COLLECTIVE BARGAINING AGREEMENT

USDA/National Appeals Division

and

AFSCME, Council 26, AFL-CIO
Local 3020

October 1, 2010

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PREAMBLE

The Parties agree to mutually establish and maintain a work environment that ensures the integrity of the Federal Service, promotes the most effective and efficient delivery of Agency services, protects the interest of American taxpayers, promotes good workmanship and the principles of good management, protects human dignity, assures equal and fair treatment of employees, and to the extent practicable, provides a work experience for all employees that is personally challenging, rewarding, and that provides equal opportunity for professional growth and success.

Employees and managers shall conduct themselves in a professional and business-like manner, characterized by mutual courtesy and consideration in their day-to-day working relationship.

The Parties, especially Union representatives and first-line supervisors, are encouraged to meet as necessary to informally discuss and attempt resolution of matters or problems of concern to either party, including, but not limited to, employees' concerns or dissatisfactions and contract administration.

It is the intent of the parties to establish procedures to accommodate the Union's legitimate need to perform representational activities specified in this Agreement and as permitted by law. It is also the intention of the Parties to accommodate the Employer's legitimate interest in ensuring no unreasonable disruption of the Employer's ability to carry out its critical day-to-day operations and perform its overall mission.

The parties agree that most grievances and complaints should be resolved in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee and be consistent with the principles of good management and public interest.

ARTICLE 1 - PARTIES TO THE AGREEMENT, RECOGNITION, AND DEFINITION OF BARGAINING UNIT AND DEFINITION OF DAYS

1.1 PARTIES TO THE AGREEMENT

The parties to this Agreement are the U.S. Department of Agriculture (USDA), National Appeals Division (NAD), (hereinafter referred to as the "Employer", "Agency", or "Management") and the American Federation of State, County, and Municipal Employees (AFSCME) Council 26, AFL-CIO, Local 3020, (hereinafter referred to as the "Union.")

1.2 UNIT OF RECOGNITION

The unit of recognition covered by this Agreement is the unit certified by the Federal Labor Relations Authority (FLRA) in Case Numbers WA-AC-50040 and WA-RP-70033. The Employer recognizes AFSCME Council 26, AFL-CIO, as the exclusive representative of all employees (hereinafter referred to as "employees" or "bargaining unit employees") in the bargaining unit as defined below.

1.3 DEFINITION OF A BARGAINING UNIT

(See Appendix A)

INCLUDED: All non-professional employees of the U.S. Department of Agriculture, National Appeals Division, in the Washington, DC Metropolitan Area, and all hearing officers and regional office employees nationwide.

EXCLUDED: All management officials, supervisors, including Deputy Assistant Directors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

1.4 APPEALS OFFICERS INCLUSION

Pursuant to FLRA review, the parties agree that the NAD Appeals Officers are members of the bargaining unit represented by the Union.

1.5 DEFINITION OF DAYS

Days in this agreement are defined as calendar days unless otherwise noted.

ARTICLE 2 – PROVISIONS OF LAW AND REGULATIONS

In the administration of all matters covered by this Agreement, the parties will be governed by this Agreement, existing or future Agency and the Department rules, regulations and policies that do not conflict with this Agreement, Government-wide rules and regulations, and Federal law.

All past practices and previously negotiated agreements between AFSCME Local 3020 and the Employer that conflict with the terms and conditions of this agreement are no longer recognized.

ARTICLE 3 - EMPLOYEE RIGHTS

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

A. to act for AFSCME in the capacity of a representative and the right, in that capacity, to present the views of AFSCME to heads of agencies and other officials of the Executive Branch of the Government, Congress, or other appropriate authorities:

B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3.2 The Agency shall provide to employees annual notification of the right to have Union representation at any investigatory interview that the employee may reasonably believe will result in disciplinary action. A copy of the annual "Weingarten Notice" is found at Appendix B.

3.3 An employee has the right to be represented by the Union at formal discussions between one or more representatives of the Employer and one or more employees in the Unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.

3.4 Each employee has the right to be represented by the Union at any Management-initiated investigative meeting that may result in disciplinary action, or that the employee believes may result in disciplinary action, and shall be given the opportunity to obtain such representation, upon request. Prior to such meeting, Management will notify the employee of his or her right to Union representation.

3.5 An employee may be represented by a representative of the employee's own choosing, in any employee-related appeal action not under the negotiated grievance procedure. The employee may exercise grievance or appellate rights established by law, rule, or regulation. When exercising these rights and the rights under the negotiated Agreement, employees shall be granted a reasonable amount of official time for initiating, reviewing, preparing, presenting, and participating in the grievance process, in accordance with Article 19.

3.6 Employees covered by this agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences a violation of law, rule, or regulation; or evidences mismanagement, a waste of funds, an abuse of authority, or a

danger to public health or safety, in accordance with applicable laws and regulations.

3.7 Each employee has the right to file a complaint or grievance, act as a witness, and exercise any appeal or other rights granted by law, rule, regulation or this Agreement without fear of restraint, coercion, discrimination, or reprisal.

3.8 Rules, regulations, and policies under which employees are obligated to work will be made available via electronic accessible media or upon request may be distributed in hard copy format at the discretion of the Agency.

3.9 Employee counseling or cautions on conduct or unacceptable performance, or verbal warnings will be conducted in a setting that protects the employee's confidentiality.

3.10 With Management's approval, employees have the right to use official time.

3.11 Each employee has the right to choose whether to participate in Federally-sanctioned charitable and/or investment activities including, but not limited to, CFC, Savings Bond drives, and the like, freely, without coercion, and without fear of reprisal. Each employee also has the right to have his or her choices made and held in confidence.

ARTICLE 4 – UNION RIGHTS

4.1 The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and negotiate collective bargaining agreements covering these employees. The Union is responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to Union membership, in accordance with the Federal Labor-Management Relations Act (FLMRA) and interpretative case law.

4.2 For the purpose of administration of this Agreement, the Employer agrees to recognize representatives of AFSCME Council 26, Local 3020.

4.3 The Union has the right to represent an employee or group of employees in formal discussions between one or more representatives of the Agency and one or more employees in the bargaining unit concerning conditions of employment. The Union will be given reasonable notice of, and an opportunity to attend formal discussions.

4.4 The Agency will provide the Union an opportunity to be present at the examination of an employee in the bargaining unit by a representative of the agency in connection with an investigation if: 1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and 2) the employee requests Union representation.

4.5 The Union has exclusive right to represent employees under the negotiated grievance procedure in this Agreement. An employee or group of employees may present a grievance or complaint without representation by the Union.

4.6 **REASONABLE NOTICE**: The Union will be given reasonable notice of, and provided an opportunity to attend formal discussions concerning the settlement of a grievance, personnel policy or practice, or other conditions of employment.

4.7 **RESTRAINT**: Union officials and representatives performing duties in consonance with this Agreement and under the FLMRA will not be subject to restraint, coercion, or reprisal, or discrimination as the result of performing such duties

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ARTICLE 5 - MANAGEMENT RIGHTS

Basic Rights (5 U.S.C. Section 7106)

A. Subject to subsection (b) of this section, nothing in this Article shall affect the authority of any management official of the Agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
(2) in accordance with applicable laws—
(a) to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
(b) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
(c) with respect to filling positions, to make selections for appointment from—
(1) among properly ranked and certified candidates for promotion; or
(2) any other appropriate source; and
(d) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Nothing in this section shall preclude the Agency and the Union from negotiating—

(1) at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
(2) procedures which management officials of the Agency will observe in exercising any authority under this section; or
(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

ARTICLE 6 - CONFLICT OF INTEREST

6.1 POLICY

In accordance with 5 C.F.R. 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in applicable laws, regulations, and executive orders. The Agency will continue to ensure that all employees are trained on conflict of interest matters for which employees are to be knowledgeable and accountable. Employees will have access to the Standards of Ethical Conduct of the Executive Branch at their duty station and it will be made available via electronic accessible media or upon request may be distributed in hard copy format at the discretion of the Agency."

6.2 CONFLICT OF INTEREST

In accordance with the Standards of Ethical Conduct for Employees of the Executive Branch, employees who find themselves in an actual conflict, a potential conflict, or in a situation that could give the appearance of a conflict of interest shall immediately make known to their supervisor the nature of the situation. The employee shall state any suggestions as to how the situation may be remedied. Employees who fail to make such situations known within ten (10) days may be subject to disciplinary action. In accordance with 5 C.F.R. 2635.101(b)(14), whether particular circumstances create an appearance that the law or applicable standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. Employees shall disclose fraud, waste, abuse, and corruption to appropriate authorities.

6.3 OUTSIDE EMPLOYMENT

An employee shall not engage in outside employment or other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties: if it is prohibited by Statute or by a Departmental or NAD supplemental regulation; or, if under the standards set forth in government-wide regulation, it would require the employee's disqualification from matters so central or critical to perform the duties of his/her position would be materially impaired. Employees are responsible for adhering to established Agency guidelines for outside employment or other activities, whether paid or unpaid.

6.4 REPORTS OF MISCONDUCT

Employees who have reason to believe that misconduct has been committed shall report it promptly to their supervisors. If the circumstances of the case are such that the employee feels his/her report should not be routed through his/her supervisor, it shall be reported to the next higher or appropriate level of supervision. Employees are covered by the Whistleblower Protection Act.

6.5 ETHICS OFFICIAL

Employees will be notified of the identity and phone number of the Agency's designated Ethics Official. Employees who have questions about the application of ethics requirements or any particular situations should seek advice from the Agency Ethics Official. Disciplinary action for violating such requirements or any Departmental regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an Agency Ethics Official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

ARTICLE 7 - USE OF OFFICIAL FACILITIES AND SERVICES

7.1 GENERAL

The Agency agrees to allow Union officials reasonable access to telephones, teleconferencing capability, copier equipment, four-drawer locking file cabinet, fax machine, e-mail, computer equipment and the internal mail system. Such use will be for official business only and not internal Union business as defined by 5 U.S.C. Section 7131(b).

7.2 BULLETIN BOARDS

A. The Agency will provide an adequate amount of space on office bulletin boards throughout the Headquarters site and Regional Offices.

B. The Union is the sole authority for the content of all material posted on Union bulletin boards. Management will not be held liable for any of the Union's actions regarding the content of the material on such bulletin boards.

C. Material which does not violate any law, contain libelous material or personal attacks may be posted on Union bulletin boards.

7.3 DISTRIBUTION OF UNION LITERATURE

A. Management agrees that the Union has the right to use the internal mail system to transmit documents or correspondence to Management or to bargaining unit employees for representational purposes only.

B. The Union agrees that, prior to the bulk distribution of its literature, the Union is responsible for preparing, collating, and apportioning such literature.

C. With the exception of the provisions in Article 7.3 D, upon prior approval from the Agency, the Union shall be allowed to distribute its literature.

D. The Union may use communications systems, including electronic mail, to distribute newsletters to bargaining unit employees subject to the provisions of this article. This use may be done provided that such document preparation, distribution and reading is done on non-duty time. The Union will provide a contemporaneous copy to the NAD Human Resources Management Specialist.

7.4 UNION MEETING TIMES AND LOCATION

Upon prior approval from the Agency, the Union shall be allowed to reserve rooms to hold meetings on the Agency's premises during the lunch period and outside duty hours. However, on a case by case basis, requests for meeting space or teleconferencing may be requested and approved for representational purposes during duty hours.

7.5 PARTICIPATION BY UNION REPRESENTATIVES

Union representatives not employed by the Agency may meet with local Union representatives and/or bargaining unit employees to discuss appropriate matters and may participate in meetings between the Union and the Agency.

7.6 USE OF TELEPHONE CONFERENCING

Because many of NAD’s employees are located in single person offices and home offices nationwide, Management agrees that the Union has the right to conduct bi-annual Union meetings by telephone using the established telephone conferencing system.

ARTICLE 8 - PERSONNEL RECORDS

8.1 Each employee and/or their designated representative who has been so authorized in writing by the employee, has the right, upon request, to review, photocopy, or receive an electronic copy, if available, of his/her official personnel file (OPF). The employee may request to review their OPF by contacting the human resources servicing office.

8.2 Each employee is responsible for giving the proper written authorization to his/her designated representative and providing a copy to the official having custody of the file(s) in question. The designation(s) must be for a specified time and will remain in the appropriate file until revoked or expired.

8.3 Each employee and their designated representative may inspect such records and files only with proper identification. This record shall be maintained as part of the file and shall always be available for inspection by the employee or his/her representative.

8.4 Upon request and consistent with agency government rules, laws, regulations an employee may request removal of expired information or correction of inaccurate information in the OPF.

8.5 The review or photocopying of all official files shall take place only in the presence of the Agency official or his/her designee having custody of the file. Information will be made available to authorized persons only for official use, as specified by OPM, other applicable laws, and this agreement.

8.6 Employees will be made aware of information placed in any official Agency record as defined by the Privacy Act.

8.7 Within 30 days, employees will be provided a copy of any information placed in their supervisory file.

ARTICLE 9 - POSITION DESCRIPTION

9.1 **POLICY AND PURPOSE**: The purpose of a position description (PD) is to describe the principal duties and responsibilities of the position for pay and classification purposes. Employees will normally be provided with a description of duties for their position prior to the effective date of employment. Position descriptions also contain any special qualifications and/or requirements of the position.

9.2 **ACCURACY OF POSITION DESCRIPTION**: The Employer will update position descriptions periodically to ensure accuracy. Employees who believe their position description is inaccurate may meet and discuss this matter with their supervisor for clarification. When differences concerning the accuracy of a position description cannot be resolved between the supervisor and the employee, the employee may grieve the matter under the negotiated grievance procedure. An employee will be informed of changes made to his/her position description, and will be provided a copy.

9.3 **OTHER DUTIES AS ASSIGNED**

The phrase “other duties as assigned” normally relates to tasks of an incidental nature, or that are infrequent, or constitute an emergency, for which it is impractical to include in the official position description.

9.4 **TASK FORCE**

The parties agree to participate in an analysis to study the feasibility of a new working title for the GS-0930 series and make a recommendation for the NAD Director’s approval or disapproval as appropriate. The task force will consist of two representatives from management and two representatives from the Union, and coordinated by the NAD Special Assistant to the Director.

The task force shall be created within 60 days after the CBA has been finalized and approved. After creation, the task force shall determine the organization of the analysis and appropriate time tables.

9.5 **NOTIFICATION TO THE UNION**

Where a change of duties is reflected in a change to an existing PD, the union will receive a copy of that changed PD.

ARTICLE 10 - WORK SCHEDULES AND HOURS OF WORK

10.1 GENERAL

A. This article has been developed to give recognition to the mutual need for coverage and flexibility and to address issues and concerns that have arisen and, to the extent foreseeable, will arise as employees and managers continue working together to accomplish the work of the Agency.

B. Employees may request authorization to work one of the four schedules established (Standard Work Schedule, Compressed Work Schedule (CWS), Maxiflex, and Flexitour) in this Article. The variety of schedules provides for more flexibility than has previously been available to employees.

C. New hires must complete a minimum of 90 days in their position before working a CWS and a Maxiflex schedule.

10.2 DEFINITIONS

A. OPERATING HOURS

The operating hours are the specific hours of the Agency in which employees may begin or end the workday. Those hours are from 5:30 a.m. until 6:30 p.m. daily. These times are subject to change by management should the workload require it, and in abnormal, unusual or unforeseen circumstances.

B. CORE HOURS

Core hours are the hours in a workday when all full-time employees must be present for duty. The core hours are from 9:30 a.m. until 2:30 p.m.

C. REGULAR WORKDAY

For employees on a fixed schedule (Compressed Work Schedule 5/4/9 or 4/10): 5:30 a.m. to 6:30 p.m.

a. For employees on a flexible work schedule (Maxiflex or Flexitour Schedule): 5:30 a.m. to 6:30 p.m.

b. Employees shall begin work each day no earlier than 5:30 a.m. but no later than 9:30 a.m. Employees must have completed

their tour of duty no later than 6:30 p.m., as applicable. Any time worked before 5:30 a.m. or after 6:30 p.m., as applicable, must be approved overtime or compensatory time.

D. PERMANENT SCHEDULE CHANGE

A permanent work schedule change, as used in this Article, means a time period that exceeds 2 pay periods.

10.3 ESTABLISHED WORK SCHEDULES

A. STANDARD WORK SCHEDULE

In the absence of any other approved work schedule, the standard work schedule will be 8:00 a.m. - 4:30 p.m. daily.

B. ALTERNATIVE WORK SCHEDULES (AWS)

These schedules provide a family friendly work environment, and employees may use such schedules to improve productivity and the quality of life that encourages job orientation instead of time orientation. The Agency can improve productivity through reduced tardiness, short-term absences, achievement of quieter hours at the beginning and end of the workdays, reduced commuting times, and enhanced employee morale. Employees can improve their quality of life through control over their personal working situations. It also provides a greater opportunity for employees to participate in the Wellness Program activities as well as community, family, and leisure activities. The employees have workday flexibility for childcare arrangements and emergency short-term absences that may be necessary when caring for sick children.

1. COMPRESSED WORK SCHEDULE (CWS)

Employee works a fixed schedule which is established by the employee and approved by the supervisor. Employees must work an 80-hour pay period of fewer than ten (10) workdays per pay period (Monday-Friday). Workdays must begin no later than 9:30 a.m. and must end no later than 6:30 p.m. Starting and ending times once established are fixed and do not change. Employees shall establish a schedule according to one of the following:

a. 5/4/9: Employee establishes a schedule to work eight 9-hour days, one 8-hour day, and designates one (1) fixed compressed day off.

b. 4/10: Employee establishes a schedule to work eight 10-hour days and designates two (2) fixed compressed days off.

2. MAXIFLEX

Employee must work an 80-hour pay period of ten (10) or fewer workdays per pay period (Monday - Friday). An employee on a maxiflex schedule may take two (2) days off in the same week. Workdays must be 6 to10 hours in length and must include all core hours on days scheduled to work. Employee requests to establish a schedule according to Section 10.4 below and may request to change the schedule as often as each pay period, choosing the time he/she will arrive each day no earlier than 5:30 a.m. and no later than 9:30 a.m.

