

# Collective Bargaining Agreement

*between*



Pretrial Services Agency  
for the District of Columbia

*and*



American Federation of Government Employees  
Local 1456

May 23, 2012

## Preamble

This Agreement is entered into by and between the Pretrial Services Agency (PSA) for the District of Columbia, hereinafter referred to as the “Agency” or “Management”), an independent entity within the Court Services and Offender Supervision Agency (CSOSA) and the American Federation of Government Employees (AFGE), Local 1456, AFL-CIO (hereinafter referred to as “the Union”) (collectively referred to as “the Parties”), pursuant to the statutory authority of the Federal Service Labor-Management Relations Statute (FSLMRS), Chapter 71 of Title 5 of the United States Code (U.S.C.).

### **Recognition and Coverage**

AFGE is recognized as the exclusive representative of all professional and non-professional employees employed by PSA with the Certification of Representative, Case No. WA-RP-06-0014, approved by the Federal Labor Relations Authority (FLRA) on March 24, 2006 as follows:

#### **Included:**

All professional and non-professional employees employed by PSA.

#### **Excluded:**

All management officials, supervisors and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

This Agreement covers all employees pursuant to the FLRA recognition. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and/or favoritism and without regard to union membership.

Should the Union request certification to include subsequently organized groups of employees in the unit described above, and the FLRA determines that the combined unit would be an appropriate unit under the law, the Agency must not oppose the certification of the unit. Upon certification of the unit, the subsequently organized groups of employees are automatically covered by this Agreement. Nothing in this section should be construed as a waiver of the Agency’s right to oppose the appropriateness of the unit in any FLRA proceedings.

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## Article 1

### Governing Laws, Regulations and Definitions

#### Section 1. Relationship to Laws and Government-Wide Rules and Regulations

The Parties are governed by this Agreement, existing and future laws, existing Government –wide rules and regulations and subsequently-enacted Government-wide rules and regulations

#### Section 2. Other Agreements

Any Memoranda of Understanding, Memoranda of Agreement or any other written agreements between the Parties that pre-exist this Agreement and that are not covered by this Agreement are treated as past practices and do not change except in accordance with 5 U.S.C § 7101 et seq.

#### Section 3. Past Practices

In order to change any past practices that were in place on the effective date of this Agreement and that are not covered by this Agreement, the Agency provides notice and, upon request, bargains with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

#### Section 4. Definitions Applicable to this Agreement

Days mean calendar days, unless otherwise specified.

Employee means bargaining unit employee, unless otherwise specified.

Position means bargaining unit position, unless otherwise specified.

Agency Computation Date (ACD) is the actual start date or constructed date (the date is adjusted for previous time in PSA). Employees get a day of credit for each day of full time or part time service in PSA.

Seniority is based on PSA's ACD. Seniority is based on availability of requested item (i.e. unit seating). Tie – Breakers will be determined by the Service Computation Date – Leave (SCD). Should an additional tie-breaker be necessary, the last three digits of the social security number will be used.

## Article 2

### Labor-Management Relationship

#### Section 1. Basic Principles

The Parties will honor the following general principles:

- A. That a cooperative and effective labor-management relationship promotes the increased quality, productivity, performance and effectiveness of the Agency in pursuit of the Agency's mission, vision and Strategic Plan, and fosters a positive working environment for Agency employees;
- B. That labor-management relations within the Agency are strengthened by the participation of employees in the formulation and implementation of personnel policies and practices relating to and/or affecting their conditions of employment, and through constructive and cooperative relationships between the Parties; and
- C. That their relationship of promoting mutual trust, respect and appreciation for each other's roles and responsibilities continues.

#### Section 2. Labor-Management Relations Forum

- A. To give meaningful effect to the above principles, the parties establish an Agency-wide Labor-Management Relations Forum (LMRF).
- B. The Union may have up to five (5) representatives, which is equal to the number of management officials, on the LMRF. Employees who serve on the LMRF will facilitate the principles of this Article.
- C. The LMRF meets on a mutually agreed upon schedule.
- D. Official time is authorized for Union representatives' attendance at the LMRF meetings.
- E. The LMRF facilitates the exchange of information and discussion of items of mutual interest to the Parties and promotes the principles of labor-management cooperation throughout the Agency. However, the Parties acknowledge that the LMRF is not used as a substitute for fulfilling or exercising bargaining obligations or rights under applicable law or the mid-term bargaining provisions of the Agreement.

#### Section 3. Pre-Decisional Involvement

In accordance with Executive Order 13522, dated December 9, 2009, the Parties support pre-decisional involvement, when practicable and useful to the most appropriate resolution of the issue.

Pre-decisional involvement refers to those activities where the Union, which is recognized as a stakeholder, is afforded by Management the opportunity to shape decisions in the workplace. Either party may bring matters before the Labor-Management Relations Forum (LMRF) for discussion. If appropriate, a workgroup (comprised of management and union representatives) will be formed to conduct the pre-decisional discussions and report progress, conclusions and/or recommendations to the decision-maker, usually either a Management official or designee.

The pre-decisional involvement process does not expand the topics which are negotiable under 5 U.S.C. § 7106(a) and (b) of the statute. Pre-decisional involvement does not waive management's statutory right to make decisions under 5 U.S.C. § 7016(a) and (b), nor does it waive a labor organization's statutory right to engage in collective bargaining.

## Article 3

### Employee Rights

#### Section 1. General

Employees and managers are treated with mutual respect, fairly, and equitably in the administration of this Agreement and in policies and practices concerning conditions of employment without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age or non-disqualifying handicapping conditions. The Parties agree to endeavor to establish working conditions which are conducive to enhancing and improving employee morale and efficiency while accomplishing the mission of the Agency. Employees are afforded proper regard for protection of their privacy and constitutional rights.

- A. Employees have the right to be treated in a reasonable and professional manner. Guidance is provided in a constructive manner in an atmosphere that assures the employee's privacy (so as to avoid public embarrassment or ridicule). If an employee is served with a warrant or subpoena, it is done in private without the knowledge of other employees to the extent it is within management's control.
- B. Employees have the right to work in an environment free of intimidation, coercion, or harassment.
- C. When employees receive conflicting orders, they have a right to follow the last order given as long as they advise the management official who issued the latest order that there is a conflict.
- D. Employees recognize their responsibility to promptly comply with all orders and instructions from their supervisors. If an employee reasonably believes that an order or instruction patently violates any law, rule, or regulation, the employee has the right to state their beliefs to the supervisor. If the instruction remains unchanged, the employee has the right to state concisely their beliefs promptly and orally to the next higher level of management available. If the order or instruction is confirmed by that higher level management, or if the higher level management is not readily available, then the order or instruction must be carried out promptly by the employee unless they reasonably believe they are in a situation of imminent danger, death, or serious bodily harm, and that there is insufficient time to effectively seek corrective action.

#### Section 2. Rights to Join or Assist Union

- A. Each employee has the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee is protected in the exercise of such right. Except as otherwise provided under law, this includes the right:



1. To act for the union in the capacity of a representative, and the right, in that capacity, to present the views of the Union to the head of the Agency and other officials of the executive branch of the government, the Congress, or other appropriate authorities; and
2. To engage in collective bargaining with respect to conditions of employment through representatives.

### Section 3. Right to Union Representation

- A. If an employee wishes to discuss a representational matter with a Union representative on duty time, the employee requests a reasonable amount of time to hold the discussion from their supervisor.
- B. If the discussion takes place away from the worksite, the employee identifies the location where they can be contacted.
- C. The supervisor, or their designee or second-line supervisor in the absence of the supervisor, releases the employee from duty unless that supervisor determines the presence of the employee at the worksite is necessary to meet immediate work requirements. If the employee cannot be released immediately, the employee is normally released within a reasonable amount of time not to exceed three (3) business days.
- D. Pursuant to 5 U.S.C. § 7114(a) (3), the Agency agrees to annually inform all employees of their right to Union representation under 5 U.S.C. § 7114(a) (2) (B) by appropriate means.

### Section 4. Investigatory Examinations (*Weingarten*)

The supervisor informs the employee of the general purpose of any meeting that the employee is asked to attend. In accordance with 5 U.S.C. § 7114(a) (2) (B), a representative of the Union is given an opportunity to be present at any examination, discussion, or interview involving an employee if the employee reasonably believes (either prior to or during the examination, discussion, or interview) that a disciplinary action may result and the employee requests such representation. These meetings are often referred to as “investigatory examinations” or “Weingarten” meetings.

### Section 5. Formal Discussions

The Union is given the opportunity to be represented at all formal discussions as defined in 5 U.S.C. § 7114(a) (2) (A). The Agency notifies the Union designee as far in advance of the formal discussion as is reasonably possible under the circumstances. The Union representative identifies himself/herself at the start of the formal discussion and is given an opportunity to participate. The role of the representative includes clarifying the questions, clarifying the answers, assisting the employee(s) in providing favorable information, suggesting other employees who may have knowledge of relevant facts, and advising the employee(s).

## Section 6. Privacy Act Protection for Collection of Information

In conducting investigations that may result in an adverse determination about an employee's rights, benefits and privileges, the Parties are reminded that the Privacy Act requires that, to the greatest extent practicable, information should be collected directly from the subject employee. Information may also be collected from existing Agency systems of records.

## Section 7. Individual Employee Personnel Records

- A. No individual employee personnel records may be collected, maintained, retained or disclosed by the Agency except in accordance with law and Government-wide rule or regulation, including the provisions of the Privacy Act, as amended, 5 U.S.C. § 552a.
- B. Individual employee personnel records include the Official Personnel Folder (OPF), the Supervisory Employee Record File (SERF) and the Employee Medical File (EMF) as prescribed under 5 C.F.R. § 293. Other individual employee personnel records, which may be collected, maintained and retained and are subject to Privacy Act requirements are provided for in the Office of Personnel Management's Privacy Act notice. They include records such as: general personnel records, records of adverse actions, performance based reduction in grade and removal actions and resignation/termination of probationers, recruiting, examining and placement records, applicant race, sex, national origin and disability status records and position classification appeal records.
- C. All individual employee personnel records are confidential and must be retained in a secure location. In accordance with the Privacy Act, as amended, 5 U.S.C. § 552a(b)(1), no Agency employees, including current and former managers and supervisors (as well as those in an acting capacity), may disclose individual employee personnel records without prior written consent of the individual to whom the record pertains, unless the disclosure is to Agency employees who have a need for the record in the performance of their duties.
- D. Employees and/or their authorized representatives, who have been so authorized in writing, have the right to examine any of their individual employee personnel records in the presence of a management official. Upon request by the employee, a reasonable amount of duty time is granted for this purpose by the employee's supervisor. Access to official personnel records is granted within two (2) business days of the request if the records are maintained on the premises where the employee is located.

## Section 8. Supervisory Working Files

- A. Individual supervisors maintain a SERF on each of their employees. These files are subject to the same collection, maintenance, retention and disclosure requirements pertaining to other individual employee records, including the provisions of the Privacy Act, as amended, 5 U.S.C. § 552a.

- B. Supervisory working files are used by supervisors in carrying out human resources management responsibilities. As such, these files may include documents concerning individual employee development plans, recommendations for awards, training plans or history, discipline or performance, and other such records the supervisor determines to be appropriate for carrying out their on-going personnel supervisory responsibilities.
- C. Each SERF must be kept in a secure location, such as a locked desk or cabinet, to ensure its security and confidentiality.
- D. Employees are notified and given a photocopy of any documents placed in their SERF within three (3) business days after the document is placed in the file by the supervisor. Upon request, employees may review the documents contained in the SERF in the presence of a designated management official.
- E. These files must be maintained in accordance with the applicable records retention schedule.

#### Section 9. Memory Joggers

- A. Supervisors may prepare and retain memory joggers concerning individual employees.
- B. Memory joggers are private notes retained and used for the personal use of the supervisor to recall events or aid memory. Memory joggers may be prepared, retained or discarded at the author's discretion; they are not filed in the SERF. Memory joggers may not be given to non-management employees.
- C. These records are not individual employee personnel records subject to the requirements of the Privacy Act or records subject to the requirements of 5 U.S.C. § 7114(b)(4).
- D. The Union is not entitled to a supervisor's memory joggers under this Agreement, except as permitted by law, rule, or regulations.

#### Section 10. Restrictions on Access to the SERF and Associated Records.

The Parties recognize the importance of safeguarding employee records. It is critical that the records only be accessed in the performance of official duties. Any violation is subject to corrective action.

#### Section 11. Whistleblower Protection

Employees are protected against reprisal for the disclosure of information which the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety, unless the disclosure is specifically prohibited by law, in accordance with 5 U.S.C. § 2302(b) (8).

## Article 4

### Management Rights

#### Section 1.

In accordance with the Civil Service Reform Act of 1978 and subject to Section 3 of this Article, the Agency retains the authority:

- A. To determine the mission, budget, organization, number of employees, and the internal security practices of the Agency; and
- B. In accordance with applicable laws:
  - 1. to hire, assign, direct, layoff and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;
  - 2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations are conducted;
  - 3. with respect to filling positions, to make selection for appointments from:
    - a. among properly ranked and certified candidates for promotion; or
    - b. any other appropriate sources; and
  - 4. to take whatever actions may be necessary to carry out the mission of the Agency during emergencies.

#### Section 2.

Nothing in this Article precludes the Parties from negotiating, at the election of the Agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, or on the technology, methods, and means of performing work.

#### Section 3.

Nothing in this Article precludes the Parties from negotiating:

- A. Procedures which the Agency observes in exercising any authority under this Article, or
- B. Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by the Agency.

## Article 5

### Negotiations During the Term of the Agreement

#### Section 1. Agreement to Bargain

The Parties, through appropriate representatives, meet and negotiate in good faith for the purpose of collective bargaining as required by law and this Agreement.

#### Section 2. Procedures for Bargaining Changes in Conditions of Employment

- A. The Agency provides the Union with reasonable advance written notice prior to the proposed implementation date of changes affecting conditions of employment subject to bargaining. The notice contains the nature and the scope of the proposed change, and the proposed implementation date.
- B. The Union is provided fourteen (14) calendar days from receipt of the notice to request to bargain. If the Union fails to request to bargain and/or submit written proposals within fourteen (14) calendar days from the receipt of the Agency's notice, the Agency may implement the changes.
- C. Within seven (7) calendar days from receipt of the notice, the Union may request additional information or a briefing. After the Agency provides the requested information and/or conducts the briefing, the Union has the remainder of the fourteen (14) calendar day period in which to request to bargain and/or submit written proposals.
- D. The first negotiation session takes place as soon as possible but not later than fourteen (14) calendar days from receipt of the Union's request to bargain and/or written proposals.
- E. The time frames set forth in this section may be modified in writing by mutual agreement of the Parties.

#### Section 3. Ground Rules for Mid-Term Bargaining

- A. The Agency provides a meeting room and reasonable equipment for negotiation sessions.
- B. The Parties are represented at the negotiation sessions at all times by duly authorized chief negotiators who are authorized to execute agreements.
- C. During negotiations, the chief negotiator for each Party signifies agreement on each section by initialing the agreed-upon section. The chief negotiator for each Party retains their copy and initials the other Party's copy. This does not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.

- D. The Union is authorized the same number of representatives on official time as the Agency has representatives at the negotiations table. The designated Union negotiators are granted official time for time spent during the actual negotiations, including attendance at impasse proceedings during the time they would otherwise be in a duty status. The Union is permitted to have negotiators who are not employees of the Agency. If the Union chooses to exercise this option, it agrees to pay all fees and costs incurred by these negotiators.
  
- E. If any proposal is claimed to be non-negotiable and is subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal is, upon request, reopened within thirty (30) days. Nothing in this provision precludes the right of judicial appeal.

#### Section 4. Execution of Agreements

All written agreements or memoranda of understanding reached under the provisions of this Article are duly executed and incorporated into this Agreement.

#### Section 5. No Waivers

Nothing in this Agreement waives either Party's statutory rights including, without limitation, the Agency's right to assert the "Covered By" doctrine and the Union's right to initiate mid-term bargaining on matters that are not contained in or covered by the Agreement.

## Article 6

### Research Programs and Demonstration Projects

#### Section 1. Definitions

For purposes of this Agreement, the terms “research program” and “demonstration project” have the following meaning, in accordance with 5 U.S.C. § 47:

- A. Research Program - a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, and the possibilities for change, and comparisons among policies and systems.
- B. Demonstration Project - a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

#### Section 2. Notification to the Union

- A. In the event a research program impacts working conditions of employees, the Agency provides notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.
- B. Prior to the inclusion of any employees in an Agency demonstration project, the Agency provides notice and, upon request, bargain with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.

#### Section 3. Information Sharing

As early as possible in the deliberation or pre-decisional process, the Agency briefs the Union and provides applicable background material concerning the proposed demonstration project that is under consideration. For any ongoing demonstration project, the Agency provides periodic briefings along with applicable background materials to the Union, a copy of the project plan, as set forth in 5 U.S.C. § 4703(b)(1), and the OPM annual report, as set forth in 5 U.S.C. § 4705.

## Article 7

### Dues Withholding

#### Section 1. Eligibility

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions are discontinued when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this Article.

#### Section 2. Union Responsibilities

- A. The Union agrees to inform management, in writing, of the following:
  - 1. The dues amount(s) or changes in the dues amounts,
  - 2. The names of union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
  - 3. The name and address of the payee to whom the remittance should be made.
- B. The Union agrees to promptly forward completed and certified form(s) to the Office of Human Capital Management.

#### Section 3. Management Responsibilities

- A. It is the responsibility of management to:
  - 1. Process voluntary allotments of dues in accordance with this Article and in amounts certified by the Union,
  - 2. Withhold employee dues on a bi-weekly basis,
  - 3. Transmit remittance to the local allottee designated by the Union in accordance with this Article, as expeditiously as possible at the end of each pay period, together with two (2) copies of a listing containing the following information:
    - a. The name of the employee and the anniversary date of the effective date of the dues withholding, and
    - b. Identification of active employees for whom allotments have been temporarily stopped and identification of those which are a final deduction because of termination.



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

#### Section 4. Procedures for Withholding

Bargaining unit members wishing to have their dues withheld by payroll deduction submit their completed Request for Payroll Deductions for Labor Organization Dues (SF-1187) to the Union President, or designee. These officials certify the form and include the amount of dues to be withheld. The certified SF-1187 is delivered to either HR Specialist (LR/ER) in the Office of Human Capital Management for processing. The Union provides two (2) acknowledgements of receipt for signature. Dues withholding becomes effective at the beginning of the next pay period if received in the Office of Human Capital Management at least three (3) workdays prior to the beginning of that pay period. Questions concerning whether an employee is in the unit of recognition and eligible for payroll deduction of Union dues are resolved through consultations between the Director, Office of Human Capital Management, or designee and Union officials and/or through a unit clarification petition. In the event a clarification of unit petition is filed, the employee's dues are withheld pending a decision on the petition.

#### Section 5. Changes in Dues Amount

Any time there is a change in dues structure, the Union sends a memorandum to the Director, Office of Human Capital Management, noting the amount of the change. The new amounts are deducted starting the first pay period following receipt by the Agency unless a later date is specified by the Parties. The memorandum must be signed by one of the Union officials designated to certify dues withholding forms.

#### Section 6. Revocation

- A. Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely Cancellation of Payroll Deductions for Labor Organization Dues (SF-1188) to the union representatives designated for such purpose. In order for the SF-1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) calendar days prior to the anniversary date. The Union representative must certify by date and signature or by some other appropriate date stamping device the date the SF-1188 is given to the Union representative.
- B. The Union official, by reference to the remittance listing, determines the anniversary date of the allotment. The ending date of the pay period in which the anniversary date occurs is entered in Item 6 on the SF-1188. The entry is initiated by the Union official who then delivers the form to the designated Human Resources Specialist prior to the close of business of the Friday following the date entered in Item 6. If, through error of the Union, an SF-1188 is received in the Office of Human Capital Management later than the agreed-to date, the Office of Human Capital Management processes the form at the earliest possible time, but no later than the first pay period following receipt. Union representatives may be in duty status while receiving and processing the SF-1188 and are released from normal duties to carry out these duties.