Once a schedule is approved for all employees (other than Hearing Officers), they must account for hours in the schedule except that arrival time may be flexed earlier or later up to 30 minutes on any given day, provided departure time is flexed an equivalent amount on that day. Actual arrival time under this 30-minute glide may only occur from 5:30 a.m. to 9:30 a.m. and actual departure time must occur between 2:30 p.m. and 6:30 p.m.

Once a schedule is approved for Hearing Officers, they must account for hours in the schedule except that arrival time may be flexed earlier or later up to 2 hours on any given day, provided departure time is flexed an equivalent amount on that day. Actual arrival time under this 2 hour glide may only occur from 5:30 a.m. to 9:30 a.m. and actual departure time must occur between 2:30 p.m. and 6:30 p.m.

Full-time employees working under Maxiflex who do not work 80 hours in a pay period must charge their leave or use previously earned credit hours, as appropriate, in order to make up the 80 hour requirement.

To facilitate NAD’s customer service requirements and to increase flexibility of available work hours, employees are encouraged to avail themselves of a schedule that directly supports accomplishing NAD’s unique and critical mission objectives. The supervisor shall consider these factors in reviewing Maxiflex schedule requests.

3. FLEXITOUR SCHEDULE (ALTERNATIVE EIGHT-HOUR SCHEDULE)

This is a fixed schedule that does not vary from day-to-day. The arrival and departure times are according to a set, written schedule requested by the employee and approved by the supervisor in advance. The schedule includes 10 workdays in each pay period.

Each workday is eight hours in length excluding the scheduled lunch period. This schedule differs from the normal eight-hour tour in that the scheduled arrival and departure times need not coincide with the basic eight-hour workday.

10.4 PROCEDURES FOR REQUESTING WORK SCHEDULES

A. Employees who want to establish or make a change to an alternative work schedule shall request their preferred work schedule from the available options listed in 10.3 of this article by submitting the appropriate form to their supervisors no later than close of business on the first Tuesday of the pay period preceding the pay period for which they wish the schedule to be effective. Employees may request AWS by e-mailing or faxing the appropriate form.

B. Supervisor shall approve or disapprove requested schedule no later than close of business Tuesday before the pay period for which the employee wishes the schedule to be effective. It is the employee's responsibility to ensure the supervisor's actual, timely receipt of the request. If a work schedule request is disapproved, the specific reasons for such disapproval must be provided in writing to the employee on the work schedule form or an attachment. Supervisors may approve or deny such requests and transmit their decision by e-mail or facsimile.

C. Supervisors and employees are responsible for customer service and a supervisor may deny an employee's specific request for an alternative work schedule (AWS) if:

1. he employee would be unable to complete the requirements of the position or;

2. the office would have inadequate coverage during established Agency business hours or;

3. the work unit's business operations would be unduly delayed or interrupted or;

4. a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

10.5 SCHEDULE REQUEST CONFLICTS

To resolve conflicts in schedules:

1. The parties encourage informal resolution within the employees work unit.

2. Department (USDA) seniority shall be used to determine priority.

   In case of a tie, the Service Computation Date (SCD), as shown on the SF-50, Notice of Personnel Action, shall be used to determine order of priority in choosing the schedules and days off when informal resolution is unsuccessful.

3. Requests for changes in work schedules will not be used to alter existing work schedules of employees who are not seeking a change in their work schedules.

4. A new employee coming into the work unit cannot force a change in the existing employees' work schedules.

5 Employees are encouraged to consider days off other than Monday and Friday.

6. Once an employee has selected a compressed day off, that employee may not use seniority to bump another employee from his/her established compressed day.

10.6 TEMPORARY WORK-RELATED SCHEDULE CHANGES

A. A supervisor may, after giving timely notice to affected employees, make a temporary change to an employee's work schedule (including scheduled days off) for any work-related exigency -- including, but not limited to, to ensure required attendance at meetings, training, travel; to alleviate inadequate office coverage during the established work day; to provide required services to internal or external customers; to compensate for temporary staffing shortages or changes; or to fulfill special needs of the Agency.

B. An employee may request a temporary change to the work schedule (including scheduled days off) for any work-related exigency -- including, but not limited to, ensuring required attendance at meetings, training, travel; providing required services to internal or external customers; or fulfilling special needs of the Agency. Such request for change must be submitted on the appropriate form and approved by the supervisor in advance.

C. Timely notice as used in this paragraph, is defined to mean as soon as is practicable after the supervisor has determined a change in the work schedule is required for the current or any subsequent work day for any of the reasons noted in 10.6.A above or similar requirements. It is understood by the parties that the amount of notice practicable in each instance will vary according to the circumstances. Supervisors shall consider the affected employees' need to make corresponding changes in their personal affairs to accommodate the Employer.

D. For supervisory initiated changes according to 10.6.A, an employee who is required to work on their scheduled day(s) off will, if possible, be permitted to schedule alternative day(s) off during the pay period. If this is not possible, the employee will be paid overtime or permitted to accrue compensatory time for future use.

10.7 PERMANENT WORK-RELATED WORK SCHEDULE CHANGES

A. Supervisors and employees are responsible for customer service. Subject to 10.7.B below, a supervisor may direct a permanent work schedule change for an employee, work unit, or part of a work unit when:

1. an employee would be unable to complete the requirements of the position or;

2. the office would have inadequate coverage during established Agency business hours or;

3. the work unit's business operations would be unduly delayed or interrupted; or

4. a critical mission of the Agency would not be accomplished or would be unduly delayed or interrupted.

B. For management directed changes to approved work schedules as defined in this article, with the exception of changes to Maxiflex approved hours of work, and except for abnormal, unusual, or

unforeseen circumstances, the supervisor will provide the employee and Union at least 7 calendar days notice prior to the change.

10.8 CREDIT HOURS

A. Employees who work a Maxiflex or Flexitour schedule may earn credit hours by working beyond their normal tour of duty. An employee may carry over a maximum of 24 credit hours at the end of any pay period. There is no time limit for using credit hours. However, should an employee leave NAD, the hours will be paid in a lump sum at the employee's current regular hourly rate of pay.

B. If an employee wishes to earn credit hours, he or she must receive prior supervisory approval on a prescribed form (see Appendix C). Hearing Officers are authorized to earn up to 4 credit hours per pay period without prior supervisory approval.

C. An employee may not earn credit hours on the same day that he or she uses credit hours or leave. An employee must earn credit hours within regular operating hours (5:30 a.m – 6:30 p.m). Credit hours will be earned in 15 minute increments.

D. An employee may use credit hours in 15 minute increments just like annual leave by submitting an Application for Leave (OPM-71) to the supervisor. Employees should check the "other" block on the OPM-71 and write in "credit hours."

E. Part-time employees also may earn credit hours by working beyond their normal tour of duty. The maximum carryover for part-time employees is one-fourth of the hours in their normal pay period. For example, a part-time employee who works 32 hours per week (64 hours per pay period) may carry over a maximum of 16 credit hours rather than the 24 which full time employee's carryover).

F. Employees may use credit hours in lieu of sick leave, but employees on formal leave restriction, which requires documentation for use of sick leave, must submit proper documentation.

G. Requests to use credit hours have the same priority as annual leave. In the event of conflicts over a day off, it does not matter whether annual leave or credit hours have been requested.

H. For approval purposes, credit hours are treated just like annual leave.

I. Employees cannot be forced to use credit hours. Employees cannot be forced to earn credit hours. Employees approved to work overtime may elect to earn credit hours consistent with this article.

J. Credit hours will not be earned for travel.

10.9 HOLIDAYS

A. When a Federal holiday falls on an employee's scheduled workday, the employee is entitled to holiday leave according to the following:

1. employees on a Compressed Work Schedule, the total number of hours scheduled for that day. For example, if a holiday falls on Monday and the employee is scheduled to work nine (9) hours, the employee will be paid nine (9) hours for the holiday;

or

2. employees on Maxiflex, Flexitour, and Standard Work Schedules, are entitled to 8 hours holiday leave.

B. When a Federal holiday occurs on a full-time employee's scheduled day off or compressed day off, the employee is entitled to holiday leave according to Section 10.9.A(1) or 10.9.A(2), as applicable, for the workday immediately preceding the holiday as their "in lieu of holiday", with the following exceptions:

1. If the nonworkday is Sunday (or an "in lieu of" Sunday), the next basic workday is the "in lieu of" holiday.

2. If Inauguration Day falls on a nonworkday, there is no provision for an “in lieu of” holiday.

3. If the Head of the Agency determines that a different ‘in lieu of’ holiday is necessary to prevent an ‘adverse Agency impact’, he or she may designate a different ‘in lieu of’ holiday for full-time employees under compressed work schedules.

4. An employee is not entitled to another day off as an ‘in lieu of’ holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.

10.10 SPECIAL SITUATIONS

To facilitate completion of certain educational and/or training programs and/or complete unusual work or developmental assignments or details that will improve an employee's value to the Agency, or to address other special mission-related situations, an employee may request their work schedule be changed for a temporary period so as to accommodate these special circumstances. The Employer agrees to consider such changes and to work with the employee to work out an agreeable schedule, if possible, that will allow the employee to pursue these types of opportunities while ensuring completion of the required functions of the work unit. Each request will be evaluated on its own merits on a case-by-case basis. As used in this section, temporary period is understood by the parties to generally be 180 days, or less.

10.11 COMPENSATORY TIME

A. Employees who are covered under the Fair Labor Standards Act (FLSA) may elect comp time in lieu of payment for overtime. FLSA-Exempt employees who are authorized overtime may request to take compensatory time in lieu of payment for overtime in accordance with 5 CFR 550.114(c). Employees working a flexible schedule may earn compensatory time for an equal amount to overtime work, whether or not overtime work is irregular or occasional, as contrasted to employees working other than a flexible work schedule who can only earn compensatory time for irregular or occasional overtime work.

B. Employees who do not use compensatory time earned within the time limits provided shall be paid overtime for the unused hours at the pay rate in effect when the overtime was earned in accordance with government regulations.

10.12 OVERTIME

A. Time spent performing official business in excess of eight hours a day, 40 hours a week, or 80 hours per biweekly pay period shall be considered overtime when officially ordered or approved for employees exempt from the FLSA. An employee covered under the FLSA shall be considered to be in an overtime status when performing work prior to or after the established hours of work or during the prescribed lunch period for the benefit of the Agency, whether requested or not, and the Agency knows or has reason to believe it is being performed, and has not placed the employee on notice that such work in excess of the employee’s work schedule is not authorized. All employees shall be compensated for overtime work either by compensatory leave or overtime pay according to

applicable laws and regulations (see Section 10.11, Compensatory Time).

B. Overtime assignments will be distributed and rotated equitably among qualified employees according to qualifications needed for the work to be done, as determined by Management. Supervisors shall not assign overtime work to employees as a reward or penalty. In the assignment of overtime, the Agency agrees to provide the employee(s) with advance notice, if possible. Any employee designated to work overtime on days outside his/her basic workweek will be given two days notice, except in an emergency or other situation that was not reasonably foreseen. When overtime is to be performed on a Sunday or holiday, two days advance notice will normally be given to the employee(s) affected whenever possible, and compensation will be according to applicable laws, regulations and the provisions of this Agreement.

C. A rotation will be established whereby each and every employee within a section or organizational unit where the work is to be performed will be given the opportunity to participate in overtime work assignments on an equal basis insofar as operational needs allow. The rotation of overtime will be limited to employees within the section or organizational unit who possess the needed training or skills, as determined by Management. If sufficient employees from within the unit where the work is being performed are not available to perform the work, the supervisor may assign qualified staff members to work overtime regardless of their organizational unit. Records of employee overtime worked shall be maintained by the Agency and provided to the Union upon request.

D. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour or who are called in on Saturday, Sunday, or holidays are entitled to a minimum of two hours overtime pay.

E. Employees will normally be scheduled to perform functions on overtime commensurate with the grade-level of the employee.

F. Overtime shall be distributed to bargaining unit employees whose performance is at least fully successful.

G. The Union acknowledges that the Agency retains the right to require employees to work overtime. Management will consider personal hardship requests when assigning overtime.

10.13 DEALING WITH ABUSERS

Employees who abuse AWS will not be permitted to remain on AWS. The following procedure will be followed in cases where AWS is abused:

A. FORMAL WARNING

When it becomes apparent that an employee is abusing AWS, the supervisor will counsel the employee and issue a letter providing written notice that another instance of abuse will result in suspension of that employee's AWS. The formal warning period will cover 12 months from the date of the letter. If there is no abuse within that 12-month period, this warning period will expire.

B. SUSPENSION

If an abuse occurs during the 12-month formal warning period, the employee will be suspended from AWS. If suspended, the employee will not be eligible for AWS for a period of one year from the date of suspension. At the end of the one-year suspension, the employee may be reconsidered for eligibility for AWS.

10.14 BREAKS

Employees shall receive two daily rest breaks of 15 minutes duration, one to be taken in the morning and one to be taken in the afternoon, or one break for each four hours worked. Break time shall not be accumulated (banked) for future use or used to extend the lunch period or shorten the workday.

ARTICLE 11 - MERIT PROMOTION

11.1 PURPOSE AND POLICY

The parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied in a consistent manner with equity to all employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, or age, and shall be based solely on job-related criteria. This Article applies to bargaining unit positions in the Agency.

The actions covered by merit promotion are stated in Departmental Regulations.

11.2 NOTIFICATION

A. If an employee is determined to be not basically qualified for the position, the employee may request an explanation from the HR Staff. If requested, the HR Staff will provide a verbal explanation to the employee.

B. If an employee does not make the Best Qualified (BQ) list for a position, the employee may request an explanation from the HR Staff. If requested, the HR Staff will provide a verbal explanation to the employee.

C. If an employee is on the BQ list but is not selected for the position, the employee may request an explanation from the selecting official. If requested, the selecting official will provide a verbal explanation to the employee.

11.3 PROMOTION PANELS

A. When vacancy announcements result in 10 or less basically qualified applicants, all basically qualified applicants will be certified to the selecting official.

B. When vacancy announcements result in more than 10 basically qualified applicants, a panel will be convened to rate the basically qualified applicants. The panel will be conducted as outlined in Departmental Regulations. A reasonable number of the best-qualified applicants (minimum of 10) will be certified to the selecting official.

11.4 DETAILS WITH TEMPORARY PROMOTIONS

A. Employees assigned to higher grade positions for more than 75 consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail, unless the employee is not qualified, funding is not available, or in the case of an externally imposed freeze. Management will make every reasonable effort to assign qualified employees for such positions.

11.5 PRIORITY (CONSIDERATION)

A. If it is determined by HR or through the grievance procedure that an employee was erroneously omitted from the BQ list or improperly rated, the employee will receive priority consideration for the next two vacancies for which the employee is qualified.

B. Priority consideration consists of a promotion certificate, which contains an employee's name alone, being sent to the selecting official before the official considers other applicants for a position.

C. If more than one employee is entitled to consideration, the names of only those employees will be submitted on the single certificate to the selecting official for the next appropriate vacancy.

D. An employee will be entitled to a separate priority consideration for each vacancy announcement for which the employee was improperly considered.

E. Under normal circumstances, priority consideration will be given prior to a vacancy being announced. If the appropriate vacancy has already been announced, the employee(s) due the priority consideration will be considered by the selecting official before other applicants are rated or referred for selection.

F. If, the selecting official declines to select the priority consideration employee, documentation must be presented showing legitimate job-related reasons for the non-selection.

ARTICLE 12 – REASSIGNMENTS AND DETAILS

12.1 POLICY AND PURPOSE

The parties agree that Management has the authority to reassign employees, as needed, to meet the needs of the Agency, in accordance with Title 5, Section 335, of the Code of Federal Regulations. The parties recognize that personal circumstances change and bargaining unit employees may prefer work in other locations. Details are intended for meeting temporary needs of the Agency when necessary services cannot be obtained by other desirable or practicable means.

12.2 DEFINITIONS

A. Reassignment - An employee changes from one (1) position or geographical location to another without promotion or demotion.

B. Detail - a detail is a temporary assignment of an employee to a different or the same position for a specified period, with the employee returning to his/her regular duties at the end of the detail.

C. Voluntary Reassignment – An employee requests a reassignment for personal reasons. Hearing Officers may also request Voluntary Reassignments in accordance with Section 12.7 below.

D. Job Swap - Hearing Officers in different duty stations arranging to exchange jobs. An employee is not eligible to job swap during the first year of full-time employment with the Agency. Job swaps must be approved by the Director, or designee, before they are effective.

12.3 PROCEDURES

A. The Employer agrees to give an employee who is going to be reassigned or detailed as much notice as possible before effecting the reassignment or detail. The employer will provide a minimum of 30 days advance notice to employees for directed reassignments out of the commuting area.

B. The Employee may request reconsideration of a reassignment or detail based on undue hardship.

C. Merit promotion procedures do not apply when a detail is to a position of the same grade and promotion potential.

D. The procedures in this article shall apply, except when the Agency must make a detail or assignment to respond to an unusual, sudden, and unforeseen situation of an urgent nature.

12.4 SELECTION OF EMPLOYEES

The Agency retains the authority to detail employees. This authority shall be exercised in accordance with applicable laws, rules, regulations and directives/policies.

12.5 DETAILS TO HIGHER GRADED POSITIONS

Details for more than one hundred twenty (120) days to a higher-grade position or to a position with known promotion potential shall be handled under competitive promotion procedures. Prior service during the preceding twelve (12) months under non-competitive temporary promotions and non-competitive details to higher graded position counts toward the one hundred twenty (120) day total.

12.6 RECORD OF DETAIL

Details over thirty (30) consecutive days will be documented by a SF-52, Request for Official Personnel Action. Should the requirements of the Agency necessitate detailing an employee to a lower graded position, this will not adversely affect the employee's salary, classification, or job standing.

12.7 HEARING OFFICER VOLUTARY REASSIGNMENT

A. Policy

The parties agree that a voluntary reassignment process is in the interests of both the employees and the organization as a way to identify and fill vacant Hearing Officer positions in a timely and cost-effective process. The parties recognize that the Agency may need to reassign employees to duty stations outside of the commuting area when there is a critical need for resources in another area or during work reduction situations. The parties further recognize that personal circumstances change and bargaining unit employees may prefer to work in other duty stations. Therefore, policy and procedures are established for a Voluntary Placement Program (Section 2, below). This Program allows Hearing Officers to request voluntary placement in a different duty station.