## Section 7. Continuation of Dues

- A. Dues withholding is discontinued when an employee is detailed or temporarily promoted out of the bargaining unit. Union dues withholding restarts automatically when the employee returns to the bargaining unit.
- B. Anytime an employee has left the bargaining unit (for examples, a promotion or reassignment) the Union is notified. Where a dispute arises over whether the employee has left the bargaining unit, the procedures outlined in Section 4 are used.

## Section 8. Costs

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

## Section 9. New Position Determination

If an employee who is on dues deduction is selected for a new, non-supervisory position on which the Parties do not agree whether it is in or out of the bargaining unit, the employee remains on dues deduction until a decision is reached through Alternative Dispute Resolution, mutual agreement, or the formal clarification of unit petition process.

## Article 8

### Duration of the Agreement

#### Section 1. Effective Date

This Agreement becomes effective and is implemented when it is signed by the Parties, including review and approval pursuant to 5 U.S.C. § 7114(c).

#### Section 2. Duration of the Agreement

This Agreement remains in full force and effect for a period of three (3) years after its effective date. At the expiration of three (3) years from its effective date, the Agreement automatically renews for one (1) year periods unless the Agency or the Union requests to renegotiate the Agreement.

#### Section 3. Renegotiation

- A. The Agency or the Union may request to renegotiate the Agreement by submitting a notice in writing to the other party at least sixty (60) days, but not more than one hundred twenty (120) days, prior to the expiration date. Once the Agency or the Union submits a request to renegotiate under this Article, the entire Agreement is subject to renegotiation.
- B. When notice of intent to renegotiate is given, the Parties meet to negotiate ground rules. This meeting occurs no later than thirty (30) days prior to the expiration date.
- C. The ground rules are in writing. They include, at minimum, procedures governing submission of written proposals and interests, scheduling and caucuses.
- D. If renegotiation of an agreement is in progress but not completed upon the termination date of this Agreement, this Agreement is automatically extended until a new agreement is reached.

## Article 9

### Health, Safety and Critical Incidents

#### Section 1. General Policy

The Parties agree to incorporate by reference the current version of the *PSA Guide to Office Safety*. The Parties further agree to incorporate the current version of the *PSA Continuum of Control*

#### Section 2. Publicity

The Parties agree to publicize on an annual basis all safety awareness programs and the provisions and procedures for elimination of health and safety hazards under the established program.

#### Section 3. Required Notices for On-the-Job Accidents

In case of an on-the-job accident, employees must inform their supervisor and report to the Office of Human Capital Management for assistance in filling out the appropriate workers' compensation program form(s). At the request of an employee or a surviving family member, the Office of Human Capital Management promptly notifies the Union President or designee in the event of an on-the- job injury, illness or death.

#### Section 4. Health and Safety Committee

The Agency maintains a Health and Safety Committee. It is co-chaired by the Agency Director or designee and the Union President or designee. Meetings are scheduled at least quarterly on dates determined by the co-chairs. By mutual agreement of the Parties, additional meetings are held to consider serious safety matters that arise between the regularly scheduled meetings. Four (4) Union representatives are entitled to permanent membership on the Committee and have equal status with other Committee members. In addition, the Union is permitted to have a technical advisor on an as-needed basis, provided the request is made at the time agenda items are submitted. Official time entitlements to allow representation under this Article are as authorized under Article 28.

- A. The purpose of the Committee is to consider occupational health and safety matters brought to its attention make recommendations to the Director or designee, and perform such additional tasks as the Director or designee may direct. The Committee may also review matters such as occupational health and safety training programs.
- B. An agenda for each Committee meeting is prepared in advance. Either Party may propose subjects for discussion by submitting them to the Committee co-chairs at least fifteen (15) business days prior to the scheduled meeting. Additional agenda items may be submitted on health and safety issues that arise subsequent to the fifteen (15) business day requirement. Minutes of all meetings are taken and distributed to all attendees.

Meeting minutes include appropriate Committee recommendations outlined in priority order as determined by the co-chairs and the office or personnel assigned to implement the recommendations. Minutes are to be signed by the co-chairs.

- C. Each Committee member has the right, if desired, to file a dissenting report to the Committee's full report or any part thereof, and that dissent becomes a part of the official record on the subject.
- D. This section does not preclude a Union representative from attending employee organizational safety meetings outside of the Health and Safety Committee.
- E. To the extent provided in applicable regulations, the Agency will provide introductory and specialized training for the Union's permanent representatives on the Health and Safety Committee. The training enables the representatives to participate fully in the health and safety program aimed at assuring a healthy and safe work environment. Training is provided without loss of pay or charge to leave for specified Union representatives.

#### Section 5. Health and Safety Standards

Applicable PSA guidance on safety and health are minimal safety standards. In the absence of PSA guidance, applicable Occupational Safety and Health Act (OSHA) standards govern. If there is no applicable OSHA standard, nationally recognized sources of health and safety criteria are to be utilized.

#### Section 6. Duties of Employees and Supervisors

Any employee who is assigned duties they reasonably believe could endanger their health or well-being must notify the supervisor of the situation. If the supervisor cannot resolve the problem and agrees with the employee, the supervisor must delay the assignment and refer the matter through the proper channels for appropriate action. Should the supervisor and the employee disagree, the matter must be referred to the second level manager in conjunction with the Agency's Facilities Manager who evaluates the condition as to its element of danger. The employee has the right to immediately consult with a Union representative. The employee may elect not to perform the assigned tasks only when a reasonable expectation of serious injury or death exists, and they reasonably believe no alternative action is available.

#### Section 7. Inspections

- A. Safety inspections of each worksite are conducted annually with follow-up inspections to ensure corrective action has taken place.
- B. A copy of the inspection report is provided to the Union president or designee. In addition, an outline of the corrective actions taken is provided when available. Reasonable and necessary steps must be taken in order to ensure a safe environment.

- C. An employee or authorized Union representative may request an inspection by OSHA when unsatisfied with the results of the Agency's inspection and findings.
- D. A designated Union representative is entitled to be present during an inspection.

#### Section 8. Reporting of Hazardous Working Conditions

The Agency's health and safety program must have provisions for responding to employees' reports of hazardous working conditions. Employees are encouraged to use Agency procedures as the most expeditious means of abating hazardous conditions. Employees may also send reports directly to the Secretary of Labor.

The Parties agree to:

- A. Respond to employee reports of hazardous conditions and require inspections within twenty-four (24) hours for imminent danger, three (3) business days for potentially serious conditions, and twenty (20) business days for other conditions. Any employee or Union steward is authorized to request an inspection of the workplace when they believe a hazardous condition exists. The request must be in writing, signed, and submitted to the Facilities Manager. When an employee believes an imminent danger exists, the condition may be reported in person, by telephone, or by other means, and a written report filed within seventy-two (72) hours. If a hazardous situation does not pose imminent danger, employees may report such hazards to the PSA Facilities Helpdesk via e-mail or personally, depending on the urgency of the situation. Such reports are processed in accordance with applicable regulations, including 29 C.F.R. § 1960, where appropriate.
- B. Establish procedures to ensure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of a hazardous working condition. The procedures ensure the right to confidentiality, if requested by reporting employees or Union stewards.

In addition, the Agency agrees to:

- C. Notify the Union when accident investigations are conducted that involve or impact employees. The Union is permitted at its request to meet with the safety and/or management officials in charge of the investigation and provide recommendations to that official, such as prospective witnesses or work practices that may have led to the accident.
- D. Advise the Union of any action taken as a result of any hazard report and/or safety inspection concerning a matter affecting employees.

#### Section 9. Posting Notice of Hazardous Conditions

The Agency agrees to post a notice of hazardous conditions discovered in a work place as required by applicable regulations. The notice is posted, with a copy to the Union President when requested, at or near the location of the hazard and remains posted until

the cited condition is corrected. A notice contains a warning and description of the hazardous working condition and any required precautions, to the full extent required by applicable regulations.

#### Section 10. Personal Protective Equipment

The Agency will provide employees with any personal protective equipment, such as gloves, laboratory coats and other equipment required by Agency policy or OSHA standards necessary to provide protection from hazardous conditions encountered during the performance of official duties. The Union agrees to assist the Agency in aggressively publicizing the benefits of protective devices and equipment by employees, and adherence to good safety practices, policies and procedures.

#### Section 11. Medical Services and Health Programs

The Agency provides medical services and health programs to all employees as follows:

- A. A health unit staffed by certified medical personnel that provide a minimal level of treatment.
- B. Smoking cessation classes free of charge, provided a sufficient number of employees enroll for each class. Where insufficient numbers of employees enroll for a class, the Agency may cancel the class at its option.
- C. Immunization programs such as Hepatitis B series or influenza.
- D. Cholesterol screening and blood pressure checks.
- E. Stress reduction courses.
- F. Other Federal Occupational Health (FOH) provided free services.

When services are provided by the Agency, employees who are availing themselves of these services are on duty.

The Agency makes reasonable efforts to ensure the availability of adequately trained personnel to administer first aid/cardio-pulmonary resuscitation (CPR).

- A. The Agency periodically solicits for volunteers.
- B. The Agency provides timely training and recertification at no cost to the volunteers, such as first aid and CPR.
- C. The Agency makes CPR shields and masks available and readily accessible to volunteers.

The Agency protects the privacy of employees seeking or receiving services under these health and medical programs.

## Section 12. Employee Safety Training

The Agency provides adequate training to employees required to perform duties which involve real or potential hazards. An employee should not be required to work on unfamiliar equipment until the Agency has provided adequate training and instructions to safely operate the equipment. Training includes instruction, proper work methods to be used, and proper use of protective equipment.

## Section 13. Employees with Disabilities

The Agency agrees to develop procedures to ensure that all employees with disabilities are provided appropriate assistance to evacuate the building in case of an emergency.

## Section 14. Critical Incident Response

Supervisors must provide copies of critical incident reports to the Union president. The Agency encourages all employees to take advantage of the Employee Assistance Program (EAP) whenever they feel the need.

## Section 15. Hostage Response

The Parties agree to incorporate by reference the Hostage Response Procedures as contained in the current version of Policy Statement 5802.

Supervisors and employees must rehearse the plan every twelve (12) months. Documentation of the rehearsal is provided to the Facilities Manager.

Upon resolution of a hostage situation the following actions are taken:

- A. Debrief Staff
- B. Prepare Critical Incident Report
- C. Contact the EAP to request debriefing and/or crises intervention.

## Section 16. Temperature Conditions

The Parties recognize that temperature conditions in and around the work area can have a direct bearing on employee comfort, morale, health and safety. Where the Agency's Facilities Manager determines that the temperature in a particular work area or site exceeds recognized standards for the type of work being performed, the Agency takes precautionary measures to reduce the risk to employees. Measures include reduction of work performed, and increased frequency or duration of rest periods. This Section applies to both heat and cold exposure situations.



## Article 10

### Hours of Work and Overtime

#### Section 1. General

- A. The Parties recognize that in order to build a customer-focused team, it is necessary to create a high quality, family friendly work environment that attracts and retains qualified professionals. The primary mission of the Agency is to serve the needs of our clients and stakeholders. With that in mind, the Parties are committed to establishing and supporting the use of alternative work schedules (AWS) that have the potential to improve productivity and morale, and provide enhanced customer service. The Parties recognize that the accomplishment of the Agency's mission is paramount and may impact the flexibilities associated with AWS. In addition, the Parties recognize that AWS may not be appropriate for certain positions or organizational segments because of the nature of the work performed.
- B. A change in the regularly scheduled work week is considered a change in conditions of employment.
- C. At the discretion of the supervisor, all employees are authorized brief, paid work breaks in accordance with the practice of their particular office. This practice does not provide for additional smoke breaks. Employees who smoke may do so on their breaks (in authorized locations) but are not authorized additional break time. On days when all work is overtime, or in the case of extended shifts, a rest period of fifteen (15) minutes is allowed for each period of four (4) consecutive hours worked. Rest periods are not to be added to periods of leave or the beginning or end of the employee's work shift. Management may not restrict an employee's mobility during rest breaks.
- D. "Basic work requirement" means the number of hours, excluding overtime hours, an employee is required to work or be on approved leave.

#### Section 2. Alternative Work Schedules (AWS)

This section sets forth the procedures to be followed for AWS, including a standard ten (10) eight and one-half hour (8 ½) workday with a credit hour option, compressed work schedules, and flexible work schedule.

##### A. Credit Hours

- 1. Definition - Those hours in excess of the employee's tour of duty that are performed at the employee's option with the approval of their supervisor so as to vary the length of a succeeding workday or work week. Credit hours are not available to those on a fixed work schedule (i.e., a compressed work schedule).

## 2. Procedures

- a. Employees are authorized to earn credit hours provided that there is work available and it can be performed at the requested time(s).
- b. Credit hours may be earned in fifteen (15) minute increments and may be used in fifteen (15) minute increments.
- c. The maximum number of credit hours that an employee may carry over from pay period to pay period is twenty-four (24) hours.

## 3. Request to Work Credit Hours

- a. Normally, an employee requests to work credit hours during the workday preceding the day they wish to work. This request must be submitted in writing to the immediate supervisor. In the supervisor's absence, the request is submitted to the next level supervisor. The request is documented as approved or denied by the supervisor as soon as possible on the day it is submitted.
- b. The above procedure does not preclude the working of same day credit hours upon mutual agreement of the supervisor and the employee.

## 4. Request to Utilize Credit Hours

As with any other leave, an employee must submit an OPM Form 71, Request for Leave or Approved Absence, to their supervisor to request the use of accumulated credit hours.

## A. Compressed Work Schedule (CWS)

### 1. Definition - A compressed work schedule (CWS) means:

- a. in the case of a full time employee, an eighty (80) hour bi-weekly basic work requirement that is scheduled for less than ten (10) workdays;
- b. in the case of a part time employee, a bi-weekly basic work requirement of less than eighty (80) hours that is scheduled for less than ten (10) workdays.

### 2. CWS Options

- a. "5-4-9" is a work schedule that includes eight (8) nine and one-half hour (9 ½) workdays plus one (1) eight and one-half hour (8 ½) workday and one (1) regularly scheduled day off (RDO) within the bi-weekly pay period.

- b. "4-10" is a work schedule that includes eight (8) ten and one-half hour (10 ½) workdays with two (2) RDOs within the bi-weekly pay period.

## B. Flexible Work Schedule

1. "Flexible work schedule" means a tour of duty consisting of eight (8) hours a day and forty (40) hours each work week where the employee may vary the arrival and departure time on each of the ten (10) work days of a pay period within limits established by the supervisor. A flexible work schedule includes "core time" and a "flexible band." "Flexible bands" mean the specific periods of the work day during which employees may opt to vary their arrival and departure times. Flexible time bands are established for the start and end of the work day and may also be established mid-day (in conjunction with the lunch period). A flexible work schedule includes credit hours.
2. "Core hours" means that portion of the work day when all employees are expected to be at work unless on approved leave or have their supervisor's approval to "flex" in conjunction with their lunch period. The core hours are as follows:
  - a. **Diagnostic – day (9:00 a.m. – 3:30 p.m.)**  
Flexible Band: 7:00 a.m. – 9:00 a.m./3:30 p.m. - 5:30 p.m.
  - b. **Diagnostic – evening (4:00 p.m. – 10:30 p.m.)**  
Flexible Band: 2:00 p.m. – 4:00 p.m./10:30 p.m. - 12:30 a.m.
  - c. **Diagnostic – night (1:00 a.m. – 6:30 a.m.)**  
Flexible Band: 10:00 p.m. – 1:00 a.m./6:30 a.m. – 9:30 a.m.
  - d. **District Court (10 a.m. – 3:00 p.m.)**  
Flexible Band: 6:30 a.m. - 10 a.m./3:00 p.m. - 6:30 p.m.
  - e. **Supervision (10:00 a.m. – 3:00 p.m.)**  
Flexible Band: 6:30 a.m. – 10:00 a.m./3:00 p.m. - 6:30 p.m.
  - f. **Supervision (Court Rep) (8:30 a.m. – 3:00 p.m.)**  
Flexible Band: 6:30 a.m. – 8:30 a.m./3:00 p.m. - 5:00 p.m.
  - g. **Treatment – SSAC/SSU/SBTU (9:00 a.m. – 3:30 p.m.)**  
Flexible Band: 7:00 a.m. – 9:00 a.m./3:30 p.m. – 5:30 p.m.
  - h. **Treatment – Drug Court/New Directions (12:30 p.m. – 4:00 p.m.)**  
Flexible Band: 7:30 a.m. – 12:30 p.m./4:00 p.m. – 9:00 p.m.
  - i. **DTCU – early (9:30 a.m. – 3:00 p.m.)**  
Flexible Band: 6:30 a.m. – 9:30 a.m./3:00 p.m. – 5:00 p.m.
  - j. **DTCU – late (11:00 a.m. – 6:30 p.m.)**  
Flexible Band: 10:00 a.m. – 11:00 a.m./6:30 p.m. – 7:30 p.m.

**k. Drug Lab – early (8:30 a.m. – 2:00 p.m.)**

Flexible Band: 5:30 a.m. – 8:30 a.m./2:00 p.m. – 5:00 p.m.

**l. Drug Lab – late (2:30 p.m. – 9:30 p.m.)**

Flexible Band: 1:00 p.m. – 2:30 p.m./9:30 p.m. - 11:00 p.m.

**m. IT (10:30 a.m. – 2:30 p.m.)**

Flexible Band: 6:00 a.m. – 10:30 a.m./2:30 p.m. – 7:00 p.m.

**n. F & A (10:00 a.m. – 3:00 p.m.)**

Flexible Band: 6:30 a.m. - 10 a.m./3:00 p.m. - 6:30 p.m.

**o. Training (11:00 a.m. – 3:00 p.m.)**

Flexible Band: 6:30 a.m. – 11:00 a.m./3:00 p.m. - 7:30 p.m.

**C. AWS Participation**

**1. Request for AWS**

- a. Each employee who desires to work under an AWS plan must submit a written request on HR Form “Alternative Work Schedule Request” to their supervisor for a decision. The supervisor must act upon each request as soon as possible, but in no case later than seven (7) days after the request is received.
- b. All new employees, including re-hires, may request participation in the AWS plan.

**2. Criteria for AWS Participation**

- a. Supervisors may approve requests after considering the needs of the unit, including coverage and productivity to ensure the Agency’s mission is accomplished. In approving requests, a supervisor must consider the following:
  - i. Seniority
  - ii. Current performance rating (commendable or higher);
  - iii. Current disciplinary record; and
  - iv. Current leave restriction letter.
- b. Supervisors are to make a reasonable effort to accommodate employees’ requests.
- c. An employee whose request is denied may appeal that decision to the second level manager.

- d. Conflicts in scheduling must be decided subject to the criteria identified in 2.a) above.
- e. Employees who wish to change their participation in AWS must notify their supervisor at least one (1) pay period in advance of the requested change. Changes are subject to the criteria identified in 2.a. above.
- f. Employees who wish to terminate their participation in AWS may do so by providing notice prior to the beginning of a pay period.
- g. Employees who are detailed to a different unit retain their AWS schedule. This policy also applies when detailed employees return to their former unit.
- h. Hardships are given due consideration.

#### D. Exceptions

1. There are situations involving groups of employees in organizational components that may not readily accommodate a plan described in this section. Consideration and disposition of such situations are made on a case-by-case basis, subject to bargaining.

2. Adverse Impact

If the Agency experiences an adverse impact to groups of employees in organizational components due to AWS, pursuant to 5 U.S.C § 6131, negotiations in accordance with Article 5, *Negotiations During the Term of the Agreement*, are to begin immediately to resolve the situation to both Parties' satisfaction.

3. Temporary Suspension of AWS

Temporary suspension of AWS may be made by the Director of the Agency or designee for a bona fide emergency. Management will discuss the temporary suspension of AWS with the Union as soon as practicable.

#### E. Special Provisions for Suspension of AWS

1. AWS may be suspended when employees are attending and/or conducting training with beginning and ending times which conflict with their AWS schedules.
2. An employee may continue to participate in AWS while in travel status unless there is a need to change the work schedule; for example, the hours of operation at the travel site differ from those of the employee.