B. **Voluntary Placement of Hearing Officers**

1. Hearing Officer positions are permanent jobs with assigned duty stations. The Agency expects employees to remain in the duty station where they accept a position for at least one (1) year, unless involuntarily relocated due to a localized work reduction. The Voluntary Placement Program applies to Hearing Officers and allows for:

    (a) Voluntary placement of Hearing Officers to a position for which they are qualified and trained under the provisions of this Article. This includes voluntary reassignments.
    (b) Relocation based on the voluntary placement procedures are for the benefit of the employee and are at the expense of the employee.

2. The Agency may solicit requests for voluntary reassignments prior to advertising a vacancy, concurrent to recruitment, or at some other time, as needs of the Agency require. The Agency may fill vacancies through voluntary reassignments or through alternative recruitment strategies available to the Agency. Alternative personnel recruitment strategies include, but are not limited to, how a position is advertised, who the position is open to, and from what geographic areas potential candidates may apply. Alternatively, nothing in this article precludes an employee from seeking relocation through the normal personnel or Agency recruitment process.

3. Exceptions

    (a) Involuntary reassignments in localized work reductions.

    (b) Other circumstances where reassignment is determined to be in the best interest of the Agency.

4. Eligibility

    (a) Hearing Officers, unless prohibited by restrictions in item (5) of this section, are eligible to apply for voluntary reassignment to another duty station.

    (b) Employees with formal disciplinary action pending, under leave restriction, under a performance improvement plan, or other similar actions may apply for voluntary placement but will not be selected for placement until the situation is resolved.

5. Restrictions

   (a) Employees are not eligible for voluntary placement until they have completed the probationary period and have served one (1) year in their current position. Employees may submit a request for voluntary placement no more than sixty (60) days before becoming eligible.

   (b) Employees accepting reassignment under the voluntary placement program or those selected for promotion under merit promotion procedures are not eligible for another placement until one (1) year after the effective date of the previous personnel action. Employees may submit a request no more than sixty (60) days before becoming eligible.

6. Submitting Requests for Voluntary Placement

   A. The Agency

      Informs the employees of intent to fill a Hearing Officer vacancy in a location and provides a 30-day window for current Hearing Officers to formally express an interest in the position. The solicitation will also provide a desired reporting date. At a minimum, the Agency will provide a 90-day report date.

   B. The eligible employee

      (1) Completes the form at Appendix D, indicating the duty station to which placement is desired. On this form, the employee will indicate the Service Computation date for Federal Service and acknowledge that relocation expenses will not be paid by the Agency and the Agency desired reporting date.

      (2) Submits the completed form to:
      The Agency's Human Resources Servicing Officer

      (3) Employees may rescind or change the application or duty station preferences at any time by notifying the Human Resources Field Office in writing, at the address in (b)(2), of this section.

7. Order of Merit List

   If the Agency chooses to reassign a current employee pursuant to this article, the Agency shall choose the employee from the top of the Reassignment Request list. If otherwise eligible, the rank order of the list shall be determined by employee service computation date. If selected, an employee who moves to another duty station must remain in that position for one (1) year before submitting a new request for voluntary placement.

ARTICLE 13 - REDUCTION-IN-FORCE (RIF)

13.1 When it is anticipated that a RIF will involve bargaining unit employees, the Union President will be given the earliest possible preliminary notification in writing. To the maximum extent possible, this notification will be at least ninety (90) days before the anticipated start date and will include the following information:

A. Specific functions to be transferred and identification of employees assigned to this function,

B. The reason for the RIF,

C. The competitive area and levels proposed by the Employer that may be involved initially during a RIF.

D. The anticipated effective date that the action will occur**,** and

E. The manner in which Management anticipates exercising its discretion under 5 CFR 351.

13.2 The Agency will attempt to minimize any actions that may adversely impact employees during a RIF by using, to the extent feasible, attrition to accomplish reductions. The RIF will be carried out in strict compliance with all applicable laws and regulations.

13.3 Any career or career-conditional employee who is separated because of a RIF will be placed on the re-employment priority list for all competitive positions in the commuting area for which qualified and available according to applicable rules and regulations. It is understood that acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.

13.4 Employees receiving a RIF notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions to or below the grade-level of their current positions. Bargaining unit employees involved shall have the right to seek assistance from the Union when reviewing such lists or records.

13.5 Bargaining unit employees have the right to outplacement services described in current USDA RIF regulations.

ARTICLE 14 - PROFESSIONAL DEVELOPMENT AND TRAINING

14.1 POLICY

A. Professional Development and Training is defined as training that enhances the performance of duties that support the Agency mission. The Agency shall provide training and education subject to the availability of funds.

B. The intent of Agency sponsored training is to both improve the current job performance and to develop the employee in order to promote the mission of the agency. The parties agree to support and encourage employees in developing their abilities and in contributing to the more effective utilization of available human and material resources in service to the Agency.

C. Training opportunities shall be given fairly and equitably and consistent with broad staff development goals.

D. The Planning, Training and Quality Control (PTQC) Office will maintain information and bi-annually furnish guidance about sources of available education, training, and career development resources (such as institutes of higher education, conferences, continuing legal education, the National Judicial College, web-based training, etc.).

E. Each employee is responsible for applying effort, time, and initiative in increasing their potential through career development and training. The parties will encourage employees to take advantage of educational opportunities and training that enhance work efficiency and provide needed skills for advancement.

F. Each employee has the responsibility to consult with their supervisor in developing specific skill and knowledge areas, for which training would result in the enhancement of the employee's support of the Agency mission. The Employee then has responsibility to develop and submit a training request to their immediate supervisor according to the method prescribed by the Agency. If denied, the official denying the request shall notify PTQC of the denial within two business days.

G. Retirement planning training, including mid-career training, will not be restricted to employees within 5 years remaining.

14.2 **PROCESSES AND TRAINING**

a) Upon request of either party, the parties agree to meet and discuss, in good faith, the possibility of instituting programs to train or retrain employees in new skills so as to assure an adequate supply of available employees trained in these new skills. Written requests for such a meeting shall identify the purpose thereof.

b) Upon proper notice to the Union, the parties agree to meet, consult, and bargain to the extent required or permitted by law or Executive Order:
   1) When new skills requiring employee training are necessary as a result of the introduction of new equipment and/or new processes which affect or impact the employment of the involved employees.
   2) When the Agency proposes to install new equipment, machinery, or processes which would result in changes in work assignments or require additional training
   3) Concerning the establishment of training courses or on the job training to effectively enable affected employees to perform their job duties as well as provide for requisite staff development.

ARTICLE 15 - PERFORMANCE APPRAISAL SYSTEM

15.1 STATEMENT OF POLICY

Performance evaluation shall be administered in accordance with applicable laws, regulations, and internal guidelines. The Agency and the Union recognize and endorse the concept that performance management is a continuous, systematic process by which managers and supervisors integrate the planning, directing, and executing of organizational work with the personal performance appraisal, pay, awards, promotion, and other systems. Individual employee work elements and standards are documented and communicated in writing.

15.2 PERFORMANCE ELEMENTS AND STANDARDS

Performance standards shall be fair, objective, reasonable, and related to the employee's official position. Performance standards describe the expectations or requirements established by Management for critical and noncritical elements.

15.3 PERFORMANCE PLANS

A. All elements and standards will be in writing on the performance plan. The supervisor and employee will review the elements and standards. The performance plan will normally be issued within 30 days after the beginning of an appraisal period or a change in tasks that result in changing the performance standards. Periodic reviews and discussions should be held to evaluate performance

B. The minimum of a mid-year review is required. The mid-year review will be given not later than 30 days after the mid-point of the appraisal cycle. The employee may submit a written response to the mid-year review, which the supervisor will maintain as part of the mid-year review record. The employee may use that written submission as part of an informal or formal response to the end of the year appraisal.

C. When a work assignment changes significantly, whether or not the work assignment change requires a personnel action, the effected performance plans shall be reviewed to determine whether revision or reestablishment is necessary. Employees will be informed and participate as provided in this Agreement when any revisions are made to their performance plan. Employees who believe that revisions to their performance plan are warranted due to substantial changes in work assignments may propose such changes to their immediate supervisor/rating official for consideration.

D. Employees shall be apprised of their performance under established performance elements and standards at the conclusion of the rating cycle.

15.4 EMPLOYEE PARTICIPATION IN ESTABLISHING PERFORMANCE PLANS:

The Employer will ensure consistency, objectivity and applicability in development of performance elements, standards and the subsequent appraisal of performance against established performance standards. Final authority to approve elements and standards rests with the Employer. Joint participation may be accomplished by means including, but not limited to, the following:

A. Employee and supervisor discuss and develop performance plan together,

B. Employee comments on draft performance plan prepared by the supervisor, or

C. Employees who occupy similar positions prepare performance plan(s) with supervisor's approval for consideration.

15.5 EMPLOYEES RESOURCE FOR EXPLANATION OF PERFORMANCE PLAN

When an employee is unclear about what is required to attain a rating of fully successful or equivalent, or what is required to improve their performance, the employee may request clarification from the supervisor. A summary of the guidance given will be documented, with a copy to the employee.

15.6 DOCUMENTATION OF ACCOMPLISHMENTS

At the end of the appraisal period, the employee's accomplishments will be documented in the form of a performance appraisal.

ARTICLE 16 - AWARDS

16.1 PURPOSE AND POLICY

A. The Agency and the Union agree and recognize that an award program is a necessary and useful mechanism through which employee accomplishments may be recognized. The award program will be administered in accordance with law, governing regulations, and Agency guidelines.

B. Incentive awards encourage creativity, promote initiative, and improve morale, resulting in improved organizational efficiency and customer service. Public recognition of award recipients for their special contributions, community involvement, suggestions, etc. is an effective means to achieve this objective.

16.2 TYPES OF AWARDS

A. Incentive Awards: These are granted in the form of monetary and non-monetary recognition based upon the tangible or intangible benefits realized by the government. The Incentive Awards Program consists of the following categories of awards:

1. Special Act Awards: Recognition granted for recurring and non-recurring accomplishments, such as suggestions, superior accomplishments, productivity gains, or other efforts that contribute to efficiency, economy, or other improvement of operations.

2. Spot Awards: Monetary recognition that serves to immediately reward an employee's contributions.

3. Time-Off Awards: Excused absences, awarded in hourly increments, granted to employees, without charge to leave or loss of pay. Time-off awards may be granted to an employee for up to eighty (80) hours per year. Individual awards may not exceed forty (40) hours. The scheduling of the time-off awards will be coordinated between the employee and the supervisor.

4. Honorary Awards: A form of non-monetary recognition that includes certificates, letters, citations, medals, plaques, or other items that have an award or honor connotation.

5. Informal Recognition: These non-monetary awards are usually in the form of items that symbolize the employee/employer relationship and are suitable to wear, display, or use in the work environment.

6. External Awards: The Employer encourages recognition of employees whose contributions through organizations external to the Agency benefit the government and community. Employees who perform community service activities as a volunteer may be recognized for their contributions through appropriate recognition.

Incentive Awards may be individual or group awards, as appropriate, based on the circumstances.

B. Performance Awards: These are based on the individual performance rating of record, and are awarded as performance awards (monetary) or Quality Step Increases (QSIs). The purpose of QSIs is to recognize outstanding performance by granting faster than normal step increases. To be considered for a QSI, an employee's current rating of record must be outstanding and the employee must not have received a quality step increase within the preceding 52 consecutive calendar weeks. Where an employee is rated outstanding, a rating official shall consider that employee for a performance award up through and including a QSI.

16.3 REVIEW COMMITTEE

A. The parties will establish an Incentive Awards Review Committee, consisting of two (2) members. The Employer and the Union will each select one (1) representative.

B. This Committee is established to perform post-reviews of the Incentive Awards issued by the Agency.

C. The Committee will meet on an ad hoc basis upon mutual agreement of the Employer and the Union. The Committee will perform the following activities**:**

1. Review written justifications for awards;

2. Review Awards distribution;

3. Submit findings, and recommendations to the Director, NAD; and,

4. Maintain confidentiality and share information only with the Director, NAD.

D. The Committee has no veto power but serves only in an advisory capacity.

ARTICLE 17 - ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

17.1 SCOPE AND DEFINITION

A. An action based on unacceptable performance is defined as the reduction in grade or removal of an employee whose performance fails to meet established performance standards in one or more critical elements of the employee's position.

B. This Article applies only to bargaining unit employees who have completed their probationary or trial period.

17.2 PROCEDURAL REQUIREMENTS

A. The procedural requirements prescribed by USDA/NAD regulations and this Agreement apply in processing unacceptable performance actions.

B. At any time during the appraisal year, if the supervisor identifies a performance-related problem with an employee, the supervisor, prior to initiating a Performance Improvement Plan (PIP), will meet with the employee. The supervisor shall counsel and advise the employee regarding actions necessary to bring their performance to an acceptable level.

C. Employees will be given a written notice in accordance with section 17.5 of this article for performance based actions.

17.3 PERFORMANCE IMPROVEMENT PLAN

A. As early as possible, the employee's attention will be called to areas of performance needing improvement and informal steps will be initiated to assist the employee in meeting performance standards. When informal efforts do not result in acceptable performance, a Performance Improvement Plan (PIP) will be developed.

B. The PIP will be developed in writing.

C. The PIP will include the following:

1. Identification of the critical element(s) and performance standard(s) for which performance is unacceptable, specific examples of how the employee's performance is failing to meet the standard,

2. What the employee must do to bring performance up to an acceptable level,

3. A statement that the employee has a reasonable period of time, normally thirty (30) to ninety (90) days, to achieve acceptable performance.

4. At any time during the PIP period, the supervisor may conclude that the employee's performance has improved to an acceptable level and the PIP can be terminated. Should the PIP be terminated, the employee will be notified in writing and rated appropriately.

D. The Agency will provide periodic feedback during the PIP period, as appropriate.

17.4 PERFORMANCE-BASED ACTIONS

Should the employee's performance remain unacceptable while on a PIP, the employee shall receive a rating to reflect his/her level of performance. The Agency will then proceed with Action to reassign the employee, or adverse action to reduce in grade, or remove the employee. Such action will be processed pursuant to Agency regulations and existing laws. Employees may grieve reassignments pursuant to this section under Article 19, Negotiated Grievance Procedure.

17.5 WRITTEN NOTICE

A. In all cases of proposed action based on unacceptable performance, the employee will be given written notice of the specific reasons of unacceptable performance on which the proposed action is based 30 days in advance of the action.

B. The advance written notices proposing either to remove or downgrade an employee for unacceptable performance includes:

1. Specific instances of unacceptable performance by the employee on which the proposed action is based,

2. The critical element and performance standard,

3. The employee's right to be represented,

4. The employee's right to answer orally and/or in writing, and

5. The employee's right to review the material relied upon to support the specific reasons.

C. The Union or employee will not grieve either the substance or the procedural aspects of this notice, however, a final decision may be grieved.

17.6 DECISION LETTER

A. The deciding official will set forth findings with a response to each specification listed in the letter proposing the action.

B. The decision letter will also address factual disputes, if any, raised in the employee's reply by stating the reasons why each factual dispute was rejected.

C. The decision letter will also:

1. Advise the employee of the right to appeal the final decision to the Merit Systems Protection Board or through the Negotiated Grievance Procedure, but not both; and

2. Indicate the effective date of the action.

17.7 TIME EXTENSIONS

Any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

ARTICLE 18 - DISCIPLINARY AND ADVERSE ACTIONS

18.1 GENERAL

The parties agree that the objective of this article is to correct and improve employee conduct and/or performance so as to promote the efficiency of the Agency. All disciplinary and adverse actions will be consistent with Agency regulations and existing laws. Early communication between the employee involved and the supervisor to achieve resolution is encouraged. If either party believes that resolution would be aided if the Union were involved in these early discussions, they are encouraged to contact the applicable Union steward. The parties recognize that employee misconduct may be serious enough to warrant the proposal of an adverse action even for a first offense. Every effort will be made to assure that actions are fair and equitable. Actions taken during the probationary period are not covered under this article.

18.2 DEFINITIONS

Disciplinary action - Refers to a letter of official reprimand or a suspension for 14 days or less as outlined in Subchapter I, Chapter 75, 5 U.S.C

Adverse action - Refers to a removal, suspension for more than 14 days, reduction in grade, reduction in pay or furlough of 30 days or less as outlined in Subchapter II, Chapter 75, 5 U.S.C.

18.3 OTHER PROVISIONS

A. An employee may appeal an adverse action, under the Negotiated Grievance Procedure or to the Merit Systems Protection Board, Equal Employment Opportunity Commission, not two or more. Disciplinary actions may be grieved under the Negotiated Grievance Procedure in Article 19 of this agreement.

B. The employee will be responsible for providing copies of documents from Management to the employee's representative.

C. Letters of reprimand will be maintained in the employee's OPF for a period not to exceed one (1) year.

D. Management has the right to take any action necessary to protect the health and safety of the work force.

ARTICLE 19 - NEGOTIATED GRIEVANCE PROCEDURE

19.1 POLICY AND PURPOSE

A. The purpose of this Article is to provide a fair, simple, and expeditious means of processing grievances. The negotiated grievance procedure shall be the exclusive procedure available to the Agency and the Union to address institutional complaints and for employees in the bargaining unit for resolving grievances.

B. The Employer and the Union agree that every effort will be made to settle grievances at the lowest possible level. Employees are encouraged to resolve concerns between themselves and their immediate supervisor without resorting to the grievance procedure. The filing of a grievance should not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization. Employees dissatisfied with the orders properly grounded in supervisory authority must follow the order first and then grieve the matter if they believe relief should be granted. If an employee has a reasonable belief that a supervisory order creates an imminent risk of death or serious bodily injury, the employee may pursue resolution through the next level supervisor. However, this does not absolve the employee of his/her responsibility to timely follow supervisory orders. Employees are reminded that timeframes continue to run throughout the time the employee is attempting to informally resolve the complaint.

19.2 DEFINITIONS

A. **DENIAL** - An action by either the Employer or the Union at any step of the grievance process advising the other party that the remedy sought will not be granted.