#### F. Miscellaneous

1. If the Agency proposes to make any change to AWS or to restrict the application of AWS to any new position(s), the Union is notified and given an opportunity to bargain.
2. AWS is initiated by the employee and subject to approval by the supervisor. In contrast, overtime and compensatory time, with the exception of religious compensatory time, are initiated by the Agency.
3. While maintaining adequate staffing coverage, management decisions on AWS requests are to be made in a fair and equitable manner.
4. The Agency is to provide the Union with advance written notice of any survey or study concerning AWS in which information is sought from employees.
5. This Agreement does not preclude the Agency from approving an altered tour of duty as a reasonable accommodation (for example, medical reasons or to further one's education).

### Section 3. Tours of Duty/Scheduling

- A. For the purpose of this section, the following definitions are used:
  1. Established tour – An approved tour of duty with a specific beginning and ending time except for those on a flexible work schedule.
  2. Work shifts are defined as day, evening and night within a twenty-four (24) hour period.
- B. Absent exigent circumstances, an employee's work week is not more than five (5) days of the period Sunday through Saturday.
- C. Absent exigent circumstances, employees are not expected to work a schedule that includes varying shifts (day, evening and/or night) within any five (5) consecutive day period.
- D. Absent exigent circumstances, employees are not required to report to work unless they have had at least twelve (12) hours off-duty time between work tours. Exceptions may be made with the agreement of the employee and supervisor. This does not preclude work on an overtime basis.
- E. In those units where the work precludes fixed non-work days, scheduled non-work days are rotated fairly and equitably among affected employees.
- F. Weekend and holiday work schedules are assigned in a fair and equitable manner.
- G. Employee work schedules are kept by management to ensure fair and equitable treatment of employees. These records are readily available for review by employees. The retention period is three (3) years.

- H. Shift schedules are to be posted at least thirty (30) days in advance. Absent exigent circumstances, work schedules are to be no more than five (5) consecutive days with two (2) consecutive days off within a work week.

#### Section 4. General Overtime Provisions

- A. Overtime is distributed in a fair and equitable manner.
- B. When an employee works overtime, whether exempt or non-exempt from the Fair Labor Standards Act (FLSA), such overtime is paid as authorized by applicable regulation.
- C. Employees are paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulation.
- D. When employees commit to work overtime, it is expected that they report for duty as required. If an employee is unable to report for assigned overtime work, they must call their supervisor prior to the start of the tour of duty with a reasonable explanation as to why they cannot report.
- E. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour of duty are entitled to a minimum of two (2) hours overtime pay or compensatory time.
- F. Overtime work schedules are maintained and available to the Union, upon request. The retention period is three (3) years.
- G. In the event of an extension of a regular work shift into a day, evening, or night work shift for more than a three (3) hour overtime work period, a non-paid break of up to one (1) hour is allowed no later than three (3) hours after the overtime starts, unless the emergency situation precludes it.
- H. Issues concerning overtime should be raised as soon as practicable.

#### Section 5. On-Call Status

- A. Generally, volunteers are to be used first to perform on-call duty before assigning such duty to non-volunteers. Non-volunteers are selected for on-call duty in a fair and equitable manner by their immediate supervisor.
- B. Records of on-call duty are maintained by management and made available to the Union upon request. The retention period is three (3) years.
- C. On-call employees are not expected to work more than eight and one-half (8 ½) consecutive hours, except in rare and unusual circumstances.
- D. Generally, employees who are on pre-approved annual leave are not scheduled for on-call status.

## Article 11

### Union Use of Agency Facilities

#### Section 1. Local Union Office Space

##### A. Management agrees to:

1. Furnish an office to the Union appropriate for carrying out its representational and partnership duties in a location easily accessible to employees and of size, furnishings and décor commensurate with the Union office occupied as of the date of this Agreement.
2. Provide maintenance and other customary and routine services.

#### Section 2. Meeting Space

The Union may use Agency conference/training rooms provided the space is available. The Union adheres to the conference/training room reservation process. The Union agrees to exercise reasonable care in the use of such space.

#### Section 3. Equipment

##### A. The Agency provides or makes available to the Union office the following:

1. two (2) telephone lines and two telephones;
2. one (1) fax machine;
3. two (2) personal computers with standard software, programs and capabilities compatible with the Agency's technology;
4. two (2) printers;
5. access to e-mail is provided for the sole purpose of communication between Union and management officials; and routine correspondence between Union officials and individual employees for representational matters.

##### B. The Agency will furnish the Union access to photocopiers for *de minimus* use only.

#### Section 4. Interoffice Mail System

The Union may use the interoffice mail system for regular representational communications, for example, grievance correspondence or memoranda to management.



## Section 5. Bulletin Boards

- A. The Agency agrees to provide the Union with the use of approximately one-third of the space on official bulletin boards that the Agency has on its premises.
- B. The Union agrees to furnish a copy of any information scheduled to be posted on the bulletin boards to the Director, Office of Human Capital Management or designee at least one (1) business day in advance prior to posting.

## Section 6. Literature

The Agency provides ten (10) slots in the plastic publication rack for the purpose of distributing Union material. Five (5) of the slots are outside the Office of Human Capital Management and five (5) slots are outside the Union office.

## Section 7. Agency Intranet

- A. The Agency provides the Union a home page on the Agency Intranet for employee information on matters such as Union programs benefits, and initiatives. The Union home page is identified by an icon or a link on the main Agency Intranet menu/homepage.
- B. The Union has direct access to the Agency Intranet for purposes of uploading or updating information on the Union's home page.
- C. The Union provides the Agency the names of two (2) representatives who may authorize and/or upload information to the Union's home page and updates the list of names as needed.
- D. Prior to posted information going live on its home page, the Union provides the material by way of SharePoint to the Director, Office of Human Capital Management or designee for review and authorization.

## Article 12

### Union Communications

#### Section 1. General Requirements

- A. The Union's access to and use of the Agency's communication resources (e.g., bulletin boards, publication racks, Intranet, e-mail) must not interfere with the mission or operation of the Agency.
- B. All Union communications using Agency communication resources or distributed on Agency premises must not violate the law, advocate violating the law, or contain items relating to partisan political matters, and must not malign, disparage or harm the character of any individual or the Agency.

#### Section 2. Distribution of Paper or Hard Copy Materials

- A. The Union may distribute paper (i.e., hard copy or leaflet) material on the Agency's premises in work areas to individual employees before and after the employee's tour of duty and lunch breaks, subject to internal security requirements, provided that both the employee distributing and the employee receiving such material are not in duty status. All such material must be properly identified as official Union material.
- B. The Union agrees to furnish a copy of any paper material scheduled for posting to the Director, Office of Human Capital Management or designee, at least one (1) business day prior to distribution.

#### Section 3. New Employees

The Agency provides time for the Union to meet new employees at the time of their entrance on duty or such other times mutually agreed to by the Parties. The Union is notified of new employee orientation sessions three (3) business days in advance. Official time is granted for up to two (2) Union representatives to make a brief presentation to new employees about the Union. The presentation does not generally exceed forty-five (45) minutes in duration and it is scheduled immediately prior to the employees' lunch break. This time is not used for any internal Union business activities, including the solicitation of membership, election of Union officials and/or collection of dues, as set forth in 5 U.S.C. § 7131(b).

#### Section 4. Distribution of the Collective Bargaining Agreement

The Agency will promptly distribute to all employees a hard copy of the Collective Bargaining Agreement and make it accessible via the Intranet.

## Article 13

### Reduction-in-Force or Transfer of Function

The Parties agree that no employee will be impacted by a Reduction-in-Force (RIF) or Transfer of Function until the Parties have negotiated the terms under which the RIF or Transfer of Function takes place.

## Article 14

### Telework Program

#### Section 1. General Policy

The Parties agree to incorporate by reference the current version of Policy Statement 4040.2, *Telework Program*, with the following exceptions and clarifications.

#### Section 2. Rescheduling

An employee, whose regular scheduled telework day falls on a Federal holiday or when participation is mandatory for an Agency sponsored event, may reschedule the telework day to another day within the same pay period, with prior approval of the supervisor. Under some circumstances, due to changing priorities, deadlines, or work demands, it may not be possible to reschedule the telework day. This request must be submitted in writing at least one (1) pay period in advance.

## Article 15

### Contracting Out

#### Section 1. Union Notification

Prior to contracting out work performed by bargaining unit employees, the Agency will provide notice and, upon request, bargain with the Union in accordance with this Agreement.

#### Section 2. Site Visits

The Agency must notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by bargaining unit employees. A Union representative may attend such a site visit.

#### Section 3. Employee Placement

When employees are adversely affected by a decision to contract out, the Agency will make reasonable efforts to find available positions for such employees. This effort includes:

- A. Giving priority consideration for available positions within the Agency;
- B. Establishing a re-employment priority list and out-placement program; and
- C. Paying reasonable costs for training that facilitates job placement.

## Article 16

### Training and Career Development

The Parties agree to incorporate by reference the current versions of the following Policy Statements:

Policy Statement 6003, *Commitment to Continuous Learning*.

Policy Statement 6004, *Yearly Mandatory Professional Development Hours*.

Policy Statement 6006, *Employee Development Action Plan (EDAP)*.

Policy Statement 6001, *Substance Abuse Treatment Training Program*.

Policy Statement 6005, *Agency Mentoring Program*.

Policy Statement 6002, *Tuition Reimbursement*.

## Article 17

### Awards

#### Section 1. General

Awards are used to recognize and reward employees whose performance is meritorious and create an environment where employees are valued for their contributions. Awards are intended to reinforce the critical importance of successful performance and valuable contributions to a performance-based, results-oriented organization. All awards are given in a fair, equitable and consistent manner.

#### Section 2. Monetary Awards

- A. Award for Foreign Language Capabilities - A cash award up to five (5) percent of basic salary given to a law enforcement officer who makes substantial use of one (1) or more foreign languages in the performance of official duties.
- B. On-the-Spot-Award - An award, in increments of \$50.00, with a minimum of \$50.00, not to exceed \$200.00, per person per event. This award provides prompt recognition of a special effort or accomplishment.
- C. Performance Award - A cash award given to recognize overall performance during the rating period, as documented in the annual rating of record. Employees rated at the "Commendable" or "Exemplary" level may receive cash awards. Award amounts may be based on a percentage of base salary. Employees with between six (6) and twelve (12) months of service may be eligible for a pro-rated award.
- D. Quality Step Increase (QSI) - A significant form of recognition given only in rare circumstances to recognize the highest levels of performance. The employee receives an additional within-grade step increase. An employee may be nominated for a QSI only if they have a current performance rating of "Exemplary" and there is a high probability that the level of performance is expected to continue as demonstrated by the employee's work history with the Agency.
- E. Special Achievement Award - A cash award made to individuals or groups for meritorious performance or results on special projects. Special achievements normally involve non-recurring projects and/or assignments outside the normal duties of the individual's or team member's position or those occurring under unusually difficult, complex or arduous circumstances.
- F. Suggestion Award - A cash or non-monetary award for an approved and implemented suggestion that is submitted in writing by one (1) or more employees that directly contributes to the economy, efficiency or increased

effectiveness of the Agency or the Federal government. See current version of Management Instruction on Employee Suggestion Procedures.

- G. Time-Off Award - An award that recognizes special effort or accomplishment and permits an employee to be away from their job during official work hours without charge to leave. Time-off awards must be used within one (1) year and may not be converted to cash under any circumstances.

### Section 3. Non-monetary Awards

- A. Certificates of Honorary Recognition - Supervisors, managers and office directors may present certificates of appreciation/honorary recognition to employees, as appropriate.
- B. Length of Service Award - Years of government service are recognized in five (5) year increments. The employee is given a certificate showing the number of years of service.
- C. Written Commendation - Supervisors and managers may recognize employees or teams for noteworthy accomplishments through Letters of Commendation or Letters of Appreciation.
- D. Peer Awards - See current version of Management Instruction on Peer Awards.



## Article 18

### Equal Employment Opportunity

#### Section 1. General

- A. The Agency affirms its commitment to provide equal employment opportunities to all employees and prohibiting discrimination on the basis of race, color, religion, sex, national origin, disabling condition, age and sexual orientation. Employees are not subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended; or the Age Discrimination in Employment Act (ADEA) of 1967, as amended, or for participating in any stage of administrative or judicial proceedings under those statutes.
- B. In accordance with 29 C.F.R. § 1614 et seq., Federal Sector Equal Employment Opportunity (EEO), and the current version of the Agency's Equal Employment Opportunity Policy (Policy Memorandum 2002-1), the Agency maintains an affirmative action program to promote equal employment opportunity by identifying and eliminating discriminatory practices and policies.

#### Section 2. Affirmative Employment

- A. The Agency provides overall management and budgetary support, including continuing its current outreach efforts, to achieve affirmative, EEO objectives throughout the Agency. The Agency will:
  - 1. Provide equal employment opportunities for all employees regardless of their race, color, religion, sex, national origin, age, disability, or sexual orientation;
  - 2. Integrate affirmative employment program efforts Agency-wide;
  - 3. Ensure that EEO is addressed in all employment practices including, but not limited, recruitment, hiring, promotion, reassignment, training, benefits and separation;
  - 4. Identify and address the areas of conspicuous absence and manifest imbalance in the workforce;
  - 5. Identify barriers and plan action items to remove the barriers to EEO for all; and
  - 6. Report on the accomplishments made toward the EEO for all and progress made toward removal of barriers.
- B. The Parties understand that the Agency is an independent entity within CSOSA. CSOSA prepares and submits required Equal Employment Opportunity

Commission (EEOC) reports. The Agency will provide to the Union the data contained within those reports that is relevant to the Agency.

### Section 3. Notice to Employees

Information concerning the EEO Program/Complaint Processing is available on the CSOSA intranet.

### Section 4. Counselors

- A. A sufficient number of trained EEO counselors are necessary to properly administer an EEO program. Counselors are given training in accordance with EEOC EEO Management Directive (MD) 110, Chapter 2.
- B. Union officials representing employees in EEO complaints and for whom the complainant has submitted a written designation of representation to the Agency, have access to copies of the EEO Counselor and Investigative Reports and the personnel records of the complainant, subject to applicable EEOC procedures.

### Section 5. Complaint Processing

- A. Any employee who files a complaint is free from coercion, interference and reprisal by the Agency and is entitled to expeditious processing of the complaint within the time limits prescribed by applicable EEOC regulation.
- B. An employee has the option of filing a complaint under the negotiated grievance procedure or under the statutory EEO complaint procedure, but not both. Should the employee elect to file a grievance under the negotiated grievance procedure, they do not have an automatic right to an arbitration hearing since only the Union can invoke arbitration.
- C. The CSOSA Alternative Dispute Resolution (ADR) Program is available for EEO complaints during both the pre-complaint counseling stage and the formal complaint process. The Parties recognize that ADR is a viable alternative that may not be appropriate in every situation.
- D. The Agency will notify the Union of all remedial or corrective actions taken as the result of informal or formal resolution of EEO complaints which impact bargaining unit employees.

### Section 6. Official Time

When an employee files a complaint of discrimination under the statutory procedure, the employee and their personal representative (if an employee of the Agency), are granted a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Agency and EEOC requests for information, in accordance with EEOC regulations (29 C.F.R. § 1614.605 and EEOC EEO Management Directive 110, Chapter 6). If the employee requests an EEOC-conducted hearing, the employee and their personal representative, if otherwise on duty, are granted a reasonable amount of official

time to prepare and present their case and subsequent appeal. The complainant and the representative must request this time in advance from their supervisor.

## Section 7. Upward Mobility

Upward mobility objectives are considered in affirmative action planning and are consistent with EEO goals and objectives.

## Section 8. Sexual Harassment

- A. Sexual harassment is a form of misconduct that undermines the integrity of the employment relationship and adversely affects working conditions. All employees are allowed to work in an environment free of unwelcome sexual overtures. The Parties will identify and eliminate such occurrences.
- B. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual; or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

## Section 9. Reasonable Accommodation

- A. The Agency provides reasonable accommodations for qualified individuals with disabilities as required by the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791. In accordance with 29 C.F.R. § 1630.2(o), the term reasonable accommodation means:
  - 1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for a position; or
  - 2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the work is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
  - 3. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.
- B. In accordance with 29 C.F.R. § 1630.2(n)(2), reasonable accommodations may include, but are not limited to:
  - 1. Making existing facilities used by employees readily accessible and usable by individuals with disabilities; and

2. Job restructuring; part-time or modified work schedules, reassignment to a vacant position, acquisition or modifications of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

## Article 19

### Employee Assistance Program

#### Section 1. General

The Agency will continue the Federal Occupational Health (FOH) Employee Assistance Program (EAP) that provides no-cost short term counseling to assist employees with issues of a personal nature related to work and family. The program includes referral services for problems related to alcohol, drug abuse, personal/emotional, financial, marital, family, and legal matters. No employee is required to use an EAP service unless this requirement is in writing as part of a mutually agreed upon settlement of a work-related matter.

Section 2. At least annually, the Agency makes all employees aware of the EAP and the available services.

#### Section 3. Procedures

The Agency notifies the Union of plans to formulate any new programs or of any changes in the existing program. Union comments and recommendations are considered.

#### Section 4. Confidentiality/Record of Participation

Employee participation in, and information obtained through, the EAP is confidential and may only be released with written consent of the employee or as provided by applicable law, rule or government-wide regulation. No employee's job security or promotion opportunities are jeopardized by a request for counseling or referral assistance.

The Parties recognize that all confidential information and records concerning employee counseling and treatment are maintained in accordance with applicable law, rule and government-wide regulation.

#### Section 5. Assistance Availability

Employee assistance services are made available to those employees who request them. The Agency agrees to assist employees by providing information and encouragement to use counseling services as needed.

Should EAP counseling appointments require absence from duty, the employee makes the appropriate arrangements with their supervisor. Such leave from duty is approved except when there is an immediate or pressing operational need or requirement that would preclude its use at the requested time. Employees utilizing EAP are excused without charge to leave for a brief period of time, not to exceed twelve (12) hours inclusive of travel time per calendar year. Employees are limited to six (6) counseling sessions per calendar year on duty time.

## Article 20

### Work/Life Balance Initiatives

#### Section 1. General

Work/life balance initiatives are any benefits, policies or programs that help create a better balance between the demands of the job and the enjoyment of life outside work.

The Parties are committed to maintaining a quality work environment by promoting and fostering work/life balance initiatives that enhance employee morale, support good job performance, and improve recruitment and retention. The Agency maintains a Work/Life point of contact who heads a joint Work/Life Committee comprised of an equal number of representatives from the Union and management.

The Work/Life Committee researches and develops initiatives to assist employees in successfully integrating their work, personal and family lives. This may include, but is not limited to the status of current activities, potential use of Agency funding, and results of surveys and/or feasibility studies. The Committee meets initially within three (3) months after ratification of this Agreement and at least quarterly thereafter.

Work/life initiatives may potentially deal with a wide range of issues including but not limited to:

- emergency childcare assistance,
- eldercare,
- referral program to care services and local organizations,
- flexible working arrangements,
- employee assistance programs,
- on-site seminars and workshops (on such topics as stress management, nutrition, smoking cessation, communication, financial planning, etc.),
- internal and/or external educational or training opportunities, or
- fitness/wellness.
- exercise facility

The primary purpose of the Committee is to provide recommendations to the Agency on specific initiatives for development. Based on consensus, Committee recommendations are forwarded to the Director of the Agency for a decision. Concurrently, the recommendations are forwarded to the Union president and the Director, Office of Human Capital Management. Agency decisions, including rationale, are forwarded to the Committee within a reasonable timeframe, not to exceed ninety (90) days.

#### Section 2. Implementation

Once recommendations are approved, the Parties meet to negotiate the terms under which they are implemented.

### Section 3. HealthierFeds Initiative

In support of the OPM HealthierFeds Initiative, the Parties recognize that regular physical activity, whether moderate or vigorous, helps employees feel better and stay healthy. It may reduce employee absenteeism, turnover, and medical costs, and improve worker satisfaction and morale. Excused absence may be granted by the Director of the Agency or designee in furtherance of Agency-sponsored events and recognized health and productivity benefits of physical activity. The Parties also recognize that supervisory approval is required and that accomplishing the mission of the Agency is paramount and may impact the flexibility associated with participation in such activities.