B. **GRIEVANCE** - Under title 5, United States Code, section 7103(a)(9), a grievance "means any complaint-- (A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning-- (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

C. **PARTICULARIZED NEED** - The Federal Labor Relations Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is a unfair labor practice.

D. **PERSONAL RELIEF -** A specific remedy directly benefiting the grievant(s). A request for disciplinary action against another employee is not a request for personal relief. Failure to request personal relief in a grievance may be grounds for rejecting the grievance.

E. **PRE-DELIBERATIVE DOCUMENTS -** Internal Employer communications that are pre-decisional and do not constitute final decisions or published Agency policy. These documents may include, but are not limited to—

1. Option papers on negotiations and disciplinary actions,
2. Information on the strategy the Employer should take on a particular grievance or unfair labor practice,
3. Case analyses or summaries of investigations conducted by the Employer, and
4. Lower-level supervisors' recommendations and concurrence with proposed action.

F. **REJECTION -** An action by either the Employer or the Union at any step of the grievance process advising the other party that the negotiated grievance procedure is not the appropriate forum to seek redress because it is outside the scope of this Article. A rejection must state the specific provision in this Article that is the cause for rejection. A rejection causes the grievance to be terminated.

19.3 GRIEVANCE PROCEDURE

A. The procedures in this Article shall be the exclusive procedures available to the parties for resolution of grievances covered under the terms of this Agreement except as expressly limited by the following:

1. Only incidents that occur while the employee is a bargaining unit employee may be pursued under this procedure.

2. An aggrieved employee affected by discrimination or adverse action taken according to 5 U.S.C. §7512 (except as excluded from the negotiated grievance procedure in Section 19.5) may at his/her option raise the matter under a statutory appellate procedure or this negotiated procedure, but not both. For the purpose of this section and pursuant to 5 U.S.C. §7121, an employee shall be deemed to have exercised his/her option when the employee files a timely notice of appeal under the appellate procedures, files a formal complaint under the EEO process or files a timely grievance in writing under the negotiated procedure.

3. An employee who alleges a prohibited personnel practice under 5 U.S.C. §2302(b)(1), which also falls under the scope of this Article, may raise the matter under a statutory procedure or this Article, but not both.

B. A grievance initiated by the Union that expresses the Union's disagreement with the Employer's interpretation or application of this Agreement, and which does not request personal relief but an institutional remedy, will be filed directly with the Labor Relations (LR) Staff. If the grievance is not resolved to the Union's satisfaction, the Union may invoke arbitration pursuant to Article 20. If requested by either party, a meeting will be held by the parties to resolve their differences informally. If the informal discussion fails, the Employer will provide a written decision within 30 calendar days of its receipt of the grievance.

C. A grievance initiated by the Employer against the Union will be filed in writing within 30 calendar days from the date the Employer knew or should have known of the subject upon which the grievance is based. If requested by either party, a meeting will be held by the parties to resolve their differences informally. If the informal discussion fails, the Union will provide a written decision within 30 calendar days of its receipt of the grievance.

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D. The parties agree that information requests will be limited to that material normally maintained by the Employer in the regular course of business which is reasonably available, necessary and relevant to the Union's representational responsibilities. If a dispute arises over access to information in connection with the grievance, after the Union has filed a request under 5 U.S.C. §7114(b) (4) with the LR Staff, it will be joined to the grievance. Information which constitutes guidance, advice, counsel, or training for the Employer is not releasable nor are pre-deliberative documents. The standard that will be used when determining necessity will be the articulated

"particularized need" for the data. The Union will explain why it seeks the information, how it will be used and what it will be used for, so that the Employer can make an informed judgment on necessity for the collective bargaining process. Each information request will be evaluated based upon the specific circumstances of the grievance being considered. All information requests relating to the labor relations process will be filed under 5 U.S.C. §7114(b) (4) with the LR Staff.

E. The time limits delineated in this Article may be modified by mutual written agreement of the parties. When the due date falls on a non-work day, the next workday will become the due date.

19.4 REJECTION/DENIAL OF GRIEVANCE

A. Individual employee grievances must request personal relief. The LR Staff is responsible for determining if other than personal relief is requested and advising the grievant in writing of the rejection. In those instances where a grievant requests personal relief and also seeks an additional remedy that does not constitute personal relief, only that portion of the grievance seeking a direct benefit for the grievant will be processed. The grievant will be notified in writing that the portion requesting other than personal relief has been rejected and the reason(s) for that decision.

B. If a disagreement exists concerning timeliness that cannot be resolved at the various steps of the grievance procedure, the matter can be joined to the grievance as a threshold issue. The arbitrator may then decide to issue a decision on the threshold issue of timeliness and not address the merits of the grievance or conduct a hearing on the merits and timeliness jointly, then issue a final decision according to the provisions of Article 20.

C. Grievances which are denied may continue being processed through the various steps and eventually decided at arbitration.

D. Grievances which are rejected as being outside the scope of this Article (e.g., specifically excluded) are terminated when the grievant receives a written rejection.

E. The parties agree to raise any questions of grievability as early as possible in the grievance procedure.

19.5 EXCLUSIONS

Exclusions include:

1. The content of published Agency regulation and policy;

2. Non-selection for promotion from a list of best qualified candidates. However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure;

3. Oral or written: counselings, warnings, notice of-proposed actions. However, disputes regarding a proposed action may be incorporated into a grievance after the final decision is issued;

4. A progress review, a counseling session or performance improvement plan (PIP). However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure. While the issuance of a PIP is not grievable, the failure of the PIP to meet contractual requirements regarding content (as specified in Article 17, Section 17.3) may be grieved;

5. An action which terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted or to a different position (not lower in grade) where the employee is informed in advance that the promotion is only temporary;

6. The substance of the elements and performance standards of an employee's position.

7. The decision to adopt or not to adopt an employee suggestion. However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure;

8. Granting of awards, except as to the procedures provided in Article 16, "Awards". However, if such action is alleged to have been taken for discriminatory reasons prohibited by statute, that issue may be grieved under this procedure;

9. Action taken according to the terms of a formal agreement voluntarily entered into by an employee, which assigns the employee from one location to another;

10. The termination of a probationary employee;

11. A salary offset determination or garnishment which is reviewable under separate procedures or law;

12. Any claimed violation relating to prohibited political activities;

13. Any complaint concerning retirement, life insurance, or health insurance;

14. Any employment examination, certification, or appointment;

15. The classification of any position which does not result in the reduction in grade or pay of an employee;

16. Complaints concerning Veterans Preference, and

17. Complaints regarding non-bargaining unit positions.

19.6 FILING A GRIEVANCE

A. STEP 1

1. Grievances must be in writing and accompanied by Grievance Form LR- 103 (Appendix E), and signed by the grievant. At each step of the grievance process, the grievant shall complete Form LR-103 that may include other documents to support the complaint. The grievant shall submit the Form LR-103 and other necessary information to the grievant's immediate supervisor.

2. The grievance must be filed with the grievant's immediate Supervisor by close of business on or before 15 calendar days of the incident that gave rise to the grievance; or on or before 15 calendar days from the time that the grievant learned, or should have learned of the matter out of which the grievance arose; or in EEO incidents, the grievant will have 15 calendar days after the date of the EEO counselor's final determination to file a grievance. Grievances must cite the basis of the violation, describe the nature of the violation, and state the remedy sought (personal relief).

3. Services of grievances and the decision thereof, including arbitration notices, shall be accomplished either by personal delivery, U.S. Mail, fax, or by other recognized delivery service(s) (ie. FedEx, etc.).

4. The grievance filing date shall be the post marked date, shipping date, fax confirmation date, or date personally delivered.

5. Employer will have 24 calendar days to attempt to resolve the grievant's complaint that may or may not include a meeting. Either party (that is, the grievant, the grievant's first level supervisor, the manager, or the manager against whom the complaint is filed) may request to meet with the other party at the earliest possible stage. The decision to accept or deny a request to meet is non-grievable or arbitrable. Should the parties mutually decide to meet, parties may have a representative present.

6. The grievant will be apprised of his immediate supervisor's decision by letter on or before 24 calendar days after receipt of the grievance. If the grievant is dissatisfied with the response to his/her first step grievance, or the grievant does not receive a written response, or the written response is untimely, the grievant has the right to elevate the grievance to the next step (Step 2) within 14 calendar days after the date the grievant received a decision at the first step.

B. STEP 2

1. The Step 2 grievance shall be filed with the next higher-level supervisor or designee. As in step 1 above, a meeting of the parties at this Step is optional, at the consent of both parties.

2. The grievant must complete and submit Form LR-103 to the Step 2 supervisor or designee with an explanation about why the grievant appealed the Step 1 decision. The Step 2 deciding official will render a decision in writing within 21 calendar days after receiving the step 2 grievance. If the grievant is not satisfied with employer's written response, or the grievant does not receive a written response, or the written response is untimely, the grievant has the right to elevate the grievance to the next step level supervisor within 14 calendar days after receiving the Step 2 response.

C. STEP 3

1. The Step 3 grievance shall be filed with the next higher-level supervisor (above the Step 2 supervisor) or designee.

2. The grievant must complete and submit Form LR-103 to the Step 3 supervisor or designee with a copy to the LR Staff. The Step 3 grievance must include an explanation about why the grievant grieved the Step 2 decision. The grievant will receive a written decision within 21 calendar days after receipt of the grievance. The grievant will be apprised of the decision by letter, with copies being sent to the LR Staff. The letter will contain the reasons for the decision.

D. **ARBITRATION**: Step 3 is the final step in the negotiated grievance process. If the grievant is not satisfied with employer's written decision issued at Step 3, or the grievant does not receive a written response, or the written response is untimely, the parties to this agreement (Agency or the Union) may invoke binding arbitration. See Article 20 of this agreement

ARTICLE 20 – ARBITRATION

20.1 Arbitration may only be invoked by the Employer or the Union. Any unresolved grievance or issue processed under Article 19, Negotiated Grievance Procedure, of this Agreement shall upon written request be submitted to binding arbitration. The request for arbitration must be made within 30 days after receipt of the final level written decision in the grievance process.

20.2 Within seven (7) days from the date of the request for arbitration, the party invoking arbitration will request from the Federal Mediation and Conciliation Service (FMCS) a list of seven (7) impartial persons qualified to act as arbitrators.

20.3 The parties shall confer within seven (7) days after receiving the list of names from the FMCS and select one of the listed arbitrators. The first strike shall be determined by the flip of a coin. If they cannot mutually agree upon a selection, the parties will alternately strike one name from the list until the list contains only one name. This person shall be the duly selected arbitrator. If for any reason either party refuses to participate in the selection of the arbitrator, the other party chooses the arbitrator.

20.4 If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard.

20.5 The parties agree that only necessary, relevant and material witnesses shall be allowed to participate in the arbitration hearing. The arbitrator will resolve disputes or questions over relevance of witnesses. All Agency employees in duty status authorized to participate in the arbitration hearing shall be in official travel status only in accordance with applicable travel regulations, and on official time.

20.6 The parties shall exchange witness lists, with names, work addresses and telephone numbers of known witnesses, representatives, and observers no later than five (5) days in advance of the hearing.

20.7 The parties may arrange for a pre-hearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) in writing, stipulating facts, outlining offers of proof, authenticating proposed exhibits, exchanging lists of witnesses, or waiving the use of a transcript.

20.8 Either party may request a verbatim transcript of the hearing. The party requesting the transcript will pay the costs and it becomes the property of

that party. If both parties request a transcript, the costs will be shared equally.

20.9 The arbitrator shall determine the procedures to use to conduct the arbitration. All parties shall be entitled to call and cross-examine witnesses and shall be entitled to a hearing before the arbitrator.

20.10 The arbitrator's fee and expenses, if any, shall be borne by the losing party, except that in any decision not clearly favoring one party's position over the other, the arbitrator may specify that all costs be borne equally by the parties.

20.11 The arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement.

20.12 Where the parties mutually agree to bifurcate issues of arbitrability from issues on the merit, issues concerning the arbitrability of a grievance presented for arbitration under the terms of this Agreement may be resolved by the arbitrator on written motion in advance of the arbitration hearing. At the request of either party, a hearing on arbitrability may be held in advance of a hearing on the merits of the case. An arbitrability decision shall be rendered within 24 hours after the conclusion of the hearing or receipt of the written motion.

20.13 Where a decision is rendered on the merits, the arbitrator will be requested to render the decision as quickly as possible, but in any event not later than 30 days after the conclusion of the hearing unless the parties mutually agree to extend this time limit. The arbitrator shall submit all findings in writing, and this report shall decide all issues raised by any party.

20.14 The arbitrator's findings and award shall be binding upon all parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority (FLRA) or the appropriate court under regulations prescribed by the Civil Service Reform Act or the FLRA.

ARTICLE 21 - MEDIATION

21.1 Mediation is recognized as an informal, yet effective process for resolving conflict. It is the intent of the parties that the use of this process will enhance the work environment. Mediation may only be used by mutual agreement of the parties. Mediation will be administered in accordance with the USDA Conflict Prevention and Resolution Center guidelines. Agreements entered into by the parties under this article will not establish precedent nor the determining of significant questions of governmental policy, or the agency fulfilling its requirement found under 5 USC 572 (b).

21.2 Mediation will not be used for:

A. Grievable or appealable adverse actions as follows:

1. Suspensions greater than 14 days
2. Demotions
3. Removal Actions
4. Reduction-In-Force and Furloughs

B. Other issues that would normally be excluded from the administrative grievance procedure.

ARTICLE 22 - LEAVE

22.1 The Agency will adhere to all applicable Government-wide rules and regulations, Departmental Regulations and this Article, in the administration of leave. Employees shall be entitled to accrue and use leave in accordance with Government-wide rules and regulations and this agreement.

22.2 Employees should request sick leave and annual leave in advance, when possible. When advance notice is not possible, an employee must notify his/her supervisor, or their designee on the first day of absence. This will normally be no later than 45 minutes after the beginning of the scheduled tour of duty. When an employee cannot contact their supervisor/designee, they may leave a phone number at which they can be reached.

22.3 Failure to give prompt notice may result in the absence being charged to Absent Without Leave (AWOL). This will not preclude a later change in leave status for very sufficient reasons.

22.4 Supervisors may require all leave to be documented by use of the OPM-71.

22.5 Sick leave will be granted to employees when they are incapacitated for performance of their duties because of illness, under certain circumstances involving contagious diseases as set forth in applicable regulations, or for medical, dental, or optical examination or treatment when required and requested prior to the beginning of the absence. In instances of denial, employees will be advised in writing of the reasons and conditions used to support that denial. When an employee's request for sick leave is denied, the employee may request substitution of annual leave or leave without pay unless the Employer takes disciplinary action against the employee. An employee's right to substitute a request for annual leave or leave without pay for a denied sick leave request shall not be waived as a result of a grievance emanating from such denial.

22.6 A period of absence on sick leave in excess of five (5) consecutive workdays must ordinarily be supported by an administratively acceptable medical certification. However, if the circumstances surrounding the employee's absence indicate that the services of a physician were not available or required, the employee's written statement may be accepted in lieu of a medical certificate. When an employee's absences indicate a possible abuse of sick leave, the submission of medical certification may be required to support any leave absence regardless of its duration. If

there is evidence that an employee abuses sick leave, that employee may be placed on restricted sick leave.

22.7 Advance sick leave, advance annual leave and leave without pay will be requested and approved only in strict compliance with law and governing regulations.

22.8 Leave without pay (LWOP) is an approved leave status that may be requested by employees to cover periods of absence in lieu of or in the absence of accrued annual leave or sick leave. LWOP is not a right that accrues to an employee and is administered in accordance with Agency and Government-wide regulations.

22.9 The Family and Medical Leave (FMLA) Act of 1993 entitles certain Federal employees up to twelve (12) weeks of LWOP for specific personal and family health conditions or emergencies. FMLA is administered in accordance with Agency and Government-wide regulations.

22.10 Sick leave up to 104 hours for family care and bereavement purposes, for serious health condition of a family member, and Sick leave for family care and bereavement purposes may be advanced at the employee's request in accordance with Agency and Government-wide regulations.

22.11 The Agency may grant Administrative Leave for activities that are in the Government's interest in accordance with Agency guidelines.

22.12 In accordance with law and regulations, bargaining unit employees who are members of the National Guard or the Armed Forces Reserves are entitled to 120 hours of regular military leave in a fiscal year for active duty, active duty for training, and certain inactive duty training and activities defined by law.

22.13 Court leave for jury duty and to serve in an official or unofficial capacity as a witness or to supply evidence for state or local government will be granted to employees in accordance with Agency and Government-wide regulations.

22.14 The Federal Employees Leave Sharing Act of 1988, Pub. L. 103-103, enables qualifying Federal employees to use transferred (or donated) annual leave from other Federal employees to cover LWOP absences and advanced leave indebtedness resulting from personal and family medical emergencies.

ARTICLE 23 - FLEXIPLACE PROGRAM

23.1 GENERAL

A. The employer supports a flexible workplace policy for employees who desire to work off-site for part of the pay period and whose work is appropriate to such an arrangement and where such an arrangement will benefit the government. It is the Agency's policy to provide management with the option to allow eligible employees to work at an alternative workplace for part of the workweek.

B. For the purpose of this article, Flexiplace means employees working from an alternative workplace for part of the workweek. Employees that have established home offices are excluded from consideration for Flexiplace under this Article.

23.2 QUALIFICATIONS

A. After a minimum of ninety (90) days of fully successful performance, and subject to B through G below, an employee may request consideration for Flexiplace.

B. The employee has demonstrated motivation, independence, and dependability in accomplishing work assignments.

C. The employee can accomplish their duties with less frequent face-to-face contact with others.

D. The employee has good time management skills.

E. The employee has clearly defined performance standards that support working offsite.

F. The employee is willing to sign and abide by a written agreement (Appendix F) which requires participation in training and evaluation sessions.

G. The employee has satisfied adequate homework station requirements, including the availability of equipment and provisions for protecting the confidentiality of data.

23.3 IDENTIFYING POTENTIAL POSITIONS

A. The following guidelines will be used to identify appropriate work assignments for flexiplace:

1. The work must be portable. In other words, it must be able to be performed in a setting other than the official duty station.