## Article 21

### Performance Management System

#### Section 1. General

The performance management system is designed to maximize employee and organizational performance and motivate employees to excel by:

- communicating Agency goals and objectives;
- developing clearly defined performance standards based upon officially assigned duties and responsibilities;
- appraising performance in a fair, equitable and consistent manner; and
- assisting employees in improving performance when needed.

#### Section 2. Definitions

- A. Appraisal - The process of evaluating performance against established performance criteria.
- B. Appraisal Period- August 1 through July 31.
- C. Critical Job Element- A work assignment or responsibility of such importance that poor performance would result in an assessment of overall unacceptable performance.
- D. Departure Appraisal - A written appraisal conducted when an employee or supervisor leaves their position.
- E. Minimum Rating Period - Ninety (90) days.
- F. Opportunity Period - A period of time, not less than sixty (60) days, for an employee whose performance is determined to be at the “Not Met” level in one or more critical job elements to demonstrate performance at the “Met” level.
- G. Performance - The accomplishment of work assignments, duties, and responsibilities.
- H. Performance Assistance Plan - Prior to the issuance of a Performance Improvement Plan, a supervisor works informally with an employee and provides a document that addresses performance-related issues.



- I. Performance Improvement Plan - A document given to an employee during an Opportunity Period when performance is determined to be at the “Not Met” level in one or more critical job elements.
- J. Performance Plan - A document composed of a cover sheet, critical job elements and performance standards.
- K. Performance Review - The appraisal of each critical job element to determine if performance is at the “Met,” “Not Met” or “Exceeds” level.
- L. Performance Standard - The management-approved expression of the performance thresholds, requirements or expectations that must be met to be appraised at a particular level of performance.
- M. Progress Review - Feedback to an employee about performance as compared to their performance standards.
- N. Rating Official - The official, usually the immediate supervisor, who appraises the employee’s performance and assigns a rating.
- O. Rating of Record - The summary rating prepared at the end of the annual appraisal period or at any time during the appraisal period for an employee whose performance in one (1) or more critical job elements is determined to be at a “Not Met” level (for employees who have completed their probationary period).

### Section 3. Performance Plan

#### A. Establishment of Plan

Within thirty (30) days of the beginning of the performance appraisal period, each supervisor establishes a performance plan for all employees under their supervision. This plan must:

- Align with organizational goals;
- Include at least one (1) critical element that holds employees accountable for achieving results; and
- Describe performance at the “Met” and “Exceeds” levels using credible measures that are observable, measurable and/or demonstrable/

After providing the employee an opportunity to review and discuss the elements and standards, the supervisor and the employee sign and date the form titled, “Performance Plan Certification.” The supervisor gives the employee a copy of the plan. An employee who declines to sign the form is still responsible for performing under the plan.

## B. Change in Position

When employees are reassigned or promoted during the rating period, a new performance plan will be established within thirty (30) days of the change in position.

## C. Details and Temporary Promotions

Employees on details or temporary promotions for ninety (90) days or more are also rated on their performance during that time. When details or promotions are expected to last ninety (90) days or more, a performance plan covering the detail or temporary promotion will be established. Departure appraisals for employees on details or temporary promotions must be prepared within thirty (30) days after the detail or temporary promotion ends. Employees on details, temporary promotions or special projects for less than ninety (90) days may receive written feedback on their performance by the responsible supervisor with a copy forwarded to the permanent supervisor.

## Section 4. Performance Review

### A. Progress Reviews

The appraisal process is ongoing and supervisors are to provide feedback, formally and informally, to employees on a continuing basis. Regular formal performance progress reviews are conducted, at a minimum, halfway through the rating period, at any time for employees whose performance is determined to be unacceptable, and whenever requested by an employee. The review will include an opportunity for the employee to provide written/verbal input. The formal progress reviews are documented on the Performance Plan Certification form where the employee and supervisor sign and indicate the date of the review.

## Section 5. Performance Appraisal

### A. Rating of Record

- At the end of the rating period, the supervisor gives employees the opportunity to provide input on their performance prior to completing the “Performance Appraisal Rating of Record” form. The supervisor appraises each critical job element as “Met,” “Not Met,” or “Exceeds.” The assignment of the Rating of Record is based on the following:
- Commendable performance: all critical job elements are at the “Met” level or a combination of “Met” and “Exceeds” levels.
- Unacceptable performance: one or more critical job elements are at the “Not Met” level.
- Exemplary performance: all critical job elements are at the “Exceeds” level.

## B. Consideration of Other Appraisals

When an employee has received a departure appraisal from another position during the performance period, it will be considered in assigning a final rating of record.

## C. Departure Appraisal

If an employee changes positions, leaves the Agency, or the supervisor leaves their position, the employee is given a departure appraisal within thirty (30) days. The employee is appraised on each critical job element but no Rating of Record is assigned. The departure appraisal is forwarded to the employee's new supervisor.

## D. Performance evaluations take in to consideration factors beyond an employee's control which have a direct impact on performance. Factors to be considered, but not limited to, are extended periods of increase in work volume due to sustained caseloads above previously established norm or staff shortage.

## E. Documentation

The supervisor meets and discusses the appraisal with the employee and provides a copy of the complete plan including the certification, elements and standards and the rating form. The employee signs the form, indicating receipt of the appraisal, and receives a copy of it and any supporting documentation. The employee's signature does not indicate agreement with the appraisal and does not impact their right to challenge the appraisal. If the employee declines to sign the appraisal, the supervisor notes this on the form, indicating that the employee refused to sign, the date and documenting that the employee was given a copy of the form.

## F. Unable to Rate

If at the end of the appraisal period an employee has not been on a signed plan for at least ninety (90) days, one of the following is applied.

1. If the employee received one (1) or more departure appraisals from their previous position(s), the rating of record is derived from these appraisals. The current supervisor prepares the "Performance Rating, Current Supervisor's Certification of Previous Appraisal" form in these cases and attaches all departure appraisals received by the employee during the rating period.
2. If an employee is unable to complete ninety (90) days of work performance, the rating period is extended.

## Section 6. Appeal Rights

See Article 24 - Grievance Procedure.

## Section 7. Performance Assistance Plan

- A. If at any time during the appraisal period a supervisor identifies that an employee has a significant performance problem, the supervisor meets with the employee and, if requested, a Union representative to advise the employee of the problem and develop a written assistance plan to improve the employee's performance. This counseling session is documented in writing and a copy is provided to the employee.
- B. The assistance plan affords the employee a reasonable opportunity of at least thirty (30) calendar days to resolve the identified performance-related problem. During this period the employee is deemed to be performing at a "commendable" level for the purposes of any performance-related personnel actions. This deemed "commendable" level does not constitute an assessment or rating of a successful level of performance.
- C. The assistance plan is tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a full performance level mentor, or other assistance as appropriate. The Parties agree that placing the employee on 100 percent review does not equate to appropriate assistance.
- D. The purpose of the assistance is to help the employee improve rather than accumulate documentation as the basis for a future performance-related adverse action.
- E. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary. The supervisor notifies the employee of this determination in writing.
- F. If, following the assistance period, the supervisor is unable to make an evaluation that the employee is successfully performing their job duties and responsibilities, the supervisor gives the employee a documented performance review communicating (1) this determination, (2) that the employee is placed on a formal Performance Improvement Plan (PIP), and (3) that personnel related actions (such as within grade increases or awards) are withheld while this level of performance continues. The employee is entitled to a Union representative at this performance review.

## Section 8. Performance Improvement Plan

For employees who have completed their probationary period, if at any time during the appraisal cycle the employee's performance in one or more critical job elements is determined to be at a "Not Met" level, the supervisor must issue a Rating of Record of Unacceptable, provide the employee an opportunity to improve and issue a PIP. The opportunity period must be at least sixty (60) days. The PIP includes the following:

- Identification of the critical job element(s) in which the employee's performance is below the "Met" level. It should refer to the element

specifically as written at the beginning of the rating period and provide specific examples of deficiencies. It also includes dates and summaries of any progress reviews or discussions regarding the employee's performance. A copy of the critical job element(s) and performance standard(s) are attached to the PIP.

- A description of the performance standard that must be demonstrated for a determination that performance is at the "Met" level, with additional explanation if necessary.
- A description of the assistance to be provided to the employee in improving their performance and a schedule of formal meetings that the supervisor plans to hold during the improvement period.

At the conclusion of the opportunity period, the employee is issued a Rating of Record. If performance did not improve to the "Met" level on each critical job element, the employee receives a Rating of Record of Unacceptable. If performance did improve to the "Met" level on each critical job element, the employee receives a Rating of Record at the "Commendable" performance level.

If an employee has performed at the "Met" level for the one (1) year period after the issuance of the PIP and the employee's performance again falls to the "Not Met" level on the same critical job element(s), the employee is given a new opportunity period to demonstrate performance at the "Met" level before any action is proposed.

If at any time during the one (1) year period after the issuance of the PIP, the employee's performance again falls to the "Not Met" level on the same critical job element(s), no additional opportunity period is provided before any action is proposed.

## Article 22

### Within Grade Increases

#### Section 1. Acceptable Level of Competence

An employee is considered to have attained an acceptable level of competence when work performance is rated as at least “Commendable” or its equivalent.

#### Section 2. Within-Grade Increases

The Within Grade Increase (WIGI) is granted as soon as the employee is eligible if they have performed at an acceptable level of competence.

#### Section 3. Performance/Competence Determination

##### A. Communication of Performance Requirements

Employees are informed of the specific performance requirements that constitute an acceptable level of competence within the time frames and means of communication of performance standards established under the Performance Management System.

##### B. Acceptable Level of Competence Determinations

1. An acceptable level of competence determination is based on the current rating of record. This rating must have been assigned no earlier than at the end of the most recently completed annual appraisal period. If the most recent rating is more than ninety (90) days old, the current performance is reviewed to ensure that the rating of record reflects current performance.
2. When it is determined that current performance is not at an acceptable level, a new rating must be prepared to document current performance.

##### C. Notification

Employees are provided with an acceptable level of competence determination as soon as possible after the completion of the required waiting period.

1. Favorable Determination - A “Within Grade Increase Record” (Form AD-658P) is used to advise employees that they have achieved an acceptable level of competence and will receive a within-grade increase.
2. Negative Determination - When it is determined that the employee’s performance is not at an acceptable level of competence, the employee is given a written notice which includes the following:

- a. The reasons for the negative determination and the critical element in which the employee must improve their performance, and
- b. Notice to the employee of their right to request reconsideration of the negative determination.

#### D. Reconsideration

##### 1. Time Limits

An employee or an employee's Union representative may file a written request for reconsideration not later than fifteen (15) days after receiving the notice of a negative determination. The time limit to request reconsideration should be extended when the employee shows they were not notified of the time limit and were not otherwise aware of it or that the employee was prevented by circumstances beyond their control from requesting reconsideration within the time limit.

##### 2. Reconsideration File

When an employee or their Union representative files a request for reconsideration, a reconsideration file is established which contains all pertinent documents relating to the negative determination including:

- a. The written negative determination and the basis thereof,
- b. The employee's written request for reconsideration,
- c. The report of inquiry, when an inquiry is made,
- d. The written summary or transcript of any Union presentation made, and
- e. The final decision on the request for reconsideration.

##### 3. Written Exceptions

The reconsideration file does not contain any document that has not been made available to the employee or their representative with an opportunity to submit a written exception to any summary of the employee's personal presentation.

##### 4. Preparation of Response

An employee in a duty status is granted a reasonable amount of time to review the material supporting the negative determination and to prepare a response to the determination.

## 5. Final Decision

The employee is provided a written decision within ten (10) business days after the receipt of the employee's response. The decision includes the right to grieve under the negotiated grievance procedure.

### Section 4. Procedures for WIGI Determinations

- A. When an employee has been assigned a new supervisor within ninety (90) days of the end of a WIGI waiting period, that supervisor uses the departure appraisal produced by the previous supervisor as the basis for the level of competence determination.
- B. Except in rare and unusual circumstances, the WIGI is granted as soon as the employee is eligible, unless the employee was informed in writing of a potential negative performance determination and, unless their performance improves, the WIGI would be denied:
  - 1. During the most recent progress review, or
  - 2. At least sixty (60) calendar days before the end of the statutory waiting period for eligibility for a WIGI.
- C. In those rare and unusual circumstances when the supervisor does not give sixty (60) calendar days advance notice, the supervisor must consider the entirety of the employee's work performance during the waiting period and provide written justification for the negative determination.
- D. If at the end of the sixty (60) calendar days the employee's performance is not at an acceptable level of competence for the purpose of approving the WIGI, the employee is given a written notice that includes:
  - 1. An indication that the employee's work has been reviewed;
  - 2. A statement that the employee's work has been determined to be of a less than an acceptable level of competence;
  - 3. An identification of those elements where the employee's performance has resulted in denial of the WIGI;
  - 4. A statement that the employee has a right to request, in writing, a reconsideration of the negative determination, provided the request is made within fifteen (15) days of the employee's receipt of the negative determination;
  - 5. The name of the reconsideration official to whom the employee may submit a request;



6. A statement that the employee may have a Union representative in presenting a request to the reconsideration official; and
7. A statement that the employee may appeal the basis for the negative determination in person and/or in writing.

#### Section 5. Appeals

Employees must complete the reconsideration process prior to filing a grievance. The employee may appeal the reconsideration decision under either the appellate procedure at 5 U.S.C. § 7701 or the negotiated grievance procedure in Article 24, but not both.

#### Section 6. Redetermination

After a WIGI has been denied, the Agency may grant the WIGI at any time after it determines that the employee has demonstrated sustained performance at an acceptable level of competence. In such cases, the WIGI is effective the first day of the first pay period after the acceptable determination is made.

## Article 23

### Discipline and Adverse Actions

#### Section 1. General

The Parties agree to the following:

- A. Misconduct must be dealt with promptly in a fair, equitable and consistent manner.
- B. The goal of disciplinary action is to correct unacceptable behavior and attitude, not to punish an employee for their misconduct. All actions must be taken only for such cause as promotes the efficiency of the service (5 U.S.C § 7513(a)).
- C. Discipline is applied in a progressive manner. This Article covers three general types of actions: 1) non-disciplinary corrective actions, i.e., verbal warnings and letters of warning; 2) disciplinary actions, i.e., letters of official reprimand and suspensions of fourteen (14) calendar days or less; and 3) adverse actions, i.e., suspensions of fifteen (15) or more calendar days, demotions and removals. Under most circumstances, the minimum penalty that can reasonably be expected to correct the employee's conduct and improve the efficiency of the service is imposed. If discipline at the higher range of penalties is proposed, the Agency must make clear why it is proposing a higher penalty.
- D. Some offenses are so objectionable that they fall outside the general use of progressive discipline, e.g., assaulting a supervisor or threatening bodily harm to co-workers. In such extreme cases, removal may be justified for a first offense. Also, discipline is normally limited to instances of misconduct occurring in the workplace or in a duty status. In some instances, misconduct outside work can have a sufficiently adverse impact on the Agency to justify corrective action. In case of off-duty misconduct, disciplinary or adverse actions are only taken if there is a nexus between the employee's misconduct and the employee's position.
- E. Except for verbal warnings, letters of warning and letters of official reprimand, all actions must provide due process. This means that the action is first proposed in writing; the employee is then provided an opportunity to respond; and a higher level of management then makes the decision.

#### Section 2. Coverage

This Article applies to all disciplinary and adverse actions taken against employees that are based solely or partially on misconduct. It does not apply to actions based solely on performance or a termination during the probationary period. Unacceptable performance actions are taken in accordance with Title 5 U.S.C. § 4303 and are covered in Article 21, Performance Management System.

### Section 3. Definitions

- A. Counseling Session - a private discussion between an employee and a supervisor or management official about any matter. It does not constitute a disciplinary action and no record is kept in the Official Personnel Folder (OPF), but the supervisor may keep a written record of the counseling session, which is filed in the supervisory employee record file (SERF) and removed after an appropriate interval (not to exceed a year) at the discretion of the supervisor. If such a written record is made, the employee is provided a copy.
- B. Crime provision - the right of the Agency to reduce the thirty (30) calendar day advance notice period (but not less than seven (7) calendar days) for adverse actions when there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.
- C. Deciding Official – 1) the line management official who issues verbal warnings, letters of warning and letters of official reprimand (first level supervisors); 2) for suspensions of fourteen (14) days or less and adverse actions, the Deputy Director or designee who reviews the notice of proposed action, receives the employee’s response, if any, and renders a decision.
- D. Demotion – involuntary reduction in grade and pay for cause.
- E. Douglas Factors - guidelines set forth by Merit Systems Protection Board (MSPB) case law addressing relevant factors agencies should consider in selecting a penalty. Elements such as the nature and seriousness of the offense, the employee’s prior disciplinary record and length of service, potential for the employee’s rehabilitation, and consistency of the penalty with those imposed upon other employees for the same or similar offenses are some of the factors that may be considered in making decisions on adverse actions. *See Douglas v. Veteran’s Administration*, 5 MSPR 280, 5 MCPB 313 (1981).
- F. Due Process - the issuance of the notice of proposed action, a right to respond, and a written decision by a higher level official. It is applicable to suspensions, demotions and removals.
- G. For Cause - an action taken by management because of an employee’s misconduct; in contrast to actions taken through no fault of the employee, such as a reduction-in-force or a change to lower grade due to the reclassification of their position.
- H. Indefinite Suspension - placing an employee in a temporary status without duties and pay pending investigation, inquiry, or further Agency action. The indefinite suspension continues for an indeterminate period of time and ends with the resolution of the pending conditions set forth in the notice of proposed action.
- I. Investigation – an official inquiry into allegations of misconduct, normally conducted by the Office of Professional Responsibility (OPR). It includes interviews, the collection of documents, records and other information. Not all

allegations require formal investigations. In such cases, an administrative inquiry to determine relevant facts may be conducted by a management official and/or the Office of Human Capital Management (OHCM).

- J. Investigative Interview - a meeting between an employee and one (1) or more representatives of management for the purpose of obtaining facts regarding an allegation of misconduct. Employees must cooperate by answering questions asked during the interview. An employee who is the subject of an investigation is informed of their right to representation before any questioning takes place or any signed statements are taken. Other employees questioned in connection with the incident have the right to Union representation upon request.
- K. Garrity Rule – a warning given to an employee by a management official during an employment investigation that requires the employee to either provide information or face removal for refusal to provide information. If such warning is given, the employee may object to the use of such information in a subsequent criminal proceeding on the basis that a self-incriminating statement was made under duress. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- L. Last Chance Agreement - written agreement between the Agency and an employee by which a decision to remove is held in abeyance, conditioned on the employee's agreement to avoid any future misconduct.
- M. Letter of Warning – a letter from the supervisor that: 1) warns the employee of conduct issues that, if not corrected, may lead to formal discipline and 2) notifies the employee of specific corrective action that must be followed. A letter of warning is a verbal warning put into writing which reinforces the message. No record is placed in the employee's Official Personnel Folder. It should be filed in the SERF and may be removed after an appropriate interval (not to exceed a year) at the discretion of the supervisor.
- N. Nexus - relationship between misconduct and the efficiency of the service. Action may be taken based on off-duty misconduct if there is a nexus between the misconduct and the employee's duties. For example, unlawful conduct by an off-duty law enforcement officer brings into question that officer's respect for and ability to abide by the rule of law.
- O. Official Personnel Folder (OPF) - maintained by OHCM, documents individuals' federal employment in accordance with Office of Personnel Management (OPM) guidelines. OPM and agency human resources offices use these documents to make decisions about employees' rights and benefits throughout their careers.
- P. Official Time - reasonable regular duty time provided, upon advance request, for an employee to prepare and present a response to a proposed action, meet with their representative and/or secure documents relevant and necessary to their defense.