2. The work must be able to be completed away from the official duty station without adversely affecting the workload of other employees, office coverage, customer service, or other mission of the work unit.

B. The types of work suitable for flexiplace depend on specific job function. However, jobs that require the following types of skills may be considered good candidates for flexiplace.

1. Requires writing such as data analysis, reviewing voluminous documents, writing decisions or reports.

2. Requires telephone-intensive tasks such as setting up conferences, obtaining information, following up on participants in training sessions.

3. Includes computer-oriented tasks such as programming, data entry, or word processing.

23.4 SUPERVISOR AND EMPLOYEE AGREEMENT

A. Before beginning off-site work, employees and supervisors must understand their responsibilities and the details of the program.

B. The primary concern of supervisors is assuring the work of the unit is accomplished. The overall interests of the office must take precedence over working off-site. One person's off-site work should not adversely affect the performance of other employees or put a burden on staff remaining in the office. Not only should an equitable distribution of workload be maintained, but also methods should be instituted to ensure that office employees do not have to handle the flexiplace employee's work.

C. Management approval will be at the first line supervisor's level with second line supervisory concurrence.

D. Employee participation in the flexiplace program is contingent upon available financial resources.

23.5 ADMINISTRATIVE POLICIES

A. DEPENDENT CARE. Flexiplace is not a substitute for day care. Flexiplace employees may not have a dependent in the home during work hours unless an in-home care provider is present. Older children, age 12 and older, who can tend themselves before/after school and others may be in the home during duty hours, as long as care is not required by the employee.

B. DURATION. Flexiplace agreements can be for any period of time up to and including one year. The agreement should be re-signed if the agreement is extended past twelve months.

C. EMPLOYEE WITHDRAWAL FROM FLEXIPLACE. An employee's involvement in the flexiplace program is voluntary and may be discontinued by the employee at any time with appropriate notice. Such notice must be sufficient to allow necessary workplace adjustments to be made.

D. EQUIPMENT. The flexiplace employee's work site will be provided with necessary computer equipment to complete their work assignments. Employees wishing to use their own computers may do so, providing the security of government information can be assured. Management will provide supplies and materials. The government will issue phone cards, or other equivalent tools, to pay for long-distance telephone calls needed to perform assigned work. The Management will not pay any additional utility expenses associated with at-home work.

E. FOCUS GROUPS, SURVEYS, TRAINING, AND EVAUATIONS. The Parties will promptly complete and submit surveys, evaluation materials and performance ratings which summarize flexiplace impact on the office, employee, the supervisor, and other organizational elements. Additionally, both Parties agree to attend periodic focus group meetings and training sessions to discuss issues.

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

G. GRIEVANCES. Grievances under this agreement will be handled according to Article 19.

H. GROUP DISMISSAL. A flexiplace employee may sometimes, but not always, be affected by an emergency requiring the regular office to close. For example, on a "snow day", the flexiplace employee is not excused unless he or she cannot perform work because the regular office is closed. When both the regular office and the alternative work site are affected by a widespread emergency, the employee may be granted excused absence as appropriate. When an emergency affects only the alternative work site for a major portion of the workday, the employee may be required to report to the regular office, request leave, or be granted excused absence, depending on the circumstances.

I. HOME INSPECTIONS. The flexiplace employee's work site must meet acceptable standards for the safety of the employee and the security of data and any Government loaned equipment. A self-certification safety inspection form or on-site inspection may be used to meet this requirement.

J. INTERMITTENT FLEXIPLACE. Intermittent flexiplace describes a work schedule that does not follow a regular weekly schedule. It can include any of the following situations.

1. Short-term (one time work assignment)

2. Periodic (occasional work assignment up to 3 days a month)

3. Recurring (a regular work assignment occurring less than 4 days per month)

K. LONG TERM FLEXIPLACE. Long-term flexiplace describes a flexiplace work schedule that generally includes one (1) day or more a week at the flexiplace site.

L. OFFICIAL DUTY STATION. The flexiplace employees' official duty station is the location of the office to which they are assigned. Entitlement to locality-based comparability payment, special salary rates, travel allowances, and relocation expenses is based on the official duty station.

M. POSITION DESCRIPTIONS AND PERFORMANCE STANDARDS. Established position descriptions will apply to flexiplace employees. Performance standards for flexiplace employees will be results-oriented and will describe the quantity and quality of expected work products and the method of evaluation. Generally, the same performance standards will apply to both flexiplace employees and on-site employees who perform the same tasks.

N. REMOVAL OF EMPLOYEE FROM FLEXIPLACE. The supervisor may remove an employee from the program if performance declines or the program no longer benefits the organization's needs. Normally, the employee will not be removed from flexiplace for a single minor infraction of the flexiplace Work Agreement. The supervisor and employee will make a bona-fide effort to work out specific problems before any decision is made to remove the employee from the Flexiplace program.

O. TIME & ATTENDANCE. Supervisors will continue to certify time and attendance for flexiplace employees. Employees are required to maintain T&A logs for periods covered at the Flexiplace site. Failure to submit T&A logs by close of business of the last Friday of each pay-period is a breach of the flexiplace agreement.

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

Q. WORK SCHEDULE, OVERTIME, PAY, LEAVE AND OTHER PERSONNEL ISSUES. Rules concerning work schedules, overtime, pay, leave, core hours and other personnel issues apply to flexiplace employees as they do to on-site employees.

1. The Flexiplace Work Agreement documents the initial work schedule and should be updated to reflect changes in work schedules. In addition to regularly scheduled on-site days, employees are responsible for attending meetings or other on-site events; reasonable notice, generally not less than 24-hours, of such events will be given to employees who are not scheduled to be in the office on those days.

2. The employee will work at the official duty station a minimum of three (3) days per workweek. Management's decision in this regard is non-grievable or arbitrable.

R. ZONING. It is the employee's responsibility to determine, and comply with, any local zoning restrictions. Employee is responsible for any costs of working at home that arise from local zoning requirements.

ARTICLE 24 – HEARING OFFICER PEER AND SUPERVISOR REVIEWS

24.1 PURPOSE

The parties agree that the purpose of this Article is to ensure that NAD delivers excellent and timely customer service and the highest quality NAD determinations.

Peer and supervisor reviewers should evaluate draft determinations in the context of producing the best product possible. Similarly, in deciding what input to include or exclude, Hearing Officers should evaluate input in the context of producing the best product possible, but the use of the input from reviewers and the final determination in the case is at the sole discretion of the Hearing Officer.

24.2 POLICY

A. PEER REVIEWS

1. A Hearing Officer may submit a draft appeal determination to one (1) Hearing Officer "peer" reviewer for pre-issuance review, or to more reviewers at the discretion of the Hearing Officer.

2. The Hearing Officer will select their peer reviewer.

B. SUPERVISOR REVIEWS

1. Prior to issuance of a determination, a Hearing Officer will submit a draft determination to the regional office electronic mailbox and to his or her reviewing supervisor. The draft determination will be submitted for review no later than four (4) business days before the final decision is due. Business days do not include holidays.

2. The reviewing supervisor will provide the Hearing Officer his or her written review within four (4) business days from the date and hour of submission. Business days do not include holidays. If the supervisor does not return the draft with comments within the four (4) day period, the hearing officer may issue the determination without supervisory review.

3. The supervisor review will address the following criteria:

- Identify the issue
- Organization
- Style
- Logic/Analysis
- Mechanical Errors

4. A Hearing Officer may elect to forward any supervisory review to PTQC.

ARTICLE 25 - TRAVEL AND EXPENSES

25.1 GENERAL POLICY

A. Travel means officially authorized travel—i.e., travel for work purposes and approved by an authorized agency official. Excluded from this definition is the time spent traveling for union activities.

B. Local travel is defined as: a round trip of 300 miles or less from the employees' official duty station and total time in travel status of less than 12 hours. The FTR defines the official duty station as the employee's permanent work assignment location

C. Employees must receive advanced approval for all travel. Hearing Officers, however, under open or blanket travel authorizations do not need preapproval for local travel

D. The Employee will usually schedule official travel during the normal workday. In those cases where such schedule will not allow the Agency to meet its objectives, the affected employee(s) who must travel outside a workday will receive compensation for travel time in keeping with the applicable pay laws and government-wide regulations.

E. Employees expected to travel more than once each year shall receive a government credit card. Employees may use the credit card only for expenses incurred with official travel. Failure to comply with the terms and conditions of the card, or pay on time, can subject a cardholder to disciplinary action.

F. Employees with known illnesses, or recovering from illnesses, which would preclude international travel or other travel outside the 48 contiguous states, may provide administratively acceptable medical evidence such as medical certification or letter from a care provider. The letter from the care provider must document the specific limit on travel for consideration of a supervisor or manager. On confirmation by a suitable medical authority, employees will not travel outside the 48 contiguous states (which includes the District of Columbia). The Agency retains the right to require employees to provide recertification of their health status and the limit on travel.

25.2 TEMPORARY DUTY TRAVEL (TDY)

Employees must use the official travel system for trips that are not considered local travel or in which they seek to use common carriers.

25.3 BLANKET OR OPEN TRAVEL AUTHORIZATIONS

Hearing Officers are the only positions within NAD where the official travel system blanket or open travel authorizations apply. All other NAD employees must have their travel authorizations issued "outside" the blanket or open authorization.

25.4 LOCAL TRAVEL EXPENSES

Employees may only use a Standard Form 1164, "*Claim for Reimbursement for Expenditures on Official Business",* to report and seek reimbursement for local travel. Except for the use of a rental car, a cost comparison is not required for local travel.

25.5 ACTUAL SUBSISTENCE EXPENSES

Sometimes government rates are not available to travelers; in those instances, the traveler must exceed allowable rates. Before traveling, employees must receive approval to exceed government rates and to use actual subsistence expenses. Headquarters employees must receive such approval from an authorized headquarters official. Hearing Officers and Regional Office staff must receive approval from their respective Regional Assistant Directors. Employees must include such approvals in the submission package to claim reimbursement.

25.6. VEHICLES

A. The use of rental cars require written approval from an approving official prior to travel. E-mail responses satisfy the written approval requirement. Employees must include such approvals in their submission package to claim reimbursement.

B. NAD Headquarters employees must receive advance approval from an authorized NAD headquarters official to use mid-sized or larger rental vehicles. Hearing Officers and Regional Office staff must receive advance approval from their respective Regional Assistant Directors to use mid-sized or larger rental cars. Employees will use the official travel system for this approval (except for Hearing Officers). For Hearing Officers, e-mail responses to and from their perspective Regional Assistant Director

satisfy the written approval requirement. Hearing Officers must include such approvals in their submission package to claim reimbursement.

C. Management does not require employees to use their POVs (privately owned vehicles) for official business. Management authorizes the use of an employee's POV as identified in the FTR at §301-10.300, instead of a special conveyance (rental vehicle).

D. Round trip travel of more than 300 miles requires cost comparisons to identify the method most advantageous to the government. Such travel requires an authorization and voucher through the official travel system.

E. Any travel cost comparisons involving rental vehicles must include "lost work time" as identified in the FTR at §301-10.4. The comparison must also include those instances where the service provider picks up and drops off the employee (which equals lost work time).

ARTICLE 26 – HEARING OFFICER OFFICIAL DUTY STATION

26.1 GENERAL

The parties agree that Hearing Officers may elect to work from their homes or a leased space.

26.2 OFFICIAL DUTY STATION (ODS)

A. It is Management's prerogative in determining official duty locations**.**

B. Hearing Officers may either work in leased offices (GSA or commercial space) or from designated office space in their homes. NAD ODS locations are within U.S. Census Bureau Metropolitan Statistical Areas (MSAs). In certain parts of the United States, Management may identify an ODS within a Consolidated Metropolitan Statistical Area (CMSA), Core Based Statistical Area (CBSA) or New England City and Town Areas (NECTA), instead of an MSA.

C. NAD will not require Hearing Officers to work from their homes. If a Hearing Officer advises the supervisor that he or she prefers leased office space, NAD will lease office space for the Hearing Officer. NAD will determine the appropriate leased office space in coordination with the General Services Administration (GSA), USDA Office of Procurement and Property Management (OPPM), and Animal and Plant Health Inspection Service (APHIS) Administration Services Division, Real Estate Team.

D. Management determines the location of the leased office space within the assigned MSA. Hearing Officers have flexibility to choose the location of their home office, as long as it is within their assigned MSA and NAD Region. Hearing Officers who choose to have their residence outside the assigned MSA and/or NAD Region will not be allowed to establish a home office and will have to work from leased space inside the MSA.

E. For a newly hired Hearing Officer, the supervisor will seek the Hearing Officer's preference (leased space or home office). The Hearing Officer must state his or her preference in writing. If the Hearing Officer prefers to establish a home office, his or her supervisor will consider it as a request. If the supervisor approves the request, the Hearing Officer may work from home as long as the home office remains in the same MSA ODS location and assigned NAD Region.

F. If after the initial request for office preference, the Hearing Officer would like to change his or her leased office to a home office or vice versa, he or she may file a request with the supervisor. If a Hearing Officer asks to switch from a leased office to a home office and NAD has executed the lease, the employee will have to wait until lease expires.

G. Hearing Officers currently working in home offices that do not fall within an MSA may maintain their current office locations. If at a later date these Hearing Officers request to move their home offices, they must move into an assigned MSA as determined by Management.

H. The supervisor will evaluate each Hearing Officer's home office preference to ensure NAD's location criteria are met before final approval.

26.3 QUALIFICATIONS

A. Once each year at a minimum, Hearing Officers must self-certify that the ODS and Government owned equipment are safe and secure and must provide an inventory of such equipment to their respective Regional Offices. Failure to provide such self-certification will result in removal from the home office and placement into leased office space. Management will annually submit a self-certification and inventory form for Hearing Officers to review, correct, and execute.

B. All Hearing Officers are subject to official visits by authorized NAD representative(s). The employee agrees to permit access to the ODS by NAD representative(s) normally with a 24-hour notification and during normal working hours.

C. All Hearing Officers who work at home offices must complete and sign a "Hearing Officer Home Office Agreement" (Appendix G). In accordance with the Agreement, the employee's work site must meet acceptable standards for the safety of the employee and the security of data and any Government loaned equipment.

D. Hearing Officers may continue to work from their home ODS, providing their performance and/or conduct meet an acceptable level as determined by the supervisor.

ARTICLE 27 - EQUAL EMPLOYMENT OPPORTUNITY

27.1 PURPOSE AND POLICY

The Parties agree that equal employment opportunity (EEO) will be administered in accordance with 29 CFR 1614 and other applicable rules and regulations. Discrimination against any employee on the basis of race, color, national origin, age, sex, disability, political beliefs, sexual orientation, religion and marital or family status is prohibited. Toward this end, the Employer will administer an EEO program in accordance with applicable laws and regulations. The Employer will cooperate and work to resolve any discrimination inquiries or complaints. The Agency also agrees to provide reasonable accommodation according to applicable laws and regulations.

27.2 EEO COMPLAINT COUNSELING

A. The Employer will provide employees access to Equal Employment Opportunity Counselors. The Employer shall make available the names and phone numbers of EEO counselors.

B. Any employee who believes that he or she has been discriminated against on the grounds set forth in Section 26.1 may file either a grievance under the provisions of this Agreement (Article 19, Negotiated Grievance Procedure), or a complaint under the discrimination complaint procedure, but not both. The EEO discrimination complaint procedures will be made available to all bargaining unit employees.

C. Whether an employee chooses to file under the discrimination complaint procedure or under the negotiated grievance procedure, he or she has a right to representation. For complaints filed under EEO procedures, the complainant shall have the right to be accompanied, represented, and advised by a representative of the complainant's choice. For complaints filed under the negotiated grievance procedure, the representative is a Union representative or a Union-designated representative. If the employee elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Employer and the employee concerning the grievance.

ARTICLE 28 - HEALTH AND SAFETY

28.1 POLICY STATEMENT

A. The Employer and the Union agree that the good health and safety of all employees is essential to the performance of the Employer's mission, and is a matter of highest priority. Accordingly, the Employer and the Union agree to work cooperatively to ensure that a healthy and safe working environment is maintained.

B. The Employer will, to the extent of its authority and consistent with the applicable requirements of Title 29 CFR Part 1960, as well as other applicable health and safety codes, provide and maintain safe and healthy working conditions for all employees. The Employer will also provide places of employment that are free from recognized hazards that cause or are likely to cause death or serious physical harm. The Union will cooperate to that end and will encourage all employees to work in a safe manner.

28.2 EMPLOYER RESPONSIBILITIES

A. The Employer will work with all persons, entities or organizations regarding GSA owned or leased workspace to which bargaining unit employees are assigned to ensure working conditions are healthy and safe in compliance with applicable laws, rules, and regulations. The Employer will also take appropriate action to ensure that any reported hazardous or unsafe working conditions are examined and, if necessary, corrected in a timely manner. The Employer will ensure a response to an employee report of a condition posing imminent danger in the workplace within 24 hours after receiving the employee's report.

B. The Employer agrees to the following in accordance with applicable law and government-wide regulations:

1. To provide information concerning Federal Employee Health Benefits and Life Insurance Programs, pre-retirement planning, retirement benefits information, and occupational health services;
2. To make reasonable efforts to provide clean on-site restrooms in which normal supplies shall be available at all times and in which all equipment is in working order;
3. To provide and maintain on-site fire and disaster plans and equipment on each floor, including smoke detection devices and exit signs that are visible during power failure;

4. To work with the on-site building manager, the Department, GSA, and private lessors, to have safe electrical equipment and adequate ventilation in all work areas;
5. To provide for regular extermination program for purposes of pest control. Spraying for extermination of pests will be accomplished during non-duty hours or employees will be given the opportunity to work an appropriate distance from his/her work site during such extermination. All employees will be given the opportunity to work away from the site of spraying for a period of 12 hours following such spraying. In addition, employees will be given the opportunity to work away from the site of painting or other activity adversely affecting air quality for a period of 12 hours following such activity;
6. To follow GSA regulations in providing on-site facilities appropriate and adequate to accommodate the needs of qualified persons with disabilities.