- Q. Proposing Official - line management official who evaluates the available information regarding possible misconduct and issues the notice of proposed action of suspension, demotion or removal.
- R. Representation - right of an employee, in the case of a proposed suspension, demotion or removal, to be represented by the Union or self-representation. The employee is required to designate their representative in writing to OHCM. All communications are handled through the representative until the employee provides written notice that the designated representative has been terminated or replaced.
- S. Verbal Warning - lowest level of corrective action consisting of a private meeting or discussion between a supervisor or management official and an employee for the purpose of identifying a conduct problem. The verbal warning is used to correct minor misconduct, offering assistance if appropriate, and notifying the employee that a recurrence may result in more severe action. It does not constitute a disciplinary action and no record is kept in the OPF, but the supervisor may keep a written record of the verbal warning which is filed in the SERF and removed after an appropriate interval (not to exceed a year) at the discretion of the supervisor. If such a written record is made, the employee is given a copy.

#### Section 4. Procedures

##### A. Disciplinary Actions

1. Letter of Official Reprimand - Formal discipline consisting of a letter that identifies a conduct problem, delineates the specific corrective action that must be taken, and notifies the employee that a recurrence may result in more severe action. A copy is placed in the OPF for a specified amount of time, usually one (1) or two (2) years, but may be removed after an appropriate interval at the discretion of the supervisor.
2. Suspension (fourteen (14) days or less) - Formal discipline consisting of placement in a non-duty, non-pay status. While on suspension, the employee is not permitted access to Agency premises (except with prior approval), and may not use leave. A permanent record (Notification of Personnel Action -- Standard Form 50) is kept in the OPF.
  - a. A suspension must be proposed in writing and provide fifteen (15) calendar days advance notice. The notice of proposed action informs the employee of their right to review the material that is relied on to support the reasons in the notice. Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed remains in a duty status in their regular position during the advance notice period. In those rare circumstances where the Agency determines that the employee's continued presence in the workplace during the notice period may (1) pose a threat to the employee or others, (2) result in loss of or damage to government

property, or (3) otherwise jeopardize legitimate government interests, the Agency may elect one (1) or a combination of the following alternatives:

- i. Assigning the employee to duties where they are no longer a threat to safety, the Agency mission, or to government property;
  - ii. Allowing the employee to use annual leave or leave without pay;
  - iii. Curtailing the notice period when the Agency invokes the “crime provision.” This provision may be invoked even in the absence of judicial action if the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or
  - iv. Placing the employee in a paid, non-duty status for such time as is necessary to effect the action.
- b. The employee has seven (7) business days from the date of receipt to file a written response with the specified Deciding Official. The response may be written, oral or both. No response is required and no adverse inference is drawn from the failure to file a response. The employee is given a reasonable amount of official time to review the material relied on to support the proposed action, prepare an answer, and secure affidavits, if they are in an active duty status. Upon written request and a showing of good cause, the deadline for filing a response may be extended.
- c. After receipt of the response (or after the deadline for receipt) the Deciding Official reviews the notice of proposed action, case file and response, if any, and decides what action to take. In arriving at the decision, the Deciding Official does not consider any reasons for action other than those specified in the notice. The decision may range from closing the case with no action through the proposed penalty. It may not be more severe than the penalty proposed in the notice. The decision letter must include the basis for the decision and the choice of penalty.
- d. If the employee is on duty, the decision is delivered in person by the Deciding Official or a designee, who has the employee sign acknowledgment of receipt. If the employee is not on duty, the decision is sent via an overnight/express mail service (proof of personal delivery not required), with a copy sent via first class mail or by personal delivery.

## B. Adverse Actions

1. Suspension (fifteen (15) or more days) - Formal discipline consisting of placement in a non-duty, non-pay status in cases of serious or repetitive misconduct. While on suspension, the employee is not permitted access to Agency premises (except with prior approval), and may not use leave. A permanent record (SF-50) is kept in the OPF.
2. Demotion - Involuntary reduction in grade and pay for cause. A permanent record (SF-50) is kept in the OPF.
3. Removal - Involuntary separation taken for egregious or repetitive misconduct.
4. Procedures
  - a. Adverse actions must be proposed in writing and provide thirty (30) calendar days advance notice. The notice of proposed action informs the employee of their right to review the material that is relied on to support the reasons in the notice. Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed remains in a duty status in their regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may: 1) pose a threat to the employee or others, 2) result in loss of or damage to government property, or 3) otherwise jeopardize legitimate government interests, the Agency may elect one or a combination of the following alternatives:
    - i. Assigning the employee to duties where they are no longer a threat to safety, the Agency mission, or to government property;
    - ii. Allowing the employee to use annual leave or leave without pay;
    - iii. Curtailing the notice period when the Agency invokes the "crime provision." This provision may be invoked even in the absence of judicial action if the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed; or
    - iv. Placing the employee in a paid, non-duty status for such time as is necessary to effect the action.
  - b. The employee has fourteen (14) business days from the date of receipt to file a written response with the specified Deciding Official. The response may be written, oral or both. No response is required and no

adverse inference is drawn from the failure to file a response. The employee is given a reasonable amount of official time to review the material relied on to support the proposed action, prepare an answer, and secure affidavits, if they are in an active duty status. Upon written request and a showing of good cause, the deadline for filing a response may be extended.

- c. After receipt of the response (or after the deadline for receipt) the Deciding Official reviews the notice of proposed action, case file and response, if any, and decides what action to take. In arriving at the decision, the Deciding Official does not consider any reasons for action other than those specified in the notice. The decision may range from closing the case with no action, through the proposed penalty. It may not be more severe than the penalty proposed in the notice. The decision letter must include the basis for the decision and the choice of penalty.
- d. If the employee is on duty, the decision is delivered in person by the Deciding Official or a designee, who has the employee sign acknowledgment of receipt. If the employee is not on duty, the decision is sent via an overnight/express mail service (proof of personal delivery not required), with a copy sent via first class mail, or by personal delivery.

## Section 5. Records

OHCM establishes a case file for each disciplinary and adverse action, as well as Letters of Warning. The file contains copies of all relevant information and is maintained for five (5) years for historical record. The case file is not part of the employee's Official Personnel Folder and disclosure is subject to the provision of the Privacy Act.



## Article 24

### Grievance Procedure

#### Section 1. Purpose

- A. The purpose of this Article is to provide a mutually acceptable method for the prompt settlement of grievances filed by employees or the Parties.
- B. The Parties earnestly desire that grievances and complaints be settled in an orderly and prompt manner so that the efficiency of the Agency is maintained and morale of employees is enhanced. Every effort is made by the Parties to settle grievances at the lowest possible level. The use of the Informal Resolution Process and Alternative Dispute Resolution (ADR) is encouraged. Employees and their representatives must be unimpeded and free from restraint, interference, coercion, discrimination or reprisal in seeking adjustment of grievances. The filing of a grievance must not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the Agency.

#### Section 2. Coverage

This policy covers all bargaining unit employees of the D.C. Pretrial Services Agency (PSA).

#### Section 3. Scope

- A. A grievance as defined by 5 U.S.C. § 7103(a)(9) means any complaint:
  1. by an employee concerning any matter relating to the employment of the employee;
  2. by the Union concerning any matter relating to the employment of the employee; or
  3. by an employee, the Union or the Agency concerning:
    - a. the effect or interpretation or claim of breach of all collective bargaining agreements; or
    - b. any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.
- B. In accordance with 5 U.S.C. § 7121(c), the grievance procedure contained in this Article does not cover:
  1. any claimed violation relating to prohibited political activities;
  2. any complaint concerning retirement, life insurance or health insurance;

3. any suspension or removal for national security reasons;
4. any examination, certification or appointment; or
5. the classification of any position that does not result in the reduction in grade or pay of any employee.

C. In addition, the following are excluded from the negotiated grievance procedure:

1. the content of published PSA regulations, policies, and management instructions;
2. any proposed suspension, downgrade or removal;
3. non-selection from a group of properly rated and certified candidates or failure to receive a noncompetitive promotion with just cause;
4. an action that terminates a temporary promotion and returns the employee to the position from which the employee was temporarily promoted, or places the employee in a similar position that is not at a lower grade or pay level than the position from which the employee was temporarily promoted (employees are given prior written notice of this possibility);
5. the substance of the critical elements and performance standards of an employee's position;
6. a decision to grant a general pay increase, performance-based pay increase, performance award, cash award, or quality step increase;
7. the granting of any form of honorary recognition, or the adoption of an employee suggestion;
8. termination of probationary appointments with just cause.

#### Section 4. General Provisions

- A. This is the exclusive procedure available to the Union, the Agency and employees for resolving grievances.
- B. An employee processing a grievance under this Article is limited to Union representation or self-representation. Management must notify the Union of any bargaining unit employee who performs self-representation. When not representing employees in a grievance, the Union has the right to observe settlement meetings during all steps of the negotiated grievance procedure. Therefore, management must notify the Union when these meetings take place. In its capacity as an observer, the Union agrees to respect the confidentiality of all information obtained.

- C. New evidence and witnesses that are relevant to the resolution of a grievance may be introduced at any Step in the grievance procedure prior to arbitration. A matter that constitutes a separate grievance may not be raised by either Party unless it was raised at Step 1.
- D. In accordance with 5 U.S.C. § 7121, employees at their option may raise matters covered under 5 U.S.C. § 4303 (unacceptable performance) and 5 U.S.C. § 7512 (suspensions of more than fourteen (14) days, removals, furloughs without pay for thirty (30) days or less, or reductions in pay or grade) under either the appellate procedure at 5 U.S.C. § 7701 or the negotiated grievance procedure in this Article, but not both. An employee is deemed to have exercised their option to raise a matter under either the applicable appellate procedure or the negotiated grievance procedure at such time as the employee timely files a notice to appeal under the applicable appellate procedure or the employee timely files a grievance in writing in accordance with this Article, whichever event occurs first.
- E. An employee affected by a prohibited personnel practice or discrimination may raise the matter under a statutory procedure or the negotiated grievance procedure, but not both. An employee is deemed to have exercised their option at such time as they timely file a grievance in writing or initiate an action under the applicable procedure.

#### Section 5. Question of Grievability/Arbitrability

In the event that either Party should declare a grievance non-grievable or non-arbitrable during the grievance procedure, the disputes of grievability or arbitrability are referred to arbitration as a threshold issue in the related grievance. The Party raising the grievability/arbitrability question must provide an adequate written explanation of the issue at the earliest practical time during the grievance procedure, but no later than the invocation of arbitration.

#### Section 6. Informal Resolution Process (Optional)

Many issues arise from misunderstandings or disputes which can be settled promptly on an informal basis at the immediate supervisory level. Employees are encouraged to have informal discussions with their supervisors about issues of concern to them. At the employee's discretion, a union official may represent the employee. Employees must initiate this discussion with their immediate supervisor within ten (10) days of the incident/event that gave rise to their concern. The immediate supervisor has five (5) business days to render a decision. If the concern is not resolved at this level, the employee has five (5) business days from the day the supervisor renders their decision to initiate the formal grievance procedure.

## Section 7. Procedures

### A. Steps in the Process

#### 1. Step One

- a. When the informal resolution process has not been utilized, a written grievance must be submitted to the immediate supervisor within ten (10) business days of the date of the incident/event that gave rise to the grievance, or of the date the employee became aware or should have become aware of the occurrence of the incident/event. A grievance concerning a continuing practice or condition may be presented at any time. All grievances are to be in writing and submitted on the ***PSA Standard Grievance Form*** by the grievant or their designated Union representative. The grievance information must include the date filed, the name of the grievant and their representative, if any, and signature of the grievant or their representative, the work location and sufficient detail to identify the basis of the grievance, including the specific Article and section of the Agreement, a general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted or misapplied and any alleged facts and the specific relief the employee seeks.
- b. Alternative Dispute Resolution (ADR) option - If an employee chooses ADR as the first step in resolving the grievance, they must initiate contact with the ADR official within ten (10) days of the incident/event that gave rise to the grievance or of the date the employee became aware or should have become aware of the occurrence of the incident/event. Once ADR is initiated, all other time limits are suspended until settlement is reached. If no settlement is reached, the employee has ten (10) business days upon notification of “no settlement” in which to proceed with Step 1 of the grievance procedure outlined above. Alternately, an employee may choose ADR at any step of the grievance procedure except at the last Step after the final decision has been rendered by the Director of the Agency or designee.
- c. Upon request, the Step 1 official must hold a meeting to hear the oral presentation of the grievant and/or representative within five (5) business days. The Step 1 official must, within ten (10) business days of the oral presentation, issue a written decision to the employee’s designated representative or to the employee if he or she is self-represented. If no oral presentation was requested, the Step 1 official must issue the written decision within ten (10) business days of their receipt of the grievance.

- d. If dissatisfied with the Step 1 decision, the grievant/representative has ten (10) business days from the date of receipt of the decision to ask for a review at Step 2. The Step 2 official is the second level manager as identified in the Step 1 decision.

## 2. Step Two

- a. Upon request, the second level manager must hold a meeting to hear the oral presentation of the grievant and/or representative within five (5) business days. The Step 2 official must, within ten (10) business days of the oral presentation, issue a written decision to the employee's designated representative or to the employee if he or she is self-represented. If no oral presentation was requested, the Step 2 official must issue the written decision within ten (10) business days of their receipt of the grievance.
- b. If dissatisfied with Step 2 decision, the grievant/representative has ten (10) business days from the date of receipt of the decision to ask for a review at Step 3. The Step 3 official is the Office Director or designee as identified in the Step 2 decision.

## 3. Step Three

- a. Upon request, the Office Director or designee must hold a meeting to hear the oral presentation of the grievant and/or representative within five (5) business days. The Step 3 official must, within ten (10) business days of the oral presentation, issue a written decision to the employee's designated representative or to the employee if they are self-represented. If no oral presentation was requested, the designated Step 3 official must issue the written decision within ten (10) business days of their receipt of the grievance. In the alternative, the Office Director may remand the grievance to a lower Step for resolution.
- b. If dissatisfied with Step 3 decision, the grievant/representative has ten (10) business days from the date of receipt of the decision to ask for a review at Step 4. The Step 4 official is the Director of the Agency or designee.

## 4. Step Four or Final Step

- a. Upon request, the Director of the Agency or designee must hold a meeting to hear the oral presentation of the grievant and/or representative within five (5) business days. The Step 4 official must, within ten (10) business days of the oral presentation, issue a written decision to the employee's designated representative or to the employee if they are self-represented. If no oral presentation was requested, the designated Step 4 official must issue the written decision within ten (10) business days of their receipt of the grievance.

- b. The Step 4 decision constitutes the final Agency decision. If the decision is not acceptable to the employee or the Union, the Union may refer it to arbitration.
- B. It is agreed that grievance should normally be resolved at the lowest level possible. However, there are times when a grievance is more appropriately initiated at the second or third step of the procedure, for example, when a disciplinary action is taken by the second level manager or higher, when the supervisor at the lower level clearly has no authority to resolve the issue, or when the Union grieves an action of a management official other than a Step 1 supervisor. When a grievance is initiated at a higher step, the time limits of Step 1 apply.
- C. If the Agency is untimely in issuing a decision at any Step, the employee may elect to immediately proceed to the next Step. Failure on the part of the grievant or the Union to observe time limits for any Step has the effect of nullifying the grievance except in cases based on just cause.

#### Section 8. Duty Time and Witnesses

An employee is afforded reasonable duty time to prepare for discussions and to present a grievance under this Article. Employees who appear as witnesses at any Step in these procedures are in duty status.

#### Section 9. EEO Options

- A. Before filing a grievance that alleges discrimination, the employee may first discuss the allegation with the EEO Counselor. The discussion must be within forty five (45) days of the event causing the allegation or the date the employee became aware of the event. The Counselor has thirty (30) days to resolve the matter informally (unless additional time is approved by the complainant). If the Counselor is unsuccessful in resolving the matter informally, they give the employee a written notice stating their right to file either a formal complaint under the statutory EEO procedure or a grievance under this Article. This notice clearly informs the employee that if they elect to file a grievance under the negotiated grievance procedure, they do not have an automatic right to an arbitration hearing because only the Union can invoke arbitration. Therefore, the employee is advised to consult with the Union before making their decision to file a grievance.
- B. If the employee elects to file under the negotiated grievance procedure, they proceed under Section 7 of this Article by filing a timely written grievance within ten (10) days of the date of the Counselor's final report and attach a copy of the Counselor's notification to the grievant. An employee who files a grievance may not thereafter file an EEO complaint on the same matter.
- C. If the employee elects to file a formal complaint under the EEO process, they may not thereafter file a grievance on the same matter.

- D. Employees have the right to be accompanied, represented and advised by a representative of their choice throughout the complaint process including the informal counseling stage. The EEO Counselor is not an advocate for either the aggrieved person or the Agency. If the employee chooses to have a representative, they must give CSOSA's EEO Office written notice of their representative's name and address. A Designation of Representation Form from the EEO Office may be used to provide this information.

#### Section 10. Procedures for Union/Management Grievances

- A. A grievance on behalf of the Union or the Agency must be submitted in writing to the Agency's Chief Human Capital Officer (or designee) or the Union president (or designee), respectively. The grievance must be filed within twenty (20) business days from the date of the incident or event that gave rise to the grievance or within twenty (20) business days from the date that the filing party became aware or should have become aware of such incident or event. It must not be used to file a grievance on behalf of an individual employee or combine unrelated individual grievances.
- B. Upon receipt of the Union/Management grievance, the Agency's Chief Human Capital Officer (or designee) and the Union president (or designee), must meet to attempt resolution within ten (10) business days.
- C. If the grievance remains unresolved, arbitration must be invoked no later than thirty (30) days after the date of the meeting.
- D. Any grievability/arbitrability issues must be raised no later than thirty (30) days after the date the grievance was filed.

## Article 25

### Arbitration

#### Section 1. Notice to Invoke Arbitration

Only the Union or Management may invoke arbitration on any grievance that remains unresolved after the final Step under Article 24, Grievance Procedure. A notice to invoke arbitration must be made in writing to the opposite party within thirty (30) days after receipt of the written decision rendered in the final Step of the grievance procedure.

#### Section 2. Arbitration Procedure

- A. On or after the date of the notice to invoke arbitration, the grieving party, i.e. the Union or Management requests a list of seven (7) impartial persons to act as an arbitrator from the Federal Mediation and Conciliation Service (FMCS). The Parties are to meet within ten (10) days after receipt of such list to select an arbitrator. If the Parties cannot mutually agree on one of the listed arbitrators, then Management and the Union may alternately strike one potential arbitrator's name from the list of seven (7) and repeat this procedure until one (1) name remains. The remaining person is the duly selected arbitrator. The Parties choose lots to determine who strikes the first name. Following the selection, the grieving party has fourteen (14) days to notify the FMCS of the name of the arbitrator selected. A copy of the notification is provided to the other party. The time limits may be extended by mutual consent.
- B. The arbitrator has the authority to make all grievability and/or arbitrability determinations. Threshold questions of arbitrability/grievability are submitted to an arbitrator by written brief. The arbitrator is to render a written decision on the threshold issue(s) prior to a hearing on the merits of the underlying case, unless otherwise mutually agreed.
- C. Grievances that have been processed separately through the negotiated grievance procedure may be combined for arbitration only by mutual agreement of the Parties. Any such agreements are to be in writing.
- D. The procedures used to conduct an arbitration hearing are to be determined by the arbitrator. Both Parties are entitled to call and cross-examine witnesses before the arbitrator. All witnesses necessary for the arbitration are on duty time if otherwise in a duty status. On sufficient advance notice from the Union, management is to rearrange necessary witnesses' schedules and place them on duty during the arbitration hearing whenever practical. Such schedule changes may be made without regard to contract provisions of Article 10, Hours of Work. A reasonable amount of preparation time for arbitration is granted in accordance with the provisions of Article 28, Official Time for Union Representatives and Officers.



Unless agreed to otherwise, the Parties must exchange written witness lists no later than ten (10) business days prior to the scheduled date of the hearing. The witnesses who are bargaining employees are to be advised as follows:

1. The cooperation of the witness is completely voluntary.
  2. The party seeking the interview must not take any act of reprisal against the witness if the witness decides to not be interviewed.
- E. The arbitrator's fees and expenses are shared equally by the parties, including the costs of a shorthand reporter and/or transcripts, if requested by one party. If the arbitrator determines that the grievance had no merit or one of the parties acted in a frivolous or egregious manner, then the non-prevailing party bears the full cost of the arbitration.