28.3 UNION RESPONSIBILITIES

A. The Union agrees that it will take appropriate action to encourage all bargaining unit employees to work safely with due consideration for the safety, health and comfort of all fellow employees. To avoid preventable unhealthy or unsafe working conditions, the Union will encourage respect and care by bargaining unit employees for the Employer's facilities and equipment and their own work environment.

B. Each bargaining unit employee has a duty and is encouraged to report any unsafe or unhealthy working condition(s) to his/her immediate supervisor as soon as any such condition(s) come to his/her attention.

28.4 EMPLOYEE REPORTS OF UNSAFE OR UNHEALTHY WORKING CONDITIONS

A. Any employee who believes that an unsafe or unhealthy condition exists shall have the right and is encouraged to report the unsafe or unhealthy working condition to his/her immediate supervisor. The Employer will assess each report of hazardous conditions and respond in a timely fashion.

B. The Employer will investigate the reported condition as soon as is practicable, and may refer the situation to (a) the appropriate NAD or USDA office, (b) GSA, (c) the Occupational Safety and Health Administration (OSHA) of the Department of Labor, (d) the Public

Health Service (PHS) Health Unit, or (e) other appropriate official for further investigation. The Union will be given an opportunity to accompany any inspector who responds on such a complaint during the inspector's physical inspection of the work place. The Union representative will be granted official time for this purpose.

C. If an employee is assigned duties that he/she reasonably believes could possibly endanger his/her health or well being, the employee will immediately notify his/her immediate or second-line supervisor of the situation. If the supervisor cannot solve the problem and agrees with the employee, the assignment may be delayed and the matter may be referred for appropriate action. Where the supervisor does not agree with the employee's concerns, the employee has the right to contact the Union.

D. If the Employer determines that a hazardous condition exists which affects employees, the Employer shall advise the Union and the involved employees as soon as possible. Upon request, the Employer will meet with the Union and to the extent required by law, rule, regulation and/or Executive Order, negotiate with the Union regarding the matter.

E. The Employer will take measures to ensure prompt abatement of unsafe or unhealthy working conditions found to exist by the Employer in conjunction with the Department, GSA, OSHA, PHS and/or other appropriate officials. When this cannot be accomplished, the Employer agrees to develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. When the hazard cannot be abated without the assistance of GSA or another Federal lessor agency, the Employer agrees to work with the lessor agency to seek abatement.

F. The Employer will inform the Union of on-site toxic chemicals that will adversely affect the health or safety of employees, such as paint or pesticides, as soon as it is aware that such chemicals will be used. This notice will be given no later than one full workday before the chemicals are to be used. This notice will also include any warning statements given to the Employer by the organization using the chemicals, or that it otherwise has in its possession.

G. No employee shall be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other authorized participation in occupational safety and health program activities.

28.5 OCCUPATIONAL INJURY OR ILLNESS

When an employee sustains a job-related injury or occupational illness, the employee will report the injury or illness to his/her supervisor as soon, as practicable. Employees are encouraged to seek medical assistance where necessary. The employee will be advised to contact the HR Staff to obtain information on benefits under the Federal Employees Compensation Act.

28.6 EMPLOYEE ASSISTANCE PROGRAM

A. The Employer presently maintains an Employee Assistance Program (EAP), which provides services such as counseling, information and other sources for employees troubled by alcoholism, substance abuse, emotional illness, marital/family problems or financial problems. The Employer will make employees and supervisors aware of the program at least annually.

B. Employees whose performance is negatively affected by alcoholism or other forms of substance abuse will be given a reasonable opportunity to obtain professional assistance in overcoming the problem and to participate in programs, such as Alcoholics Anonymous. As required by the program, the Employer will make available to employees, on a completely confidential basis, the services of a qualified counselor specializing in alcohol and substance abuse problems.

C. The EAP offers referral services to outside, local alcohol treatment programs, family counseling and substance abuse treatment programs.

D. Employees undergoing a prescribed program of treatment for problems recognized under this Article will be granted the appropriate leave to the extent necessary to complete such program on the same basis as any other illness when absence from work is necessary.

E. Employees with substance abuse or alcohol problems are encouraged to voluntarily request assistance through EAP and participate in a prescribed program of treatment. When the Employer determines that a conduct or performance problem exists which may be substance abuse or alcohol related and refers the employee to EAP, the Employer may take appropriate disciplinary or adverse action, consistent with the obligation to provide reasonable accommodation where required by law.

F. The Employer agrees to continue participating in the EAP in accordance with Departmental rules and regulations. Employees' participation in the EAP will be treated with the utmost confidentiality.

28.7 OCCUPANT EMERGENCY PLAN

In accordance with GSA regulations, the Employer shall maintain an Occupant Emergency Plan that will designate floor monitors, area monitors, stairwell monitors, elevator monitors, monitors to assist persons with disabilities and restroom monitors for each floor, and describes the duties and responsibilities of these persons during an emergency. A copy will be given to the Union upon request. The Employer will establish such programs, if they are not already in existence, in all federally leased/owned or privately leased buildings in which bargaining unit employees work, within 120 days of the effective date of this Agreement. Copies of the plan will also be provided to the Union upon request.

28.8 JOINT HEALTH AND SAFETY COMMITTEE

A joint Health and Safety Committee comprised of Employer and Union personnel may be established by mutual agreement to study and make recommendations to the Employer concerning issues related to the parties' mutual efforts to ensure the good health and safety of all employees. This Committee will consist of up to two members from the Agency and two members from the Union.

ARTICLE 29 - CONTRACTING OUT

29.1 NOTIFICATION TO UNION

This Article refers to work currently being performed by bargaining unit employees. The Employer will provide advance notice to the Union prior to implementing a decision to contract out that results in Reduction-in-Force (RIF) or demotion of bargaining unit employees.

29.2 COMPLIANCE

The Employer agrees to comply with all controlling laws and regulations relating to contracting out work performed by bargaining unit employees, provided, however that such laws and regulations do not specifically prohibit enforcement through grievances, arbitration, and/or collective bargaining. The Employer agrees to follow the requirements of Article 13, RIF, where RIF results from a decision to contract out.

29.3 STATEMENT OF WORK

The Employer will provide the Union a copy of any Statement of Work that includes work currently performed by bargaining unit employees.

29.4 ACCESS TO REGULATIONS

The Employer agrees to provide the Union access to all regulations relevant to contracting out which are maintained on-site.

29.5 ADVERSE EFFECTS ON BARGAINING UNIT EMPLOYEES

If bargaining unit employees are subject to RIF or demotion as a result of a decision by the Agency to contract out work presently performed by bargaining unit employees, the provisions of Article 13, RIF, and Agency regulations and guidelines apply.

29.6 PLACEMENT ASSISTANCE

The Agency agrees to assist in locating suitable employment for bargaining unit employees who are displaced as a result of contracting out including:

A. Giving priority consideration for suitable vacant positions, released to be filled**,** in the Agency in accordance with Agency policies and procedures;

B. Paying reasonable costs for training and relocation, subject to availability of funds, when these will contribute directly to placement; and

C. Providing available research resources to employees for use in conducting job searches during the period of continued employment with the Agency.

ARTICLE 30 - OFFICIAL TIME

30.1 DEFINITION

A. "Official Time" means time expended by the Employer's bargaining unit employees as Union representatives during normal working hours, without charge to annual leave, and granted by the Agency according to 5 U.S.C. 7131(d) for the purposes set forth in Section 30.3 below.

B. Requests for Official Time for purposes other than those enumerated in Section 30.3 will be considered by Management and responded to in a timely manner. Such requests should be made by an appropriate Union official to the LR staff. If this office agrees that the request constitutes an appropriate use of Official Time, individual representatives may schedule its usage with their supervisors according to the provisions of Section 30.6 below.

30.2 USE OF OFFICIAL TIME

A. Permitted Use of Official Time

Union representatives shall request official time from the Employer, and shall be granted the use of reasonable official time, for purposes defined in Section 30.3. Official time will be approved unless it will interfere with the completion of key work assignments of the work unit.

B. Designation of Union official for Use of Official Time

The Union shall have the right to designate six (6) representatives and alternates, one of whom will be the Chief Steward. These representatives may be granted official time for representational purposes covered in Section 30.3 of this Article. The representatives and their alternates will provide geographic representation for the work area to which they are assigned. However, this will not preclude the Union from assigning a representative to matters outside of his or her normal area under special circumstances when mutually agreed by the parties. Such circumstances could include a steward's unavailability due to leave, travel, training; and the need for a steward's special expertise; the regularly assigned steward has the grievance or problem; or the need for on-the-job training for a new steward. Management agrees to give serious consideration to such circumstances when

deciding whether to agree to assign a steward to a matter outside of his or her geographic area and will not unreasonably withhold agreement. The regular assignment of representatives and alternates designated at each location will be determined by the Union. In the case where the Union cannot find a representative for a specific location, a temporary representative may be assigned at the Union's election. Officers, including the Chief Steward, will not be restricted by geographic location.

C. List of Stewards and officers

The Union agrees to provide Management with a list of officers, representatives, and their alternates designated to use official time within their assigned location. This list may be updated and modified from time to time. Normally, any changes to the list will be submitted in writing to the Employer's representative three working days before the individual will be recognized by the Employer as having authority to represent the Union and be granted official time for representational duties. In exceptional circumstances, such as when a new steward replaces an existing steward and is immediately confronted with a situation requiring Union representation, the Union may notify the Employer's designated representative orally, but must send a written confirmation within three working days after the oral notification.

30.3 PURPOSES OF OFFICIAL TIME

Official time for representational purposes or representational activities is covered by 5 U.S.C. Section 7131 and shall include the following:

A. Any formal discussion between one or more representatives of the Employer and one or more employees in the bargaining unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment.

B. Any examination of an employee in the bargaining unit by a representative of the Agency in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee, and

2. The employee requests representation.

C. Any meeting between a Union representative(s) and one or more representatives of the Employer that is initiated by either the Employer representative or the Union representative.

D. Participation in bargaining, including mediation and/or the resolution of any bargaining impasse and/or negotiability questions.

E. Participation in proceedings of the Federal Labor Relations Authority, Federal Mediation and Conciliation Service, Federal Services Impasses Panel, Merit Systems Protection Board and Arbitration.

F. Preparation time for the following:

1. Filings to the agencies referenced in Section 30.3, Paragraph E above.

2. Preparation of grievances, adverse actions and other appeals under the relevant Departmental Regulations, and this Agreement.

3. Preparation of any other negotiation (impact and implementation), grievance or arbitration procedures as outlined in this Agreement.

G. Presentation of grievances, adverse actions, and other appeals under the relevant Departmental Regulations, and this Agreement.

H. The Employer agrees to grant up to 300 hours of official time each year on a calendar year basis to employees who are Union officers for the purpose of attending Union-sponsored labor relations training that furthers the interest of the Federal Government by improving the labor management relationship. Written requests for official time to attend Union-sponsored labor relations training will identify the names and location of each representative proposed to attend the training and the number of hours requested for each representative. Such requests will be submitted to the Office of the Assistant Director for Administration at least 10 days in advance of the training. The requests will contain a copy of the training agenda and other information concerning the duration and nature of the training. Management reserves the right to approve or deny training requests.

I. The Union will be responsible for all costs associated with attendance at the training.

30.4 PROHIBITED USE OF OFFICIAL TIME

Official time shall not be permitted, used, granted or utilized for internal Union business, including but not limited to, the following:

A. The attendance at meetings for internal Union business;

B. The solicitation of membership;

C. The collection of dues;

D. The election of Union officials;

E. The preparation and distribution of Union newspapers, flyers, bulletins or other publications; or

F. The discussion of internal Union business by telephone, in person or otherwise.

30.5 AMOUNT OF OFFICIAL TIME

The Union representative's supervisor may approve official time for the purposes set forth in Section 30.3 in amounts that are reasonably necessary to accomplish the purpose for which official time is requested.

30.6 PROCEDURES FOR REQUESTING USE OF OFFICIAL TIME

A. The following procedures shall be followed for requesting the use of official time for the purposes set forth in Section 30.3.

1. All requests for the use of official time shall be for finite periods of time and must be made in advance and recorded on OPM Form 71 (OPM-71), Request for Leave or Approved Absence.

2. Requests for the use of official time shall be made by the Union representative completing Other Paid Absence on the OPM-71 with the appropriate code (Code 35, 36, 37, 38) listed in the remarks section and submitting it to his/her immediate supervisor or the second level supervisor if the immediate supervisor is absent or unavailable.

3. Supervisory approval of the period of official time must be obtained prior to the use of such official time and recorded on an OPM-71.

4. In the event the person entitled to the use of official time requires additional time due to unforeseen circumstances,

the person shall request an extension of time by telephone or other appropriate means. The request shall be made to the approving supervisor or in that supervisor's absence, to the acting supervisor of the person's unit, section or division.

5. Upon the completion of a period of official time that is reasonable and necessary, the Union representative shall promptly return to work and notify the supervisor who approved the official time.

6. It is understood by the parties that unforeseen needs may arise precluding advance approval, such as unexpected telephone calls to a Union representative. On such occasions, the Union representative will notify the supervisor as soon as possible and fill out an OPM-71 by close of business on the same day.

B. Availability of Official Time in the Case of Disapproval

In the event that a request for the use of official time by a Union representative is disapproved in whole or in part, the decision making official shall notify the representative as much in advance as possible, so that the Union may select an alternate representative, and so that the selected alternate will have sufficient time to prepare, if necessary. If after making a good-faith effort, the Union is unable to designate an alternate representative, Management will make a reasonable effort to reschedule events or modify deadlines that are under Management's control.

ARTICLE 31 - MID-TERM BARGAINING

31.1 GENERAL

A. I&I (IMPACT AND IMPLEMENTATION) BARGAINING.

When the Employer wishes to implement negotiable changes in personnel policies, practices and working conditions, the Employer will provide the Union advanced notice of the proposed changes in conditions of employment. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on procedures that management will follow in implementing its protected decision as well as on appropriate arrangements for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining.

B. STEPS FOR MID-TERM BARGAINING.

Changes involving working conditions shall be governed by the following:

1. A proposed change, affecting the conditions of employment of any employee, will be submitted in writing by one Party to the other. The notice will include the following:

    a. A description of the change or proposed change;
    b. An explanation of how the change will/would be implemented; and
    c. The date of implementation or proposed implementation.

2. The other Party will respond to the notice of proposed change within ten (10) work days of receipt of the notice. The response may include a request for information, briefing, and/or negotiation.

3. The initiating Party will respond to the request for information or briefing, or both, within ten (10) work days of receipt of the request.

4. Requests for negotiation will be made within ten (10) work days of receipt of information requested or completion of the briefing, and will be accompanied by proposals or counterproposals, as appropriate.

5. The parties may mutually agree to extend the time limits described above.

6. With regard to the proposed change, the Parties shall bargain over all matters that are negotiable consistent with law and this Agreement.

C. IMPASSE PROCEDURE

If agreement cannot be reached on the matters under negotiation, the following procedures apply:

1. Declarations of Impasse:

    a. Neither party may declare an impasse until all issues are agreed to or declared non-negotiable by the Agency or declared at an impasse by either Party. The Parties agree that each will use their best good-faith efforts to avoid impasse in negotiations.

    b. Either Party declaring any provision nonnegotiable will provide to the other Party a statement of non-negotiability and reasons therefore, without prejudice to later supplementation of the reasons.

2. In the event either Party believes there to be an impasse in negotiations, the Federal Mediation and Conciliation Service shall be immediately requested to provide services and assistance to resolve the dispute pursuant to 5 U.S.C. 7119.

3. If mediation services of the Federal Mediation and Conciliation Service do not result in resolution of the issue, either Party may invoke the services of the Federal Service Impasses Panel pursuant to 5 U.S.C. 7119. Prior to taking such action, however, the Party seeking to invoke the services of the Federal Service Impasses Panel will provide notice to the opposing party of its intention to take such action.

ARTICLE 32 - REOPENER NEGOTIATIONS

The parties may elect to re-open this agreement for negotiations at its mid-point by mutual agreement. At least 30, but not more than 60 days, prior to the mid-point (18 months after the effective date) the moving party will serve the other party with written notice citing the article(s) to be re-negotiated and a brief explanation of why the party wishes to re-open the article(s). If the other party agrees, the parties will move forward with negotiations under the following guidelines:

A. Each party may re-open a maximum of three (3) articles on their own volition.

B. Article(s) in excess of three (3) articles may be re-opened at the midpoint if the parties mutually agree.

C. Within fifteen (15) days of receipt, the parties will meet to establish ground rules to commence negotiations.

D. The mid-term bargaining team will be comprised of three (3) members from each party unless otherwise mutually agreed.

E. Changes that are negotiated or agreed to pursuant to this section will be reduced to writing, signed by both parties, and incorporated into this Agreement.

F. In the event agreement is not reached on any re-opened article(s), the current provisions of the disputed article(s) will remain in full force and effect until a satisfactory resolution of the dispute is attained or a remedy imposed by the Federal Services Impasse Panel (FSIP).

G. Official time will be authorized according to Article 30**.**

H. The Employer will provide facilities for negotiations and will pay Union Negotiation Team members' travel and per diem expenses incurred during the negotiating sessions.

ARTICLE 33: DUES WITHHOLDING

Voluntary allotment by employees for the payment of dues to the Union shall be authorized and processed according to the May 3, 1993, Memorandum of Understanding (MOU)[1] between the USDA and the American Federation of State, County, and Municipal Employees (AFSCME), with the exception of paragraphs eight (8) and nine (9)(c) & (d), covering employee dues deduction until superseded. At that time, this Article will be modified to incorporate the conditions of the new MOU. The present MOU is attached to this Agreement as Appendix H. Paragraphs eight (8) and nine (9)(c) & (d) from the 1993 MOU are revised as follows:

8. An employee may voluntarily revoke an allotment for the payment of dues by completing an SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the Human Resources Office (HRO). An employee may submit a SF-1188 Form, in duplicate, for the revocation of an allotment within thirty (30) days of the anniversary date when the bargaining unit employee joined the union. If the employee uses a written request, it must contain all the information required by the SF-1188. The request will be processed within two full pay periods after receipt of a properly completed form. Following verification of the information, a copy of each revocation received will be forwarded to the designated Union official as appropriate notification of the revocation.

9. The USDA will terminate an allotment.
   (a) as the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;
   (b) at the end of the pay period during which an employee member is separated or assigned to a position not included in an AFSCME bargaining unit;
   (c) at the end of the pay period which the HRO received a noticed from the AFSCME or Local of AFSCME that an employee member has ceased to be a member in good standing;
   (d) within two full pay periods after receipt of a properly completed Form SF-1188 consistent with the requirements of paragraph 8 above and provided the revocation is received by the HRO within 30 days of the anniversary date when the bargaining unit employee joined the Union.

ARTICLE 34 - DURATION AND DISTRIBUTION

34.1 Effective date: This Agreement shall take effect no later than 30 days after signature by both parties unless disapproved by the Secretary of Agriculture pursuant to the provisions of 5 U.S.C. Section 7114(c)(2).

34.2 This Agreement shall remain in effect for three (3) years from its effective date.

34.3 Renegotiation and Renewal: The Employer or the Union may request to renegotiate the Agreement by submitting notice in writing at least 60 days, but not more than 120 days, prior to the expiration date. In the event the parties renegotiate the Agreement, the current terms will remain in effect until superseded by a new Agreement. In the event that neither party submits a notice to renegotiate, the Agreement will be renewed automatically for periods of one (1) year except for provisions that may be in conflict with applicable law, rule, or regulation.

34.4 At a minimum, the following ground rules will apply to the negotiations:

A. The parties will begin negotiations no later than 30 days prior to the expiration date of this Agreement.

B. The parties shall meet within 15 days following the notice in Article 32 to negotiate additional ground rules, as necessary.

34.5 Disapproval by the Secretary of Agriculture. If the Secretary of Agriculture disapproves any negotiated language, the Union may petition the Federal Labor Relations Authority (FLRA) to challenge the decision or to reopen negotiations over the topic within 10 days. Otherwise, unaffected portions of the Agreement shall take effect according to Section 32.1 of this Article.

34.6 Upon any disapproval, the parties will negotiate further pursuant to the ground rules governing the negotiations of this Agreement.

34.7 Printing and Distribution. Within 30 days after the effective date of this Agreement, Management will print 150 copies and distribute them to the Union and bargaining unit employees. Each party is independently responsible for the cost of printing any additional copies of this agreement.

APPENDICES

APPENDIX A

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

UNITED STATES DEPARTMENT OF AGRICULTURE
NATIONAL APPEALS DIVISION
WASHINGTON, D.C.

Activity

and

Case No. WA-RP-70033

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO

Petitioner

CERTIFICATION FOR INCLUSION IN EXISTING UNIT

An election was conducted in the above matter under the supervision of the undersigned Regional Director of the Federal Labor Relations Authority, in accordance with the provisions of Chapter 71 of Title 5 of the U.S.C., and in accordance with the Regulations of the Federal Labor Relations Authority, among the employees of the Activity in the following categories:

INCLUDED: All hearing officers and regional office employees nationwide, employed by the U.S. Department of Agriculture, National Appeals Division.

EXCLUDED: All management officials, supervisors, including Deputy Assistant Directors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

and it appearing that a majority of the valid ballots has been cast for inclusion in the unit currently represented by the **AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO**, as certified on March 1, 1995, in Case No. WA-AC-50040,

Pursuant to the authority vested in the undersigned,

IT IS HEREBY CERTIFIED that the above-described employees are included in the unit of employees currently represented by the **AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO**, which will hereafter be described as follows:

INCLUDED: All non-professional employees of the U.S. Department of Agriculture, National Appeals Division, in the Washington, DC Metropolitan Area, and all hearing officers and regional office employees nationwide.

EXCLUDED: All management officials, supervisors, including Deputy Assistant Directors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

FEDERAL LABOR RELATIONS AUTHORITY

Dated: February 24, 1998

Attachment: Service Sheet

Brenda M. Robinson (by dgr)
Brenda M. Robinson
Regional Director, Atlanta Region

SERVICE SHEET

Case No. WA-RP-70033

I certify that I have served the parties listed below a copy of the CERTIFICATION FOR INCLUSION IN EXISTING UNIT:

Joseph Slater
Attorney for AFSCME, Council 26
Beins, Bodley, Axelrod & Kraft, P.C.
1717 Massachusetts Avenue, N.E., Suite 704
Washington, D.C. 20036

Carl Goldman, Executive Director
AFSCME, Council 26, AFL-CIO
1511 K Street, N.W., Suite 314
Washington, D.C. 20005

Laura D. McFarland
Special Assistant to the Director
U.S. Department of Agriculture
National Appeals Division
3101 Park Center Drive, Suite 1113
Alexandria, VA 22302

Nancy A. Speight
Director of Program Development
Office of the General Counsel
Federal Labor Relations Authority
607 14th Street, N.W., Suite 210
Washington, DC 20424-0001

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE

U.S. DEPARTMENT OF AGRICULTURE
NATIONAL APPEALS DIVISION
WASHINGTON, DC
(Activity/Petitioner)

and Case No. WA-AC-50040

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO
(Labor Organization)

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 858
(Labor Organization)

CERTIFICATION OF VOLUNTARY AGREEMENT

Pursuant to section 291 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the Act), a request was filed seeking certification of the parties' agreement on a new bargaining unit created as a result of the Secretary of Agriculture's exercise of authority under the Act and the parties' agreement on the exclusive representative for such unit.

On March 1, 1995, the undersigned issued a Decision and Order finding that the terms of the parties' agreement may be certified as requested.

No timely application for review having been filed, pursuant to the authority vested in the undersigned;

IT IS HEREBY ORDERED that in accordance with the parties' agreement the American Federation of State, County and Municipal Employees, Council 26, AFL-CIO is

the exclusive representative of a unit of employees of the National Appeals Division as follows:

> All nonprofessional employees employed by the U.S. Department of Agriculture, National Appeals Division in the Washington, DC metropolitan area, but excluding all management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2),(3),(4),(6) and (7).

Dated at Washington, D.C., this 11th day of May, 1995.

Michael W. Doheny
Regional Director
Washington Regional Office
Federal Labor Relations Authority
1255 22nd Street, N.W., Suite 400
Washington, D.C. 20037-1206

Attachment

BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE
SERVICE SHEET

IN THE MATTER OF: **U.S. DEPARTMENT OF AGRICULTURE**
NATIONAL APPEALS DIVISION
WASHINGTON, DC
(Activity/Petitioner)

and **Case No. WA-AC-50040**

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26, AFL-CIO
(Labor Organization)

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 858
(Labor Organization)

COPY OF: **CERTIFICATION OF VOLUNTARY AGREEMENT**

DATED: **May 11, 1995**

CERTIFIED MAIL, RETURN RECEIPT REQUESTED	**CERTIFIED NOS.**
Donald D. Downing, Director Employee Relations Division, Office of Personnel, Office of the Secretary U.S. Department of Agriculture OP:ERF:RM 18-W ADMBG Washington, DC 20250	Z 028 531 684
Carl Goldman American Federation of State, County and Municipal Employees, Council 26 1511 K Street, N.W., Suite 314 Washington, DC 20005	Z 028 531 685
Eugene Phillips National Federation of Federal Employees, Local 858 9435 Holmes Rd. Kansas City, MO 64131	Z 028 531 686

SERVICE SHEET CONTINUED

REGULAR MAIL

Nancy Speight, Director
of Program Development
Office of the General Counsel
Federal Labor Relations Authority
607 14th Street, NW, Suite 210
Washington, D.C. 20424-0001

APPENDIX B

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF HUMAN RESOURCES MANAGEMENT
WASHINGTON, D.C. 20250
Annual Weingarten Notice
MEMORANDUM TO ALL USDA OFFICES
(For Posting or Distribution to Bargaining Unit Employees)

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71, Section 7114(a)(2)(B) provides employees represented by a labor organization the right to request a Union representative in conjunction with investigations conducted by agency representatives under certain conditions. This memorandum fulfills the USDA's obligation under the FSLMRS to annually remind employees of their rights and the conditions when those rights may be exercised.

As a bargaining unit employee represented by a labor organization, you have the right to request representation from the labor organization (i.e. Union) at any investigative examination/interview where you reasonably believe the examination may result in disciplinary action being taken against you. You may make this request at any time prior to or during the interview. If requested, the agency may opt to: suspend questioning and grant your request then resume the interview; discontinue the interview; or offer you the choice to proceed with the interview without a Union representative, or to forego the interview.

Sources of additional information concerning your rights to representation are Union officials within the labor organization having exclusive recognition for employees in your work unit, the collective bargaining agreement for your bargaining unit, or the Federal Labor Relations Authority (FLRA) at www.flra.gov.

APPENDIX – C

UNITED STATES DEPARTMENT OF AGRICULTURE
National Appeals Division (NAD)
REQUEST TO EARN CREDIT HOURS

REQUESTOR'S NAME:		CURRENT BALANCE:
DATE	TIME	TOTAL
MONDAY	FROM: TO:	
TUESDAY	FROM: TO:	
WEDNESDAY	FROM: TO:	
THURSDAY	FROM: TO	
FRIDAY	FROM: TO	
SIGNATURE		DATE:

APPROVAL

☐ ABOVE REQUEST APPROVED FOR CREDIT HOURS

☐ ABOVE REQUEST DISAPPROVED FOR CREDIT HOURS

☐ ABOVE REQUEST APPROVED IN PART AS NOTED

REMARKS

IF APPROVED IN WHOLE OR IN PART, PLEASE RETURN ORIGINAL TO THE EMPLOYEE AND COPY TO THE TIMEKEEPER. IF DISAPPROVED PLEASE RETURN FORM TO EMPLOYEE

APPROVAL SIGNATURE	DATE

FORM LR -102

APPENDIX D

Request for Hearing Officer Voluntary Reassignment

A Hearing Officer requesting voluntary reassignment may submit a request on this form, sent by mail, fax, or by email, that contains the information on this form. Requests will be submitted to the NAD Human Resource Specialist. Requests will be submitted in response to a NAD-wide announcement to fill a Hearing Officer vacancy at a location. A separate request must be submitted for each NAD announcement. The request should contain the following information:

Date of Request:

Name:

Employee Service Computation Date (If needed, an SF-50 may be requested to verify the date):

Request Voluntary Reassignment to (Based upon Agency Announcement):

Each request will state the following :

"By making this Hearing Officer Voluntary Reassignment request, I acknowledge that relocation expenses will not be paid by the Agency. I also acknowledge that I will be available for duty not later than *(date),* as stated by the announcement. *The request must be signed. For email or electronic submissions, a "//s//" combined with the employee's signature block and date will suffice.*

APPENDIX - E

AGENCY USE ONLY
GRIEVANCE
NUMBER_____

GRIEVANCE FORM LR-103

THIS GRIEVANCE IS FILED UNDER THE PROVISIONS OF THE
COLLECTIIVE BARGAINING AGREEMENT

<table>
<tr><td colspan="2">Grievant's Name – LAST FIRST</td><td>Contact Telephone #</td><td></td></tr>
<tr><td colspan="4">Address to Which Grievance Response Must be Mailed.</td></tr>
<tr><td colspan="2">Position Title, Series, Grade, and Duty Station</td><td>Regional Office</td><td>Check Grievance Step</td></tr>
<tr><td>Date of Alleged Violation</td><td>Management Officials' Name Against Whom Grievance Made</td><td></td><td>Step 1___
Step 2___
Step 3___</td></tr>
</table>

GRIEVANCE DESCRIPTION – Exact terms of the grievance (including dates), applicable law(s), rule(s), regulation(s), Collective Bargaining Agreement Article(s) allegedly violated, reason for dissatisfaction, names and addresses of witnesses, and supporting documents and evidence. (Continue on Reverse)

EFFORTS TO RESOLVE (after step 1)– written description of verbal and written supervisory decisions and why those decisions were not acceptable

PERSONAL RELIEF DESIRED

Grievant Signature	**Date**
Union Representative's Signature (if represented)	**Filing Date**
Print Union Official Name, Title, and Location	**Telephone No.**

CONTINUED FROM PAGE 1

APPENDIX - F

FLEXIPLACE WORK AGREEMENT

The following constitutes an agreement between the United States Department of Agriculture, National Appeals Division (Agency) and

(Employee):_____

of the terms and conditions of the Flexible Workplace Program:

1. Employee volunteers to participate in the Flexible Workplace Program and to adhere to the applicable guidelines and policies. Agency concurs with employee's decision to participate and agrees to adhere to the applicable guidelines and policies.

2. Employee's official duty station is_____.

3. Employee's official tour of duty will be:_____.

   The flexiplace work place is:_____

   _____.

   All pay, leave, and travel entitlements will be based on the employee's official duty station.

4. Management will provide a copy of the employee's flexiplace schedule to the employee's timekeeper.

5. Employee must obtain supervisory approval before taking leave in accordance with the Collective Bargaining Agreement (CBA) and established office procedure.

6. Employee will continue to work in pay status while working at his/her flexiplace work site. If an employee works overtime that has been ordered or approved in advance, he/she will be compensated in accordance with applicable laws and regulations. The employee understands that the supervisor will not accept the result of unapproved overtime work. If an employee misuses overtime, it may result in his/her removal from flexiplace.

7. If the employee borrows Government equipment, the employee will protect the Government equipment in accordance with the applicable Government procedures. Government owned equipment will be serviced and

maintained by the Government. If the employee provides their own equipment, he/she is responsible for servicing and maintaining it.

8. Once each year at a minimum, employees must self-certify that the flexiplace work site and Government owned equipment, if applicable, are safe and secure and must provide an inventory of the Government equipment, if applicable. Employee will follow established Agency guidelines for reporting actual or perceived loss or theft of agency property or data. Failure to provide such self-certification may result in removal from flexiplace. The employee agrees to permit access to the flexiplace worksite by NAD representatives as required, normally with a 24-hour notification and during normal working hours.

9. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by Federal Tort Claims Act or claims arising under the Military Personnel and Civilian Employees Claims Act.

10. The Government will not be responsible for operating costs, home maintenance, or any other incidental cost (e. g. utilities) whatsoever, except the Government will pay the cost of telecommunication expenses incurred on behalf of the Government. By participating in this program the employee does not relinquish any entitlement to reimbursement for authorized expenses while conducting business for the Government, as provided by statute and implementing regulations.

11. Employee is covered under Federal Employee's Compensation Act if injured in the course of actually performing official duties at either the official or alternative duty station. Employee must notify management as soon as possible of any injury that occurs while working flexiplace.

12. The employee will meet with the supervisor to receive assignments and to review completed work at any time upon request. This flexiplace agreement is governed by the conditions of the NAD Collective Bargaining Agreement (CBA) Article 23 – FLEXIPLACE PROGRAM.

    The following requirements/parameters also exist for the employee entering into the Flexiplace agreement:

    - If a holiday falls on a flexiplace day, the flexiplace day is forfeited.

    - Flexiplace participants will be available during their tour of duty.

- Management may require a flexiplace employee to report to his/her ODS on a scheduled flexiplace day.

- Flexiplace days will be assigned on a first come basis with consideration of operational needs.

- Specific work deliverables may be identified for accomplishment with your supervisor.

- Non-compliance to these conditions may result in forfeiture of flexiplace.

13. The employee will complete all assigned work according to elements and standards as stated in the employee's performance plan. The employee's job performance will be evaluated according to the elements and standards contained in the performance plans. Participation in flexiplace will end at any time when an employee's performance is unacceptable.

    The employee will notify his/her supervisor immediately if a malfunctioning computer or other equipment or utilities prevents the employee from performance of official duties.

14. Employee will apply approved safeguards to protect Government/agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at Section 552a, title 5 U. S. C.

15. Employee is responsible for submitting his/her time and attendance in accordance with established Agency policy. Employees may withdraw from the flexiplace agreement by notifying the supervisor in writing before the effective date. The requirement may be waived in emergencies, hardship cases, or interference with work operations.

16. Each supervisor reserves the right to deny, modify, suspend, or terminate participation in the flexiplace agreement via written notice before termination of the flexiplace agreement. Reasons for termination include but are not limited to:

    A. Less than fully successful employee performance.

    B. Adverse organizational impact or productivity.

    C. Misconduct, such as failing to adhere to the employee's tour of duty, which calls into question the suitability for participation of the flexiplace program.

D. Failure to adhere to the provisions of the flexiplace agreement or other related guidance.

E. Change to an ineligible position.

F. Loss of equipment or release of sensitive but unclassified information or Personally Identifiable Information (PII) due to negligence.

Flexiplace agreements are to be renewed annually, at the end of the annual performance period (September 30th).

SIGNATURE PAGE

_____	_____
Employee Signature/Date	Management Official Signature/Date

APPENDIX – G
HEARING OFFICER HOME OFFICE AGREEMENT

The following constitutes the terms and conditions of the Home Office Agreement between:

Employee:

Last Name	First Name	Middle Initial
Title	Pay	Plan/Series/Grade

MISSION AREA/AGENCY/STAFF OFFICE:

_____

The employee's worksite is:

Address: _____

Location of designated official work area within the home:_____

_____

Phone: _____
Fax: _____
E-mail: _____

A permanent change in the home official duty station (ODS) arrangement requires a new Agreement.

Home Official Duty Station

It is the responsibility of the employee to ensure that all the requirements to do official work are met in an environment that allows the tasks to be performed safely. The employee agrees to permit access to the home worksite by NAD representatives as required, normally with a 24-hour notification and during normal working hours, to repair or maintain government-furnished equipment, to perform supervisory duties, and to ensure compliance with the terms of this Agreement.

The employee is required to designate one area in the home as the official work or office area that is suitable for the performance of official government business.

The government's potential exposure to liability is restricted to this official work office area.

The employee acknowledges that home ODS is not a substitute for dependent care. However, a caregiver may be present at the home ODS to take care of a dependent (newborn to non-school age and/or elderly person) while the employee is officially working. Also, school-age children, who require no supervision, may be present at the home ODS.

The government is not responsible for any operating costs that are associated with the employee's use of his or her personal residence. This includes home maintenance, insurance, or utilities.

The employee's official duty station for such purposes as special salary rates, locality pay adjustments, and travel is the city or town, county, and state in which the employee normally works. For most employees, this will be the location of the employee's worksite, i.e., the place where the employee normally works.