The party cancelling arbitration after the arbitrator is engaged must pay the attendant fees and expenses, if any.

- F. The Parties may submit a joint statement of the issue or issues to the arbitrator. If the Parties fail to agree on a joint submission, separate submissions are made. The arbitrator determines the issue or issues to be heard.
- G. The arbitrator's decision is final and binding. The arbitrator is to render a decision within sixty (60) days. Any dispute over the interpretation of an arbitrator's award is returned to the arbitrator for settlement, including remanded awards.

H. Fees, Expenses, and Service of Copies

1. Arbitrators are paid a daily hearing fee which is the amount stated in the biographical sketch submitted to the Parties by the FMCS.
2. Travel time and expenses (including meals and lodging) are paid when a hearing is held away from the city in which the arbitrator's office is located. Mileage expenses are to be paid at the current rate.
3. In connection with each case, the arbitrator is advised by the Union and Management of the appropriate officials to be billed.
4. If arbitrators change their fees or charges, they must promptly notify the Parties in writing. Arbitrators must not charge any fees or add charges without giving at least thirty (30) calendar days advance written notice.
5. A copy of each award is sent to the Union and to the Agency.

## Article 26

### Promotions, Reassignments, and Details

#### Section 1. Purpose and Policy

The purpose and intent of the provisions contained in this Article are to ensure that promotions, reassignments and details are made equitably and in a consistent manner. Promotions are based solely on job-related criteria, and without regard to political, religious, labor organization affiliation or non-affiliation, marital status, race, color, gender, sexual orientation, national origin, non-disqualifying disabling condition, or age. The provisions of this Article only apply to promotions, reassignments, and details for positions determined by the Agency to be within the bargaining unit.

#### Section 2. Development of Career Pathways

The Parties agree to:

- A. Continue enhancing career opportunities whenever possible;
- B. Maintain career ladder positions within the organization in those situations where positions and functions can be grouped in a way compatible with program and work considerations; and
- C. Encourage employees to avail themselves of the Employee Development Action Plan (EDAP) Program.

#### Section 3. Career Ladder Advancement

- A. At the time an employee reaches their earliest date of promotion eligibility, the Agency decides whether or not to promote the employee.
  - 1. If an employee is rated as fully successful or its equivalent and is meeting the Agency's promotion criteria, the Agency certifies the promotion which is effective at the beginning of the first pay period after the requirements are met.
  - 2. If an employee is not meeting the criteria for promotion, the employee is provided with a written notice at least sixty (60) days prior to the earliest date of promotion eligibility. The written notice states what the employee needs to do to meet the Agency's promotion criteria.
    - a. If the employee is making progress, the supervisor ensures that they have the opportunity to acquire pertinent skills and knowledge and to demonstrate that they meet promotion requirements as soon as feasible.

- b. If the employee is experiencing problems, the provisions of Paragraph B of this Section are applicable.
- 3. In the event that the employee met the promotion criteria and the appropriate management officials approved the promotion in a timely manner, but the action was not processed timely, it is retroactive to the beginning of the first pay period after the pay period in which the requirements were met. The Office of Human Capital Management issues a reminder notice to supervisors ninety (90) days prior to a career ladder promotion eligibility date.
- B. At any time a supervisor and/or an employee recognizes the employee's need for assistance in meeting the Agency's promotion criteria, the supervisor and employee develop a plan tailored to assist the employee in meeting the criteria. The plan should include all applicable training as well as any other appropriate support. At the request of the employee, the Union may provide assistance.
- C. If a non-probationary employee fails to meet the promotion criteria after appropriate assistance, the Agency:
  - 1. Provides the employee with additional time to meet the promotion criteria, or
  - 2. Assigns the employee duties commensurate with their current grade.

#### Section 4. Application of Merit System Principles

Merit system principles (5 U.S.C. § 2301) apply to all competitive promotions, reassignment, and detail actions taken under this Article.

#### Section 5. Definitions

For the purpose of this Article, the definitions contained in applicable law, Government-wide rule or regulation, including Title 5 of the Code of Federal Regulations (C.F.R.), are incorporated. In addition:

- A. The term "promotion" as used in this Article means the change of an employee to a higher grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.
- B. The term "reassignment" as used in this Article means the permanent assignment of an employee from one position description to another position description without promotion, demotion, or break in service, for which the employee is qualified and meets all legal and regulatory requirements.
- C. The term "detail" as used in this Article means the temporary assignment of an employee to a different classified position (*i.e.*, a different position description number than the employee's position of record) or to a different set of

unclassified duties for a specific period with the employee returning to their classified position of record at the end of the detail. The employee continues to be the incumbent of the position from which they are detailed.

## Section 6. Applicability of Competitive Procedures

### A. Promotions

Competitive selection procedures apply to any selection for promotion to positions unless it is specifically excluded by Section 14 (Non-Competitive Actions) of this Article.

### B. Reassignments

Competitive procedures only apply to the following type of reassignment: any selection to a position at the same or lower grade with more promotion potential than that of any position previously held on a permanent basis in the Competitive Service (except as permitted by Reduction-in-Force regulations contained in 5 C.F.R. § 351).

### C. Details

Competitive procedures apply to the following details to a:

1. higher graded position; or
2. position with greater promotion potential greater than that of the employee's current position of record; or
3. position in a series different than that currently occupied by the employee which:
  - a. provides specialized experience as identified in the OPM Qualifications Handbook in the series/occupation that the employee is being detailed to, which the employee does not already have, and
  - b. is required for subsequent promotion to a higher graded position.

### D. Formal Training or Career Development Program

Competitive procedures apply to any selection to a formal training or career development program when eligibility for promotion to a particular position depends on whether the employee has completed that training.

## E. Reinstatements

Competitive procedures apply to any reinstatement of a former Federal employee to:

1. a higher graded position than the candidate's highest grade previously held on a permanent basis, or
2. a position with more promotion potential than the highest actual grade previously held on a permanent basis.

## Section 7. Vacancy Announcements for Competitive Actions

### A. Area of Consideration

1. Prior to considering candidates from outside the Agency, the Agency agrees to first consider internal candidates for selection. However, this does not preclude the concurrent posting of internal and external vacancy announcements.
2. The selecting official may expand the area of consideration when a determination is made that the established area of consideration is not sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered. The selecting official may restrict the area of consideration when a determination is made that the area of consideration yields a sufficient number of highly qualified candidates, taking into account the nature and level of positions covered, or when factors such as budget constraints, ceiling controls or hiring freezes prevent the employing office from adding to its staff.

### B. Information on Vacancy Announcements

Vacancy announcements for positions include the following information, at a minimum:

1. Announcement number.
2. Title, series, grade, position number, organizational location, duty station, and shift of the position.
3. Total number of positions to be filled. (This does not preclude filling more or less identical, additional positions than originally posted on the vacancy announcement.)
4. A statement regarding known promotion potential, if applicable.
5. Tour of duty.

6. Opening and closing dates of the announcement.
7. Area of consideration.
8. Where appropriate, a statement that the position is a primary law enforcement or secondary law enforcement position.
9. A brief summary of major duties.
10. Qualification requirements (including any mandatory selective factors).
11. Knowledge, Skills and Abilities statement.
12. Application procedures.
13. Equal employment opportunity statement.
14. Name and telephone number of the Human Resources Specialist or other individual to contact for information relating to an announcement.
15. The address of the Human Resources Unit to which applications are to be submitted.
16. Whether or not relocation expenses are paid.

C. Posting of Vacancy Announcements

The Agency agrees to provide a copy of vacancy announcements to the Union at the time of, or prior to postings. The Agency agrees to electronically post vacancy announcements for a minimum of fourteen (14) calendar days.

D. Amending Vacancy Announcements

If a vacancy announcement has been posted and is later found to contain a substantial error concerning items listed in Section 7.B., the announcement is amended (before the closing date) if the selecting official still intends to fill the position under the competitive process. The amendment includes a brief statement of the change and whether previous applicants need to reapply to be considered.

E. Canceling Vacancy Announcements

The Union and each applicant are notified in writing if an announcement is canceled and provided with a reason for the cancellation. The notification is provided within ten (10) business days of the decision to cancel.

## F. Minimum Qualifications

Once the vacancy announcement has closed, the Office of Human Capital Management determines if applicants have met minimum qualification requirements. Candidates who meet minimum qualification requirements have their applications rated to determine at what level they meet the knowledge, skills, and abilities outlined in the vacancy announcement.

## Section 8. Knowledge, Skills and Abilities (KSAs)

### A. Definitions

A KSA is a job-related knowledge, skill, or ability used in assessing candidates' qualifications. A "knowledge" is an understanding of an organized body of information (usually of a factual or procedural nature) relating to a particular subject matter area. A "skill" is a learned power to perform proficient manual, verbal, or mental manipulation of data or things, or to influence the activities of people. It embodies observable and verifiable performance parameters. An "ability" is the power to perform an activity at the present time. An "ability" is evidenced by the performance of some activity or work and should not be confused with an aptitude that is only a potential for performing an activity.

### B. Establishing KSAs

KSAs developed for all current and future unit positions, and changes and modifications, will be fair, job-related, applied equitably and uniformly, and established in accordance with law, rule and regulations and this Agreement. When KSA's are being formulated or modified, Management agrees to inform the Union so that they may provide written input.

### C. Procedures

1. KSAs are developed by:
  - a. identifying the major tasks/duties of the position through a job analysis based on information contained in the position description, qualification standards, and/or classification standards; and
  - b. identifying the worker characteristics and demonstrated abilities needed to perform the job.
2. For each announced vacancy:
  - a. KSAs are measurable.
  - b. KSAs are critical for successful job performance.

- c. Evaluation criteria, *i.e.*, task examples, are developed for each KSA. Evaluation criteria are documented and made a part of the merit promotion file but not posted on the vacancy announcement.

## Section 9. Competitive Selection Procedures

### A. General Procedures

The designated official is responsible for conducting the review of minimum qualifications candidates.

### B. Evaluation Methods

1. All eligible applicants who meet minimum qualification standards as determined by the Human Resources Specialist are referred to the rating panel.
2. The rating panel further evaluates all referred applicants based on the crediting plan developed for the position to identify the 'Best Qualified' promotion candidates.
3. The panel evaluates each application in order to ascertain the relevancy of the candidate's background (including but not limited to work experience, awards, training and outside activities) to the KSAs. Candidates are evaluated on the extent to which they possess the KSAs relevant to the position being filled. This assessment is based on the applicant's description of relevant activities, the complexity of the activity, identifiable results, level of contacts involved in performing the work, and the scope of responsibilities and duties performed.
4. Based on the review of the candidate's application package, each KSA is rated as either 'Best Qualified,' 'Well Qualified,' or 'Qualified.' The ratings are tallied with a consensus of the ratings used to determine the overall 'Best Qualified' candidates. The 'Best Qualified' candidates are placed on the Certificate of Eligibles and referred to the selecting official for consideration.

### C. Procedures for Use of a Rating Panel

Subject to Section 10.B. above, rating panels are established for all competitive actions. Panel members are instructed in the tasks necessary to perform the panel's function.

#### 1. Composition

The rating panel for a bargaining unit position includes at least one (1) bargaining unit employee chosen with the concurrence of the Union.



- a. The rating panel consists of three (3) members. Each member of the rating panel is a subject matter expert in the discipline or occupation category of the position being filled.
- b. A Human Resources Specialist conducts the panel and is available to the panel for technical guidance.
- c. Panel members are not in competition for the vacancy and must be at least the same or higher grade than the vacancy to be filled.
- d. A relative of an applicant may not serve on the panel.
- e. Under most circumstances, the selecting official and any supervisor in the chain of command associated with the position being filled, as well as individuals serving as a mentor of an applicant, are not permitted to participate as a member of the rating panel.

## 2. Documentation

Notes may be annotated on applications and/or on any worksheets used by the panel. The notes may serve to document the evaluation process and may also be used in providing feedback to employees who were not selected.

## 3. Confidentiality

The deliberations of the rating panel are confidential. Any disclosures are made in accordance with provisions of the Privacy Act and other applicable law and government-wide regulations.

## D. Interviews

If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. A “candidate” is a person whose name appears on the Certificate of Eligibles.

### 1. Internal (Merit Promotion) Actions

If interviews are used, an interview of each candidate is conducted by one or more supervisors and/or managers. If interviews are used, all candidates, if reasonably available, must be interviewed, in person or by telephone where circumstances warrant.

### 2. External (Delegated Examining) Actions

All, some or none of the candidates may be interviewed. Interviews are conducted by one or more supervisors and/or managers; however, an

employee of at least the same or higher grade of the vacancy being filled may also serve on an interview panel at the discretion of management.

### 3. Exclusions to interview panel

In order to avoid even the appearance of partiality, individuals serving as a mentor of a candidate must not participate as a member of an interview panel, if a panel is employed.

### 4. Confidentiality

The deliberations of the interview panel are confidential. Any disclosures are made in accordance with provisions of the Privacy Act and other applicable law and government-wide regulations.

## E. Multiple Grade Levels

If an announcement pertains to more than one grade level, a separate list of eligibles is developed for each grade level.

## F. Establishing the Certificate of Eligibles

There is no minimum or maximum number of applicants who may be certified as best qualified. Applicants are certified as best qualified based on the Category Rating process.

## G. Issuing the Certificate of Eligibles

The Human Resources Unit issues the Certificate of Eligibles and forwards it to the selecting official along with the application materials.

## H. Release of Employees upon Selection

When a selection has been made, the Agency arranges a release date, notifies the employee, and ensures that the appropriate human resources forms are processed. The effective date of a promotion action, other than promotion within a career ladder, is the first day of the pay period in which the employee is scheduled to report. In the event that the employee has been selected for promotion, has accepted the offer, a reporting date has been set, and the appropriate management officials approved the promotion on the Request for Personnel Action (SF-52), but the action was not processed timely, it is retroactive to the effective date of the promotion.

## I. If the vacancy is one for which an under-representation exists and there are best qualified candidates whose selection would reduce the under-representation, the selecting official gives serious consideration to those individuals.

#### J. Declinations

In the event of a declination, the selecting official may make another selection. An applicant who elects to decline a job offer should do so in writing to the Human Resources Unit.

#### K. Announcement of Selections

All merit promotion selections are announced to the respective Office employees. These announcements are made electronically by the appropriate management official.

### Section 10. Application Procedures for Competitive Actions

#### A. What Must Be Filed

To be considered for a posted vacancy announcement, an employee must file the appropriate application materials in accordance with the instructions listed in the vacancy announcement.

#### B. Time Limits

Applications must be received (e.g., hand-delivery, e-mail, fax, [www.PSAJobs.gov](http://www.PSAJobs.gov)) in the Human Resources Unit by the closing date.

### Section 11. Employee Information for Competitive Actions

#### A. Employees who apply for and inquire about a specific promotion action are given the following information by the Human Resources Unit or the selecting official:

1. whether they met minimum qualification requirements;
2. whether or not they were among the best qualified;
3. the name(s) of those selected; and
4. upon request, the selecting official provides a verbal statement of the reasons(s) why the employee was not selected.

However, an employee may have access, consistent with law, government wide rule, or regulation, to their pertinent records used in the process of filling vacancies which are requested for the purpose of processing or filing a grievance or EEO complaint.

### Section 12. Union Review of Competitive Actions

#### A. The Union may review competitive selection actions taken under this Article when it has reason to believe a discrepancy exists or when requested to do so by an employee.

- B. The Union makes the request to the Chief Human Capital Officer or designee. The Union provides the Chief Human Capital Officer or designee with the names of the Union representatives who are responsible for conducting the reviews. Any changes to the designated representatives must be submitted in writing. The representative(s) designated to conduct the review must not have been an applicant for the promotion package being reviewed.
- C. Employees who believe they were improperly excluded from consideration may request review of the promotion package through the Union review process described below.
- D. If the employee chooses to use the Union procedure, they must make a written request to the Union within fifteen (15) business days after the selection is announced to all employees. A Union request under Subsection (A) above must be made within the same time limits
- E. The Agency makes the pertinent records from the package available to the Union within seven (7) business days of receipt of the written request. The Union treats the information confidentially and reviews it in a location designated by the Agency and in the presence of a designated Management official.
- F. If during the course of the review, additional information is determined necessary, such information is secured from the Agency's designated Management official.
- G. Employees who elect to use the grievance procedure rather than the review procedure must initiate action in accordance with Article 24 Grievance Procedure.

### Section 13. Priority Consideration Arising From Competitive Actions

#### A. Definition

For the purpose of this Article, priority consideration is the genuine right of first consideration for selection given to an employee as the result of a previous failure to properly consider the employee for selection because of a procedural, regulatory or program violation. An employee is given priority consideration for the next announcement of the identical position for which they lost consideration. Employees receive one priority consideration for each instance of improper consideration.

#### B. Processing

1. Employees are notified in writing by the Chief Human Capital Officer or designee of entitlement to each priority consideration. The Human Resources Unit automatically places the employee's application in the vacancy announcement package.
2. Prior to the evaluation of other applicants, the name(s) of the employee(s) afforded priority consideration are referred to the selecting official. The

selecting official makes a determination on the request prior to evaluating other applicants.

### C. Union Notification

In order to assure compliance with this section, the Union is furnished statistics on priority considerations granted and exercised, and the results. Statistics are kept and provided to the Union on a quarterly basis.

## Section 14. Noncompetitive Actions

The following actions may be taken noncompetitively:

### A. Promotions

1. Promotion of an employee whose position is reclassified at a higher grade due to the accretion of additional duties and responsibilities.
2. Promotion of an incumbent or an individual entitled to re-employment rights to a position that is reclassified to a higher grade without significant changes in duties as a result of the application of new Office of Personnel Management classification standards or the correction of a previous classification error.
3. Promotion of an employee covered by an approved training agreement.
4. Promotion of an employee within a career ladder provided the employee has met all the qualifications and performance requirements established for the career ladder and sufficient work exists at the next higher grade level.
5. Promotion from an understudy or trainee position when the employee was selected under competitive procedures for the understudy or trainee position, provided the employee has met all qualifications and performance requirements for the target position.
6. Re-promotion of an employee, up to the highest grade previously held on a permanent basis in the competitive service, provided that the employee meets all qualifications, regulatory, and legal requirements for the series and grade and was not demoted or separated from that grade based on performance or conduct.
7. Promotion directed by proper authorities (for example, judges, arbitrators or the FLRA).
8. Promotion after being selected through priority consideration procedures outlined in this Article.

9. Permanent promotion from a temporary promotion when the announcement stated that the temporary promotion may become permanent without further competition.

#### B. Reassignments/Details

Any and all reassignments/details not listed in Sections 6.B. and 6.C. of this Article, including a reassignment/detail to a position having promotion potential no greater than the potential of a position employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons, may be taken on a noncompetitive basis.

Details of thirty (30) days or more are recorded on an SF-52 and maintained in the Official Personnel Folder.

1. The Agency has the right to reassign/detail employees between positions or between work units. Before exercising that right, the Agency informs the Union of any anticipated reassignment/detail. The Union is notified once the reassignment/detail has been made.
2. The Parties agree that decisions concerning reassignments/details take into account the goals of increasing career-related flexibility and mobility, and minimizing the need for involuntary reassignments/details.
3. The Agency strives to reassign/detail employees to appropriate positions if they are adversely affected by consolidations, reductions-in-force, downsizing, or any other types of displacement.
4. The Parties are committed to achieving the Agency's mission through cooperative efforts. Accordingly, the Agency seeks Union input prior to making a final decision about organizational changes.
5. The Agency continues to make reassignments/details to appropriately classified jobs at the appropriate grade levels unless it is to a detail of unclassified duties.

The Agency's decision to reassign/detail employees is a bona fide determination based on legitimate management considerations in the interest of the Agency. Reassignments/details must not be used as punishment, in lieu of disciplinary action, or based on personal favoritism, and the Agency gives reasonable consideration to assertions by an employee that the reassignment/detail will cause undue personal hardship.

Except as otherwise provided herein, when the Agency decides to fill a position through a reassignment/detail, the following approach is used to decide which employee(s) is reassigned/detailed:

Effort to secure volunteers:

1. To the extent feasible, information about each reassignment/detail opportunity is disseminated to all eligible employees within the defined area of consideration. Each informational notice specifies the date by which employees must respond to the Agency if they wish to be considered as a volunteer for the reassignment/detail. A copy of the notice is provided to the Union President or designee.
2. Employee-volunteers must respond in accordance with the procedures specified in the informational notice. Written expression of interest in being reassigned/detailed to the specified position must be received by the Agency no later than the date stated in the informational notice, in order to be evaluated for reassignment/detail.
3. The Agency has determined that it considers the following factors in assessing whether volunteers should be reassigned/detailed to the identified position(s):
  - a. the Agency's need to develop a balance of experienced and trainee employees at the appropriate grade levels in the unit involved, to obtain the most effective distribution of needed skills and other necessary criteria;
  - b. the qualifications and skills needed for an employee to perform in the position adequately; and
  - c. cost effectiveness, workload considerations, and staffing balance.

If the position is not filled from this initial call for volunteers, the Agency makes reassignments/details under the following procedures:

1. The Agency determines positions, as opposed to employees, from which the reassignment/detail will come.
2. Within those positions, the Agency identifies the employees best-suited to fill the vacant position. In identifying who is best-suited, the Agency has determined that it considers such factors as:
  - a. the Agency's need to develop a balance of experienced and trainee employees at the appropriate grade levels in the unit involved, to obtain the most effective distribution of needed skills and other necessary characteristics;
  - b. the qualifications and skills needed for an employee to perform in the position adequately;
  - c. cost effectiveness, workload considerations and staffing balance; and

- d. whether a candidate for reassignment/detail in this manner has previously experienced other reassignments for which they did not volunteer.

When the best-suited employee is identified, the Agency determines who is reassigned/detailed as follows:

1. If only one employee is identified as best-suited, that employee is reassigned/detailed;
2. If two or more employees are identified as best-suited, the Agency canvasses the potential reassignees to ascertain if any of them wishes to be reassigned voluntarily. If only one person volunteers, they are reassigned/detailed; or
3. If two or more employees volunteer and one must be chosen to be reassigned/detailed, the Agency determines in a fair and equitable manner who among the group is reassigned/detailed, considering such factors as the employee's experience, seniority, and performance. If no one volunteers and a reassignee must be chosen from among the pool of those identified as best-suited employees, the Agency determines in a fair and equitable manner who among the group is reassigned/detailed, considering such factors as the employee's experience, reverse seniority, and performance.

Employees are encouraged to make recommendations to their supervisors on improvements in the structure of positions in the unit and to express their interest in being considered for the positions they are suggesting, if such positions are established in the future. The supervisor gives serious consideration to such suggestions.

At any time, employees may submit to their supervisors a written request which expresses their desire to be reassigned/detailed when a reassignment/detail opportunity opens. Notwithstanding having made such a request, employees must follow the procedures prescribed in each informational announcement of a reassignment/detail opportunity in order to be considered for it.

The following situations are exceptions to the provisions in this Article on filling a position through a reassignment/detail:

1. reassignment/detail is necessary to relieve a significant hardship, e.g., medical reasons (see Section 14.C.);
2. with the consent of the affected supervisors, two (2) employees wish to exchange positions;
3. an employee volunteers for reassignment/detail to deal with a personality conflict;



4. reassignment/detail is necessary to implement an approved job-sharing arrangement.

In these situations, the affected employee may submit a written request for reassignment/detail even if no informational notice of availability of the position has been issued. The Union is informed of this request before any action is taken.

If an available position is identified for which the employee is eligible, the Agency gives the request serious consideration. The request is deemed active for ninety (90) days, unless withdrawn by the employee; if not granted within that period, the employee may renew the request thereafter if desired.

Additionally, the Agency may fill a position through reassignment/detail without utilizing the procedures of this Article because of compelling and exigent managerial considerations such as budgetary, organizational or external constraints. Under this circumstance, the Agency agrees to inform the Union in advance if possible, or as soon as practicable. However, the Agency makes every reasonable effort to consult with the Union and comply with the provisions of this Article.

Absent exigent circumstances, the Agency gives an employee who is going to be reassigned/detailed a written notice ten (10) business days before effecting the reassignment/detail.

The Agency provides timely, adequate and appropriate training for the reassigned/detailed employee, if necessary. Employees are given appropriate time to transfer existing responsibilities to their successor. Management agrees to make timely, necessary adjustments in the assignment of cases so as to preclude a reassigned/detailed employee from receiving new case assignments close in time to the date of the reassignment/detail. In addition, a reasonable amount of time is allowed for the employee to become proficient in the new duties.

**Restriction on Lower-Graded Position:** Should the requirements of the Agency necessitate a detail to a lower-level position, this in no way adversely affects the detailed employee's salary, classification or position of record.

**Restriction on Higher Graded Position:** Employees detailed to a higher graded position for a period of more than ten (10) consecutive business days, who are also qualified for the position, must be temporarily promoted. The employee is paid for the temporary promotion beginning the first day of the detail. The temporary promotion is initiated at the earliest date known by management that the detail is expected to exceed ten (10) consecutive business days. The ten (10) consecutive business day provision is not circumvented by rotating employees into a higher-grade position for less than ten (10) business days in order to avoid the higher rate of pay.

In order to ensure a smooth transition between positions, the Agency provides an employee who has been on detail to a different work area, a reasonable time period to resume the work of the position to which they are returning.

The Agency informs the employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.

Employees who are formally detailed are relieved of work required in the permanent position while the detail is in effect.

Employees detailed to a classified position ninety (90) consecutive days or longer are given the following documents, provided they are in existence or come into existence during the time of the detail:

1. An official position description, and
2. A written performance plan.

After the detail, the gaining supervisor provides the supervisor of record with written feedback which is considered in issuing the employee's regular annual performance appraisal.

#### C. Reassignments/Details for Medical Reasons

An employee recuperating from serious illness or injury who is temporarily unable to perform the full range of duties of their position, as certified by the health care provider, may submit a written request to the supervisor for temporary assignment to duties commensurate with the employee's temporary work-related restrictions. The certification from the employee's physician includes the nature, severity, and duration of the employee's serious illness or injury; the activity or activities that the serious illness or injury limits; the extent to which the serious illness or injury limits the employee's ability to perform the activity or activities; and why the work-related restrictions are needed. The Agency may require that such request be reviewed by a medical officer or other appropriate medical expert for advice and consultation. The Agency considers such requests, in accordance with applicable law, rule or regulation, and medical recommendations. To the extent determined appropriate by the Agency, the employee may be temporarily assigned to an appropriate vacancy or duties and responsibilities, commensurate with the employee's illness/injury and qualifications. Employees continue to be considered for promotional opportunities for which they are otherwise qualified.

#### D. Voluntary Change to a Lower Grade

Change to a lower grade to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons may be made on a non-competitive basis. An employee desiring consideration for a voluntary change to lower grade must submit a written request to the Human Resources Unit.

Prior to acting on an employee's request for a voluntary change to lower grade:

1. The Agency assures that the employee has been fully apprised in writing about the effect of such an action, and
2. The employee has been given an explanation of other alternatives relevant to the particular case.

E. Other noncompetitive actions include:

1. The transfer of a Federal employee or reinstatement of a former Federal employee at the same or lower grade or to a position with the same known promotion potential as the highest graded permanent position held by the employee under a career or career-conditional appointment. The candidate must not have been demoted or separated for personal cause from a higher grade.
2. A position change permitted by reduction-in-force regulations.

#### Section 15. Work Groups and Special Committees

To the extent that participation in work groups and special committees may be referenced in KSAs in a competitive action, the Agency ensures that all employees have equal opportunity to participate in the aforementioned groups and committees. To that end:

- A. The Agency disseminates information about each work group and/or special committee opportunity to all eligible employees within the defined area of consideration. Each such informational notice specifies the date by which employees must respond to the Agency if they wish to be considered as a participant.
- B. If the number of interested participants exceeds the number of available openings, the Agency gives due consideration to whether or not the employee has had the opportunity to participate in other work groups or special committees within the past year. First consideration is given to those employees who have not had the opportunity to participate in a work group or special committee.
- C. The Agency agrees to have at least one Union Representative in each work group or special committee.

## Article 27

### Position Classification

#### Section 1. General

The Parties agree that position descriptions should accurately reflect the duties and functions performed by employees and degree of supervision related to their positions. It is also understood that “other duties as assigned” as used in the position description is defined as duties outside the basic job duties assigned on an infrequent and irregular basis that support mission accomplishment.

- A. Each position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, and grade.
- B. Position descriptions are kept current and accurate, and positions are classified properly. Employees are properly compensated for duties performed on a regular and recurring basis. Changes to a position are incorporated into the position description to assure that the position is correctly classified/graded to the proper title, series, and grade. The Union is provided advance copies of changes in and updates of employee position descriptions. Current position descriptions are provided to the Union, upon request. Employees are furnished a copy of their current position description at the time of assignment and upon request.
- C. Prior to the implementation of any new classification standards or changes in existing classification standards that affect working conditions, the Agency gives notice and, upon request, bargain with the Union to the extent required by law.
- D. No position may be downgraded without a thorough review. For a downgraded position, the employee is afforded grade and pay retention in accordance with law and regulation.
- E. The Agency and the Union agree that the principle of equal pay for substantially equal work applies to all position classification actions.
- F. When an employee believes that there is a question concerning the proper classification (title, series and/or grade) of their position, and/or if the employee believes that their position description is inaccurate, the employee discusses this concern with their supervisor. If a supervisor is unable to resolve the issue to the employee’s satisfaction, the employee can discuss the matter with the Chief Human Capital Officer or designee who explains the basis for the classification/job grading. An employee and/or the Union, upon request, have access to the position description, evaluation statements, if available, organizational and functional charts and other pertinent information directly related to the classification of the position.

- G. An employee may file a classification/job grading appeal at any time through appropriate channels. The Office of Human Capital Management provides information concerning the filing of a classification appeal through the Agency or Office of Personnel Management channels, upon request.
- H. If a question concerning the proper classification of a position or the accuracy of a position description results in a determination that an audit be conducted (either initiated by the employee or the Agency), the employee is afforded an opportunity to discuss the results and analysis of the audit with their supervisor and, if requested by the employee or the supervisor, with the Agency's Chief Human Capital Officer or designee. The audit may include, but is not limited to: 1) review of mission and functional statements and/or documents providing goals and objectives; 2) desk audit of the position with the employee and the supervisor; 3) review of work products, samples or other outputs of the position; or 4) review of other available information that increases understanding of the position. When a desk audit is conducted, it is performed at the employee's work station. An audit is completed within ninety (90) days of the employee or Union request. Copies of the audit report (*e.g.*, synopsis report and report of findings) are given to the employee within five (5) business days of audit completion. Copies of the audit report are also provided to the Union, if requested.
- I. If an audit is conducted, the Union is provided with the following information for the purpose of providing advice and guidance to the employee prior to the audit: the name of the employee affected by the audit; the position number audited and when the audit takes place.
- J. If following the audit the employee still believes there is an inequity, an appeal may be filed with the Office of Personnel Management.
- K. An employee who files a classification appeal is entitled to a copy of the classification appeal file. The Union is entitled to the same material upon request.
- L. Employees who file appeals with the Agency concerning the title, series and grade have their appeal decided within a reasonable period of time with a goal of sixty (60) days from the date the Office of Human Capital Management receives an audit request. Classification appeal decisions are forwarded to the Union.
- M. Changes in grade level based on reclassification are effective on the first pay period following the final approval of the action.

## Article 28

### Official Time/Union Representation

#### Section 1. Recognition

- A. The Agency agrees to recognize local Union officers, stewards and other authorized representatives.
- B. The Union agrees to designate officers, stewards and other authorized representatives to perform representative functions in major organizational subdivisions. The Union President or designee furnishes the Director, Office of Human Capital Management or designee a listing of officers, stewards and other authorized representational functions indicating name, telephone extension, as well as the designated area of responsibility.
- C. The Union retains its right to designate its representatives without interference. The effective use of representatives and a reasonable distribution of their Union workload/caseload enhance a sound Union-management relationship and contribute to the efficiency of Agency operations.

#### Section 2. Alternate Stewards

The Union retains its right to appoint alternate stewards. Such alternate stewards act for the recognized steward only when the recognized steward is in a non-duty status. The alternate steward is granted official time in accordance with this Article.

#### Section 3. Functions for Which Official Time is Authorized

A Union representative planning to use official time must, in advance of such usage, request and receive approval from their supervisor to be released from duty. The Union representative may request this approval in person or via an e-mail communication to their supervisor. The request must include an actual or estimated amount of time needed.

The supervisor or designee must promptly consider the request and grant the request unless the supervisor determines that the Union representative's presence at the work site is necessary to meet immediate and critical work requirements. If the supervisor determines the Union representative cannot be released immediately, the representative is normally released two (2) hours before the end of the tour of duty. The Agency makes every effort to release the Union representative at the time requested in particular to handle grievances and other complaints since it is difficult to coordinate the schedule of more than one (1) employee.

Anyone using official time must keep a timely record. Representatives are strongly encouraged to log any official time used on completion of their representational duty. A completed official time record must be signed by the Union representative and submitted to their supervisor for approval on a bi-weekly basis. The supervisor who approved the use of official time must certify the record as being correct. The Union representative

delivers the signed form to the Human Resources Unit. In the event the supervisor who approved the use of official time is absent, the Union representative delivers the form to the Human Resources Unit who follows up with the appropriate supervisor when available.

Official time is granted in the amount specified by this Agreement or otherwise negotiated for the purpose of:

- A. Handling grievances and other complaints,
- B. Handling other representational functions, and
- C. Appropriate lobbying functions.

Examples of activities covered by official time include:

- A. Negotiations, including preparation time;
- B. Attendance at formal discussions between one or more representatives of the Agency and one or more representatives in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment covered by 5 U.S.C. §7114(a)(2)(A);
- C. Any statutory appeal proceeding or other forum in which the Union is representing an employee or the Union pursuant to its obligations under relevant contract provisions, regulations or law;
- D. Grievance meetings and arbitration hearings, including preparation time;
- E. EEO complaint settlements, and arbitration hearings if a complaint is processed under the negotiated grievance procedure;
- F. Adverse action or performance-based action oral reply hearings, if the Union is designated as representative of the employee, including preparation time;
- G. Any meeting for the purpose of presenting reconsideration replies in connection with the denial of within-grade increases, if the Union is designated as representative of the employee;
- H. Attendance at an examination of an employee who reasonably believes they may be the subject of a disciplinary or adverse action and the employee has requested representation pursuant to 5 U.S.C. § 7114(a)(2)(B), i.e., “Weingarten” meetings;
- I. Conferring with affected employees about matters for which remedial relief is available under the terms of this Agreement;
- J. Preparation of reports, forms and documents required by law or regulation concerning the proper operation and administration of a labor organization;

- K. Contacts with members of Congress and their staff for authorized activities;
- L. Maintenance of Union office hours (the Union agrees to rotate Union office hours among representatives); and
- M. Travel to and from any of the activities listed above.

#### Section 4. Restrictions on Official Time

No official time may be expended for any activities performed by employees relating to internal Union business (including the solicitation of membership, election of Union officials, and collection of dues).

#### Section 5. Training

- A. The Agency agrees to grant official time to Union officers, stewards and other authorized representatives to attend training. On a contract-year basis, the Agency agrees to grant a pool of five hundred (500) training hours to be distributed to the representatives at the discretion of the Union President.

Additional training hours may be granted with the approval of the Chief Human Capital Officer or designee.

- B. The Union submits requests for official time for training purposes at least ten (10) business days in advance to the Chief Human Capital Officer or designee.
- C. Official time for training is approved where the training is designed primarily to further the interests of the government by improving the labor-management relationship. If a training request is denied for any reason, the reason is given in writing to the local Union President at the time of disapproval.
- D. Informal Resolution Process and Step 1, Grievance Procedure (see Article 24): If the Parties agree in advance, and if the employee consents, the Union may have one additional participant attend a grievance meeting. The additional person does not directly participate in the grievance meeting but may briefly consult with the actual representative.

All subsequent Steps and Arbitration: The Parties agree that the Union may have one (1) additional participant as an observer if the employee consents.

#### Section 6. Official Time – General

In order to develop and maintain effective labor management relations, the Agency agrees to grant official time to employees who are Union officers, stewards and other authorized representatives who have been designated in writing and who are otherwise in a duty status to accomplish representational functions.



- A. Fifty (50) percent official time per pay period is granted to the Union President to provide representation and to perform the specific functions listed in Section 3 of this Article.
- B. Twenty-five (25) percent official time per pay period is granted to the Union Vice-President.
- C. A block of official time is granted per pay period for each position listed below:

Secretary	3 hours
Treasurer	6 hours
Other officers/stewards/authorized representatives	40 hours in total

Official time authorized for Union representatives may be used for representational purposes subject to Section 3 of this Article. On a case-by-case basis, and for just cause, the Chief Human Capital Officer or designee may approve an additional amount of official time.

The Parties are to make every effort to ensure that a representative's use of official time does not impinge upon the representative's ability to perform regularly assigned duties of their position. It is incumbent upon the Parties to closely monitor the use of official time and work cooperatively to enable management to make timely, appropriate, and meaningful workload/caseload reductions commensurate with the amount of official time used.

## Article 29

### Absence and Leave

#### Section. 1. General

Leave is administered in a fair, equitable and consistent manner.

#### Section 2. Types of Leave Categories

##### A. Annual Leave

1. Annual leave is a period of requested and approved absence from duty, with pay, and is granted for vacation or other personal reasons. Employees have the right to use annual leave; however, supervisors approve annual leave and may reschedule leave for exigent circumstances. Employees should plan and request annual leave as far in advance as possible.
2. Annual leave is accrued based on years of Federal service, including credit for certain military service. Full-time employees with less than three (3) years of service accrue thirteen (13) days per year [four (4) hours per pay period]. Those with three (3) years, but less than fifteen (15) years, accrue twenty (20) days per year [six (6) hours each pay period, with the exception of the last full pay period of each calendar year, in which these employees accrue ten (10) hours]. Those with fifteen (15) or more years of service accrue twenty-six (26) days per year [eight (8) hours per pay period]. Part-time employees accrue annual leave on a prorated basis.
3. Annual leave may be taken in increments of fifteen (15) minutes and is charged in increments of fifteen (15) minutes.
4. All annual leave, except for emergency situations, must be requested in advance on OPM Form 71 "Request for Leave or Approved Absence."
5. Leave requests are approved or denied within three (3) business days. Leave may be denied if the use of the leave would interfere with accomplishment of the office mission. In this case, the supervisor and employee should work together to arrange alternate dates. Employees are strongly cautioned not to make commitments that are contingent upon leave until the leave has been approved.
6. When requesting emergency/unscheduled annual leave, the employee must contact (i.e., voicemail, email, or text message) the supervisor prior to the start of his/her tour of duty, if at all possible. An employee who is unable to contact the supervisor must have another person contact the supervisor on his/her behalf, and contact the supervisor personally as soon as possible. Should an emergency occur during an employee's tour of duty, the employee must contact the supervisor immediately.

7. Annual leave may be advanced; however, there is no entitlement to advanced annual leave and it is advanced only on a limited, case-by-case basis when there is a reasonable expectation that it will be repaid. Any advance may not exceed the amount of leave the employee is expected to accrue by the end of the leave year. An employee indebted for advanced annual leave who separates from the Federal service is required to reimburse the Agency for that leave. Requests for advanced annual leave are in writing, on the OPM Form 71 with a justification attached.
8. The maximum amount of annual leave that may be carried over into the new leave year is 240 hours. Any accrued annual leave in excess of the maximum allowed by law is forfeited. Forfeited annual leave may be restored under certain circumstances.
9. When, because of illness or exigency of Agency operations, an employee is unable to use annual leave in excess of the maximum end of year carryover, the leave may be restored. In these cases, the leave must have been scheduled and approved in writing at least six (6) weeks before the end of the leave year.
10. All restored annual leave must be used not later than the end of the leave year two (2) years following: the date of the restoration of the forfeited leave, the termination date of Agency operations which precluded use of the leave, or the date the employee recovered from the illness which precluded use of the leave.
11. Lump Sum Payments for Annual Leave.
  - a. Employees receive a lump-sum payment for any unused annual leave to their credit when they separate from Federal service or enter active duty with the armed forces and elect to receive a lump-sum payment.
  - b. A lump-sum payment is calculated by multiplying the number of hours of accrued annual leave by the employee's applicable hourly rate of pay.

## B. Sick Leave

1. Sick leave is a period of requested and approved absence with pay from duty, which is granted for: personal medical needs; prearranged examinations or treatments; general family medical care; bereavement; care for a family member with a serious health condition; and adoption-related purposes.
2. Full-time employees accrue four (4) hours of sick leave each bi-weekly pay period. Part-time employees accrue one (1) hour each twenty hours in a pay status. There are no limits on the amount of sick leave that can be accumulated.

3. Sick leave may be taken in increments of fifteen (15) minutes and is charged in increments of fifteen (15) minutes.
4. Employees may use sick leave when they are incapacitated for duty by physical or mental illness or injury or would, as determined by health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease.
5. Employees may use a total of up to 104 hours sick leave each leave year to:
  - a. care for a family member who is incapacitated as a result of physical or mental illness;
  - b. care for a family member undergoing medical, dental, or optical examination or treatment; or
  - c. make arrangements necessitated by the death of a family member or attend the funeral of a family member.
6. For sick leave for care of a family member, arrangements necessitated by the death of a family member, or funeral attendance, family member is defined as spouse, children, including adopted children and their spouses, parents and spouse's parents, brothers and sisters and their spouses, or any individual related by blood or affinity whose association with the employee is the equivalent of a family relationship.
7. An employee may be advanced up to 104 hours of sick leave each leave year for family care or bereavement purposes. For part-time employees, the amount of advanced sick leave is prorated in proportion to the average number of hours of work in the employee's scheduled tour of duty.
8. Sick Leave to Care for a Family Member with a Serious Health Condition.
  - a. An employee may use up to twelve (12) administrative work weeks of paid sick leave each year to care for a family member (as defined above) with a serious health condition. For part-time employees and those with uncommon tours of duty, the amount of sick leave permitted for this purpose is prorated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week. If an employee has previously used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the twelve (12) week entitlement. If an employee has already used twelve (12) weeks sick leave to care for a family member with a serious health condition, they cannot use an additional 104 hours in the same leave year for general family care purposes. An employee is entitled up to a total of twelve (12) work weeks paid sick leave each year for all family care purposes.

- b. The term “serious health condition” has the same meaning as used in the regulations for administering the Family and Medical Leave Act of 1993. This definition includes conditions such as cancer, heart attack, stroke, severe injuries, Alzheimer’s disease, pregnancy and childbirth. The term is not intended to cover short-term conditions for which treatment and recovery are brief unless complications arise. Examples are the common cold, flu, earache, upset stomach, or routine dental or orthodontia problems. The Agency may require medical certification of a serious health condition.
9. An employee may use sick leave for adoption of a child. The Agency may require evidence for absences related to adoption and may advance up to thirty (30) days of sick leave each year for adoption-related purposes. Examples include but are not limited to appointments with adoption agencies, social workers and attorneys; court proceedings; required travel; any period of time the adoptive parents are ordered or required by the adoption agency or the court to be absent from work to care for the adopted child; and any other activities necessary for the adoption to proceed.
10. Sick leave is requested on the OPM Form 71. Employees requesting sick leave for scheduled medical appointments should do so as far in advance as possible. Employees who are absent three (3) consecutive workdays or less on sick leave are not generally required to submit medical certificates. If the request is for more than three (3) days of sick leave, the employee may be required to provide a doctor’s statement or other evidence that is acceptable to the supervisor as documentation for the absence. Permanent supervisors may request a doctor’s statement if they are concerned about excessive absenteeism or possible leave abuse. Any doctor’s statement must be on the doctor’s official stationery and must include the doctor’s telephone number and address; a diagnosis; and an estimate of when the employee is able to return to full-time duty.
11. The supervisor must act on the leave request as soon as possible or within three (3) business days or three (3) business days after receipt of medical documentation, if requested. Properly requested and documented sick leave must be approved.
12. Employees who are unable to report for duty because of sickness or medical emergency must contact (i.e., voicemail, email, or text message) the supervisor prior to the start of his/her tour of duty on the first day of absence, if at all possible. An employee who is unable to contact the supervisor must have another person contact the supervisor on his/her behalf, and contact the supervisor personally as soon as possible. Should an emergency occur during an employee’s tour of duty, the employee must contact the supervisor immediately.
13. Advanced sick leave may be granted in cases of serious conditions or disabilities or for appointments related to adoption of a child. All sick leave

in the employee's account must be exhausted before leave is advanced. Consideration must be given to using annual leave, especially in cases where it might otherwise be forfeited. Sick leave advances are limited to a balance of 240 hours per year. Requests may be granted only if there is reasonable assurance that the employee is able to return to work. Requests for advanced sick leave are in writing, on the OPM Form 71 with a justification attached. The justification must include a doctor's statement as described above in Section B (10).

### C. Family and Medical Leave.

1. Under the Family and Medical Leave Act of 1993 (FMLA), covered Federal employees who have completed twelve (12) months of service are entitled to a total of up to twelve (12) work weeks of unpaid leave during any twelve (12) month period for the following purposes:
  - a. birth and care of the employee's child;
  - b. placement of a child with the employee for adoption or foster care;
  - c. care of the employee's spouse, child or parent who has a serious health condition; or
  - d. serious health condition of the employee that makes the employee unable to perform the essential functions of their position.
2. The employee is responsible for invoking entitlement for FMLA leave. The request is made by checking the appropriate box on the OPM Form 71. The employee may choose to substitute paid leave, as appropriate, for leave without pay under FMLA consistent with government-wide regulations. The Agency may not subtract leave from the 12-week FMLA entitlement unless confirmation is received from the employee of their intent to invoke entitlement to FMLA leave.
3. Use with Other Types of Leave
  - a. An employee could be entitled to twelve (12) weeks of paid sick leave for care of a family member with a serious health condition (see B(8), above) and also be entitled to twelve (12) weeks unpaid leave under the FMLA.
  - b. Under certain conditions, an employee may use twelve (12) weeks leave under FMLA intermittently.
  - c. An employee may elect to substitute annual and/or sick leave, consistent with law, rule and government-wide regulations, for any unpaid leave under FMLA.
4. When calculating the twelve (12) week entitlement, authorized holidays and non-workdays are not counted toward the 12-week FMLA leave.

5. An employee must provide written notice of their intent to take FMLA leave not less than thirty (30) calendar days before the beginning of the leave, or in emergencies, as soon as practicable. The Agency may request medical certification for FMLA leave taken to care for an employee's spouse, child or parent with a serious health condition or for the serious health condition of the employee.
6. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status and other terms and conditions of employment. An employee who takes FMLA leave maintains health benefits coverage, so long as they continue to pay the employee share of the premium. An employee on FMLA may pay the employee share of the premium on a pay period basis or pay the total upon return to work.

#### D. Compensatory Time

Compensatory time is time off granted for an equal amount of irregular or occasional overtime work. Compensatory time must be approved and earned in advance of its use. The maximum amount of compensatory time that employees may have to their credit is eighty (80) hours. This limit can be waived only by the Office of the Director. Compensatory time must be used within 26 pay periods after it is earned. Employees who do not use compensatory time within that time frame and who are not covered by the Fair Labor Standards Act (FLSA) forfeit the right to use the time. Employees who do not use compensatory time within that timeframe and are covered by the FLSA are paid for the time at the rates in effect at the time it was earned.

#### E. Compensatory Time-Off for Travel

Compensatory time off for travel may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Compensatory time off for travel must be approved and earned in advance of its use. There is no limitation on the amount of compensatory time off for travel an employee may earn but it must be used within 26 pay periods after it is earned. Employees who do not use compensatory time off for travel within that time frame forfeit the right to use the time, without regard to whether the employee is covered by the Fair Labor Standards Act. Under no circumstances may an employee receive payment for unused compensatory time off for travel.

Travel in connection with union activities is not considered travel status for Compensatory Time Off for Travel because they are traveling for the benefit of the union, and not for agency-related work purposes.

#### F. Time Off for Religious Observances

An employee must be permitted to work alternate hours to meet a religious obligation if the modifications do not interfere with the accomplishment of the Agency's mission. Employees must submit a written request for an adjusted work

schedule in advance. The supervisor determines whether the alternative work hours are scheduled before or after the religious observance. Employees are allowed to accumulate only the number of hours of work needed to make up for the previous or anticipated absences. If an employee is absent from work when scheduled to perform work to make up for time off for religious observances, they are charged leave as appropriate, using the same rules that apply to any other absence from work.

## G. Military Leave

An employee is entitled to time off with full pay for certain types of active or inactive duty in the National Guard or as a reservist of the Armed Forces.

1. Any full-time federal civilian employee whose appointment is not limited to one (1) year is entitled to military leave. Military leave under 5 U.S.C. § 6323(a) is prorated for part-time employees.
2. Types of Military Leave
  - a. 5 U.S.C. § 6323(a) provides 120 hours per fiscal year for active duty and active and inactive duty training. An employee may carry over a maximum of 120 hours into the next fiscal year.
  - b. Inactive duty training is authorized training performed by members of a reserve component not on active duty and performed in connection with the prescribed activities of the reserve component. It consists of regularly scheduled unit training periods, additional training periods and equivalent training.
  - c. 5 U.S.C. § 6323(b) provides 176 hours per calendar year for emergency duty as ordered by the President or a State governor.
  - d. 5 U.S.C. § 6323(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under Title 10 of the District of Columbia Code.
  - e. 5 U.S.C. § 6323(d) provides that Reserve and National Guard Technicians are only entitled to 352 hours of military leave for duties overseas under certain conditions.
3. An employee's civilian pay remains the same for periods of military leave under 5 U.S.C. § 6323(a) and (c), including any premium pay an employee would have received if not on military leave. For military leave under 5 U.S.C. § 6323(b), the employee's civilian pay is reduced by the amount of the military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave in order to receive both civilian and military pay.



## H. Court Leave

An employee is entitled to paid time off without charge to leave for subpoenaed service as a juror, or in some cases, as a witness. Employees are responsible for providing a copy of the subpoena to the supervisor as soon as possible.

1. An employee who is summoned to serve as a juror in a judicial proceeding is entitled to court leave.
2. An employee who is summoned as a witness in a judicial proceeding in which the Federal, state, or local government is a party is entitled to court leave.
3. An employee who is summoned as a witness in an official capacity on behalf of the Federal government is on official duty, not court leave.
4. Employees must reimburse the Agency the fees they receive for serving as a juror or witness. Monies received as expenses, e.g., transportation, may be retained by the employee.

## I. Absence to Vote or Register

Employees may be granted excused absence in order to vote in an election in accordance with policy established at the time by OPM. Employees are advised prior to each election of the amount of time off to be granted for voting or registration.

## J. Bone Marrow and Organ Donor Leave

An employee is entitled up to seven (7) days of paid leave each calendar year to serve as a bone-marrow donor. An employee is also entitled up to thirty (30) days paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave.

## K. Excused Absence

Employees may be granted excused absence by the Director of the Agency or designee in severe weather or other emergency conditions, or for certain activities considered to be in the interest of the Agency. Decisions on excused absence are made based on OPM guidance or on conditions and circumstances at the time. The parameters of each excused absence are announced with the decision. Employees may be granted up to four (4) hours of excused absence to donate blood and recuperate in an Agency-sponsored or endorsed blood drive.

## L. Emergency Operating Procedures

Employees may be excused or have approved leave for inclement weather or other emergency situations. Employees who are designated as emergency personnel must follow the Agency's Emergency Operating Procedures.

## M. Leave for Workers' Compensation

An employee injured in the performance of duty whose injuries require them to be absent from work for more than forty-five (45) days, may use sick or annual leave or LWOP, or be on Continuation of Pay as provided for in applicable regulations of the Department of Labor.

## N. Leave Without Pay (LWOP)

1. LWOP is a temporary non-pay status and absence from duty that, in most cases, is granted at the employee's request. LWOP is approved leave and is not a basis for disciplinary action. In most instances, granting LWOP is a matter of supervisory discretion; however, employees are entitled to LWOP in the following situations.
  - a. FMLA

Employees are entitled to up to twelve (12) weeks LWOP in a 12-month period for certain family and medical needs. See Section C above.
  - b. Uniformed Service

The Uniformed Services Employment and Reemployment Rights Act of 1994 provides an entitlement to LWOP when employment is interrupted by a period of uniformed service.
  - c. Disabled Veterans

Under Executive Order 5396, disabled veterans are entitled to LWOP for certain necessary medical treatment.
  - d. Workers' Compensation

Employees may not be in a pay status while receiving workers' compensation payments from the Department of Labor.
2. Employees should be aware that LWOP may affect their benefits.
3. When an employee is able to project a need for LWOP, they should request it as far in advance as possible to minimize disruption of the accomplishment of the Agency mission. LWOP is requested by completion of the OPM Form 71, with additional documentation explaining why the LWOP is necessary. If the request is for medical reasons, a doctor's statement documenting the situation may be required.
4. In emergencies, the employee may request LWOP verbally and then submit a written request, within three (3) business days after the verbal request except in extreme circumstances.

### Section 3. Leave Transfer Program

The Leave Transfer Program allows employees to donate annual leave to co-workers when a medical need arises and the co-worker does not have sick or annual leave.

#### A. Eligibility Criteria

1. the employee or family member must suffer from a medical emergency as defined in Section B(8) above;
2. the employee must have a zero leave balance including annual and sick leave; and
3. the medical condition must be expected to continue for at least twenty-four (24) hours.

B. Employees requesting to participate in this Program as a leave recipient complete the application form and submit it with medical documentation to the Human Resources Unit.

C. Employees interested in donating leave to an approved Program recipient complete the request form and submit it to the Human Resources Unit.

## Article 30

### Temporary, Probationary, Part-Time Employees and Job Sharing

#### Section 1. Temporary Employees

Temporary employees may be separated at any time upon notice in writing from the Agency. When it is determined that a temporary employee will be separated prior to the expiration of their temporary appointment termination date, they are given two (2) weeks notice where possible.

#### Section 2. Probationary Employees

- A. Probationary employees have the same right to Union representation as all other employees.
- B. Probationary employees will be provided with the opportunity to develop and demonstrate their proficiency.
- C. Probationary employees are provided with one-on-one sessions with their supervisors about their performance and conduct. In the event there are deficiencies in performance and/or conduct that may affect an employee's standing for the successful completion of the probationary period, supervisors must promptly counsel employees and document the meeting with a copy given to the employee.
- D. In accordance with 5 C.F.R. § 315.804, when the Agency decides to terminate an employee serving a probationary period, the Agency notifies the employee in writing as to why they are being separated and the effective date of the action. The information in the notice consists of the Agency's conclusions as to the deficiencies in the employee's performance or conduct. The Union is notified of all such terminations in writing.
- E. If a probationary employee resigns after receiving notice of termination, no Agency comment or finding regarding the resignation is documented in the employee's Official Personnel Folder.

#### Section 3. Part-Time Employees

- A. To be considered part-time for purposes of this section, an employee must have a regularly scheduled tour of duty, set in advance, of at least sixteen (16) hours but not more than thirty-two (32) hours in an administrative work week. When a holiday falls on a part-time employee's regularly scheduled workday, the employee is paid for the number of hours they were scheduled for that day.
- B. Reasonable consideration is given to an employee's request to work a part-time work schedule consistent with the Agency's resources and mission requirements.

- C. The Agency recognizes that part-time work schedule may be appropriate for the following:
1. Employees seeking gradual transition into retirement;
  2. Employees with disabilities or others who require a reduced work week;
  3. Employees who must balance family responsibilities; and/or
  4. Employees pursuing education and/or vocational training.
- D. Denials of requests for a part-time work schedule are discussed with the employee upon request. Employees are provided with written reasons for the denial.
- E. A part-time employee's tour of duty is documented on an SF-50, Notification of Personnel Action.
- F. An employee's request for temporary adjustment of an established part-time work schedule may be granted if based on personal need or to permit participation in details, other assignments or training. Such adjustment does not result in a permanent change of the employee's established part-time work schedule.
- G. The Agency agrees to provide part-time and full-time employees on the same tour of duty equivalent access to employee activities and not to deny opportunities for attendance at Agency-approved training courses solely based on part-time status.
- H. The Agency advises employees in writing of the effects of converting to a part-time work schedule as it relates to all employee benefits prior to the actual conversion, including the effects on service credits.
- I. When the Agency permits an employee to work a part-time work schedule for an agreed-upon period of time, such permission is documented in writing with a copy to the employee.

## Article 31

### Parking and Transportation

#### Section 1. Parking Policies

- A. Parking facilities managed by the Agency are operated in accordance with applicable law, rule and government-wide regulations and the provisions of this Article.
- B. In accordance with Agency parking policies, employees must register their vehicles, notify designated Agency officials of any changes (e.g., new tags, new vehicle, etc.), and display parking permits.
- C. Employees may park in any available PSA space (except those posted otherwise) on weekends and holidays. The Agency agrees to provide a minimum of two (2) parking spaces on a monthly basis via a lottery open to all PSA employees.
- D. When implementing any changes in Agency parking policies, the Agency provides notice, and upon request, negotiates with the Union to the extent required by law and in accordance with the mid-term bargaining provisions of this Agreement.
- E. Employees may request and receive a parking space for medical purposes in accordance with applicable law, rule and government-wide regulations, and Agency parking policies.

#### Section 2. Transportation Policies

Transit subsidies are provided where funds and authorizing regulations permit, in the following manner:

- A. Employees are provided a transit subsidy equal to their eligible commuting cost, not to exceed the maximum amount/days allowed per month.
- B. Employees who commute daily to and from work using their personal vehicles are not eligible for the transit subsidy payment.
- C. Employees follow the applicable procedures established for their transit subsidy, by completing, signing and certifying all necessary forms.

## Article 32

### Work Space Modifications

Modification of employee work space is a change in working conditions and subject to bargaining. The Parties agree that resolving any issues concerning work space modifications should be a collaborative effort involving the Union, affected employees and management. When management has determined that work space modifications (relocations, renovations, etc.) are necessary, the following protocol is observed:

- A. Management notifies the Union as soon as it is known that a work space modification is necessary.
- B. Input of the Union and affected employees is sought in the pre-decisional stage.
- C. To the fullest extent possible, the Union and affected employees' recommendations are to be incorporated into management's plans and reflected in the final product, where practicable.

## Article 33

### Religious Observance and Religious Expression

With regard to accommodations for religious observance and expression, it is the policy of the Agency to abide by the mandates established in the Civil Rights Act of 1964, as amended, here and after referred to as Title VII. Employees should apprise the Agency of the sincerely held religious belief, and the Agency is to make reasonable efforts to accommodate the employee's sincerely held religious belief unless to do so would diminish workplace safety and operations.



## Article 34

### Office Attire

#### Section 1. Office Attire

- A. Appropriate office attire promotes the Agency's desired image to the courts, the public and other stakeholders and focuses attention on excellence and professionalism in the accomplishment of the Agency's mission.
- B. Employees are expected to dress neatly, professionally and in a manner that is appropriate for their assigned duties.
- C. On Monday through Thursday, employees are expected to dress in appropriate business office attire. Supervisors may grant exceptions based upon the nature of work assignments or the location in which the work is being performed.
- D. On Fridays, employees may choose to dress in appropriate business casual attire. Business casual attire is neat and professional and reflects a positive image of the Agency while promoting a comfortable work environment for employees.
- E. All employees must keep court ready attire in the office at all times.
- F. Employees performing duties in the cellblock must follow the Agency's cellblock dress policy.

PSA/AFGE Agreement

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