Time and Attendance, Work Performance and Overtime

Time spent in a home ODS must be accounted for and reported in the same manner as if the employee reported to a GSA or commercially leased office space. When scheduled to work, the employee must be readily accessible through normal communication methods.

The employee is required to satisfactorily complete all assigned work, consistent with the approach adopted for all other employees in the work group, and according to standards and guidelines in the employee's performance plan.

The employee agrees to follow their normal mission area/division/staff office's procedures regarding the requesting and approval of compensatory time, overtime and credit hours that are worked while in a home ODS.

Security and Equipment

For home ODS, Sensitive But Unclassified Information, including Sensitive Security Information, Privacy Act and For Official Use Only data may be accessed using employee-owned equipment but may only be stored on government-furnished equipment. The employee is responsible for the security of all official data, and protection of any government-furnished equipment and property, in carrying out the mission of USDA. Government furnished equipment must only be used for official duties. Employees may not authorize any other person to use any government-furnished equipment.

NAD is responsible for the maintenance of all government-furnished equipment. The employee may be required to bring such equipment to an Agency office for

maintenance. The employee must return all government furnished equipment and material to NAD at the conclusion of a home ODS arrangement or at the agency's request.

Safekeeping of Government Materials/Documents/Equipment

Employees working from a home ODS must comply with NAD Directive, NAD-07-01, "Control and Protection of Electronic and Non-Electronic Sensitive Security Information."

Neither family members nor other individuals are authorized to handle and/or view any government Sensitive but unclassified information, including sensitive security information, Privacy Act and For Official Use Only data.

Workers' Compensation and Other Liabilities

While working at a home ODS, an employee who is directly engaged in performing the duties of their jobs are covered by the Federal Employees Compensation Act.

The employee must notify the supervisor immediately of any accident or injury at the home ODS provide details of the accident or injury, and complete Department of Labor Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.

The government is not liable for damages to the employee's personal or real property while the employee is working at the approved home ODS, except to the extent the government is held liable by the Federal Tort Claims Act or the Military and Civilian Employees Claims Act.

Standards of Conduct

The employee acknowledges that he/she continues to be bound by the Standards of Ethical Conduct for Employees of the Executive Branch while working at the home ODS and using government-furnished equipment.

Temporary and/or Emergency Closure

The employee agrees to follow NAD's policy regarding excused absences for emergency situations' affecting the home ODS.

The employee will follow their mission area/division/staff office policy for a home ODS employee to be excused from duty during an emergency if the emergency adversely affects the home ODS site (e.g., disruption of electricity, loss of heat, etc.), or the employee faces a personal hardship that prevents him or her from working successfully at the home ODS.

Computer Security Training

All employees must complete all appropriate Computer Security Training.

Travel and Home ODS

The travel provisions that apply to employees working at a GSA or commercially leased office space also apply to employees working at a home ODS.
Where an employee has a full-time home ODS, entitlements to travel allowances and official time for travel will be based on that designated official duty station.

Tax Benefits

Generally, an employee who uses a portion of his or her home for work does not qualify for any Federal tax deductions. However, employees should consult their tax advisors or the Internal Revenue Service for information on tax laws and interpretations that address their specific circumstances.

Termination of the Home ODS Agreement

Either the employee or the supervisor can terminate this Agreement by giving a two-week advance written notice. Management shall terminate the Agreement should the employee's performance or conduct not meet the prescribed standard, or the arrangement fails to meet organizational needs.

Date of Commencement

The arrangement covered by this Agreement will commence on _____(beginning date) and terminate on _____(ending date).

I have reviewed and understand the terms and conditions of this Agreement.

Signature:
Employee: _____Date: _____

I have reviewed and discussed the terms and conditions of this Agreement with the employee.

Signature:
Supervisor: _____Date: _____

APPENDIX - H

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
AND
THE AMERICAN FEDERATION OF STATE COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 26

The parties to this memorandum, the American Federation of State County and Municipal Employees, Council 26, hereinafter referred to as AFSCME, and the U.S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing mutually beneficial dues withholding agreement.

1. This Memorandum of Understanding is subject to and governed by 5 USC 7115, by regulations issued by the office of Personnel Management (5 CFR 550.301, 550.311, 550.312, 550.321 and 550.322@, and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.

2. The USDA will permit any employee of the USDA who is a member of AFSCME and included within a bargaining unit for which AFSCME has exclusive recognition to make a voluntary allotment for the payment of dues to AFSCME. This Memorandum of Understanding shall be made a part of every future local or Council 26 agreement and shall be the only authorized method for obtaining dues withholding.

3. The employee shall obtain a SF-1187, "Request for Payroll Deductions for Labor Organization Dues," from AFSCME and shall file the completed SF-1187 with the designated AFSCME representative. The employee shall be instructed by AFSCME to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.

4. The President or other authorized official of the Local Union or the Council will certify on each SF-1187 that the employee is a member in good standing of AFSCME; insert the amount to be withheld, and the appropriate Local number; and submit the completed SF-1187 to the Servicing Personnel Office (SPO) of the USDA Agency involved. The SPO shall certify the employee's eligibility for dues withholding, insert the AFSCME code (47) and, process the form through the automated Payroll/Personnel Processing System. An employee's initial dues deduction will become effective the first full pay period after the receipt by the SPO of the employee's certified SF-1187, provided it is received three working days before the beginning of the pay period. For SF-1187's received after this cut-off, an attempt shall be made to begin dues withholding effective the first full

pay period after receipt. However, if this is not possible, dues withholding will become effective the following pay period. The SPO will promptly forward a copy of the SF-1187 to the AFSCME designated official. When the SPO determines that a SF-1187 cannot be processed, the SPO shall promptly return the form to the Union, annotated with the reason for its return. In most cases, this annotation will be one word, such as “confidential” or “supervisor”. Dues deduction will not be made for an employee who does not receive compensation sufficient to cover the total amount of the allotment.

5. Deductions will be made each pay period and remittances will be made on the Department's payday to the payee designated by the Union. A grace period of seven days will be permitted in unusual circumstances. The NFC shall also promptly forward to AFSCME, a listing of dues withheld. The listing shall be segregated by Local and shall show the name of each member employee from whose pay dues were withheld, the employee's Social Security number, the amount withheld, the code of the employing agency, and the number of the Local to which each employee belongs. The listing will be in alphabetical order of the employee’s last name. Each Local listing shall be summarized to show the number of members for whom dues were withheld; total amount withheld, and amounts due to the Local. Each list will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

6. In lieu of the listings provided for in Section 5 of this Memorandum of Understanding, USDA agrees to provide the National Office of the AFSCME a computer tape in a format to be agreed upon at such time as AFSCME has the facilities to process tapes. USDA will be given two (2) months notice to implement this change.

7. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the-appropriate SPO. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, and then a revised rate schedule will, be provided to the SPO. The SPO shall add the AFSCME code (47) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by the NFC which shall be no later than 30 days after the Union provides written notification to the SPO of the change in dues. Only one such change may be made in any 6-month period for a given Local.

8.[2] An employee may voluntarily revoke an allotment for the payment of dues by completing a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" or by memorandum in duplicate, and submitting it to the appropriate SPO. If the employee uses a written request, it must contain all the information required by the SF-1188. The SPO shall process the revocation effective as of the first full pay period after September 1 of each year provided that the revocation was received by the SPO on or before August 29 of each year, and provided the employee has had AFSCME dues withheld for more than 1 year and certifies to that fact. The SPO shall verify the information and forward to the designated Union official a copy of each revocation received as appropriate notification of the revocation.

9.[3] The USDA will terminate an allotment.

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

(b) at the end of the pay period during which an employee member is separated or assigned to a position not included in an AFSCME bargaining unit;

(c) at the end of the pay period during which the SPO received a notice from the AFSCME or a Local of AFSCME that an employee member has ceased to be a member in good standing;

(d) annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF1188 or memorandum in duplicate), provided that the revocation is received by the SPO on or before August 29 of each year, and provided the employee verifies that he/she has had AFSCME dues withheld for more than one year.

10. The SPO and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for AFSCME dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by AFSCME. If the dues allotments continue and the employee fails to notify his/her SPO, the retroactive recovery of dues withheld from AFSCME shall not be made, nor shall a refund be made to the employee.

11. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses, and telephone numbers of responsible

[2] Accepted only as modified in the Article 32, Dues Withholding.
[3] Accepted only as modified in the Article 32, Dues Withholding.

officials and/or technicians of AFSCME and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of this Memorandum of Understanding. This does not constitute a waiver of any legal, regulatory, or contractual right. Grievances or other appeals concerning this Memorandum of Understanding will be filed with or against the parties at the level of recognition.

12. This Memorandum of Understanding shall remain in effect for as long as AFSCME holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.

13. The initial dues for the (Farmers Home Administration), Headquarters unit (Case No. WA-RO-30020) will be withheld no later than 6 weeks from the date that this Memorandum of Understanding is signed. For any other unit certified in USDA, initial dues will be withheld in accordance with Section 2.

Agreed to, sign at _____on: _____ 2010.

SIGNATURES

IN WITNESS THEREOF, the parties agree to the National Labor Management Relations Agreement on 1 day of **July**, **2010**.

For the National Appeals Division

JERRY JOBE
Chief Negotiator
Deputy Director, PTQC
National Appeals Division

STEVEN PLACEK
Special Assistant to the Director
National Appeals Division

DUANE SINCLAIR
Assistant Director
Eastern Regional Office
National Appeals Division

PATRICIA LESLIE
Assistant Director
Western Regional Office
National Appeals Division

HARRY YEE
Chief
Labor Relations Branch
Food Safety and Inspection Service

For AFSCME Local 3020

RONALD STUBBLEFIELD
Chief Negotiator
President
AFSCME Local 3020

SOHNI BENDIKS
Hearing Officer

SEAN BRITTO
Information Technology Specialist

KAREN KING
Hearing Officer

GLENNA SHEVELAND
Hearing Officer

OFFICE OF PRESIDENT
AFSCME LOCAL 3020, COUNCIL 26

July 20, 2010

Director
National Appeals Division
United States Department of Agriculture
3101 Park Center Drive, Suite 1100
Alexandria VA 22302

Mr. Klurfeld:

I am pleased to report to you that Local 3020, AFSCME Council 26, has ratified the newly negotiated Collective Bargaining Agreement. The vote was conducted from July 12 through July 19. Sixty-five percent of Local 3020 membership voted, with unanimous approval of the new agreement.

I know the agreement must still be ratified by the Secretary. I look forward to your future notice to me that the agreement is in effect.

Respectfully,

Ronald J. Stubblefield

Ronald J. Stubblefield
President, Local 3020

Cc: Steve Placek, NAD

AFSCME Council 26
Attn: Carl Goldman

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
NATIONAL APPEALS DIVISION

STATEMENT OF ACCEPTANCE

Having made an effort to familiarize myself with the Collective Bargaining Agreement that was recently negotiated between Local 3020, AFSCME Council 26 and representatives of management, and having been informed that the members of said union have ratified the agreement unanimously, my signature below indicates my acceptance of the Collective Bargaining Agreement on behalf of the National Appeals Division of the United States Department of Agriculture.

Roger Klurfeld
Director

7-26-10
Date

3101 Park Center Drive, Suite 1100
Alexandria, Virginia 22302
www.nad.usda.gov

United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Human Resources
Management

1400 Independence
Avenue SW
Washington, DC
20250-9600

August 24, 2010

TO: Roger Klurfeld, Director
National Appeals Division, USDA

CC: Steven Placek, Special Assistant to the Director
National Appeals Division, USDA

FROM: Ronald S. James, Labor Relations Officer
Office of Human Resources Management, USDA

SUBJECT: Review of Executed Collective Bargaining Agreement between the U. S. Department of Agriculture, National Appeals Division and the American Federation of State, County and Municipal Employees, Council 26, AFL-CIO, Local 3020

The subject Agreement executed on July 26, 2010, has been reviewed in accordance with 5 U.S.C. 7114(c)(2). For the reasons set forth below the Agreement is disapproved as being inconsistent with law, rule or regulation. Contract language other than Article and section numbers and titles that appear in bold text is specifically disapproved.

The parties may pursue several courses of action when deciding whether or not to implement the revisions recommended to contract language that has been disapproved:

- The parties agree to make recommended changes, in which case the Collective Bargaining Agreement (CBA), as changed, becomes effective as of the date of this memorandum.

- The parties may decide to renegotiate the disapproved provisions, holding the remainder of the CBA in abeyance pending the conclusion of the renegotiations. Should the parties pursue this course of action, the renegotiated provisions must be submitted to this office for agency head review. If the renegotiated provisions are found to be consistent with applicable laws and regulations, the CBA will become effective as of the date of the memorandum approving the renegotiated provisions.

- The union may elect to seek review of the negotiability questions, either by filing a petition for review with the Federal Labor Relations Authority or through the unfair labor practice procedures. If the union decides to seek review of the negotiability questions under either procedure, the parties may agree to sever these issues from the remainder of the CBA so that the CBA becomes effective as of the date of this memorandum. Conversely, the parties may agree to hold the CBA in abeyance pending the resolution of the negotiability question.

Please advise this office, in writing, of the course of action agreed upon by the parties regarding the disapproved provisions and the status of the revisions. Also, if the parties agree that the revisions, as recommended, are to be effective as of the date of this memorandum, please provide our office with an electronic copy of the revised CBA, and when printed, two hard copies. The electronic copy should be emailed to Ronald.James@ocio.usda.gov.

ARTICLE 10 – WORK SCHEDULES AND HOURS OF WORK

10.2 DEFINITIONS

A. OPERATING HOURS

The operating hours are the specific hours of the Agency in which employees may begin or end the workday. **Those hours are from 5:30 a.m. until 6:30 p.m. daily.**

Analysis: The provision interferes with management's right to assign work. The right to assign work is a reserved management right established by 5 USC 7106(a)(2)(B). The Federal Labor Relations Authority (Authority) has ruled that 5 CFR 610.121(a) requires that work schedules be established with flexibility sufficient to allow for management to make changes under certain circumstances. See *AFGE, Local 3157 and Department of Agriculture, Federal Grain Inspection Service,* 44 FLRA 1570 (1992) (Proposal 3). 5 USC 7117(a)(1) removes from the duty to bargain any provision that is inconsistent with federal law or government-wide rule or regulation. It is immaterial that the provision was included in past contracts. See *Portsmouth FEMTC and Portsmouth Naval Shipyard,* 34 FLRA 1150 (1990) (*Portsmouth*).

The provision at issue does not allow the flexibility for management to make schedule changes as required by law and regulation. Consequently, the provision is inconsistent with 5 USC 7106(a)(2)(B) and 5 CFR 610.121(a) and is thus not within the duty to bargain pursuant to 5 USC 7117(a)(1).

The provision is disapproved because it violates management's right to assign work under the statute and a government-wide regulation.

Recommendation: Amend the provision to read as follows:

The operating hours are the specific hours of the Agency in which employees may begin or end the workday. Those hours are from 5:30 a.m. until 6:30 p.m. daily. These times are subject to change by management should the workload require it, and in abnormal, unusual or unforeseen circumstances.

ARTICLE 10 – WORK SCHEDULES AND HOURS OF WORK

10.2 DEFINITIONS

B. CUSTOMER SERVICE BAND

The customer service band is the span of time that office coverage will be provided to serve customer needs for headquarters and regional offices **and is from 8:00 a.m. until 5:00 p.m.**

Analysis: This provision violates management's right to determine its mission. 5 USC 7106(a)(1) establishes the right to determine agency mission as a reserved management right. A provision that effectively sets the times that an agency will be available to fulfill its responsibilities to the public interferes with management's right to determine its mission. See *NLRB Union, Local 21 and NLRB*, 36 FLRA 853 (1990). 5 USC 7117(a)(1) removes from the duty to bargain any provision that is inconsistent with federal law or government-wide rule or regulation. Further, it is immaterial that the provision was included in past contracts. *Portsmouth.*

The instant provision effectively sets the times that the agency will be available to fulfill its responsibilities to the public. Consequently, it is inconsistent with 5 USC 7106(a)(1) and not within the duty to bargain pursuant to 5 USC 7117(a)(1).

The, the provision is disapproved because it interferes with management's right to determine its mission.

Recommendation: Revise the current language to read as follows:

The customer service band is the span of time that office coverage will be provided to serve customer needs for headquarters and regional offices. The band is determined by management who will communicate changes to the band to employees timely.

ARTICLE 10 – WORK SCHEDULES AND HOURS OF WORK

10.7 PERMANENT WORK-RELATED WORK SCHEDULE CHANGES

A. For management directed changes to approved work schedules as defined in this article, with the exception of changes to Maxiflex approved hours of work, and except for **emergency situations**, the supervisor will provide the employee and Union at least **14** calendar days notice prior to the change. **The Union may waive its right to the 14 calendar days notice period.**

Analysis: This proposal violates federal law and regulation establishing the notice period for schedule changes. 5 USC 6101(a)(3)(A) and its implementing regulation, 5 CFR 610.121, provide that employee work schedules may normally be changed with a minimum of seven (7)

days notice with exceptions for circumstances in which the organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased. In *AFGE Local 2482 and Ft. Detrick*, 25 FLRA 908 (1987), the Authority determined that provisions that are more restrictive than the statute and regulations are non-negotiable. In that same case, the Authority also specifically rejected the 14-day minimum advance notice period as inconsistent with federal law and regulation. Further, 5 USC 7117(a)(1) removes from the duty to bargain any provision that is inconsistent with federal law or government-wide rule or regulation.

The instant proposal's 14 day advance notice is inconsistent with 5 USC 6101(a)(3)(A) and 5 CFR 610.121. Further, there is nothing in the language of the proposal that indicates the Agency would be permitted to change work schedules without the required advance notice in circumstances in which the requirements of 5 USC 6101(a)(3)(A) and 5 CFR 610.121 were met. Moreover, the portion of the proposal that allows the Union to waive its right to the 14 day notice is a clear indication that absent such a waiver, the Agency could not change work schedules unless there was an emergency or Maxiflex was involved.

The proposal is inconsistent with law and regulation and is disapproved.

Recommendation: Revise the proposal, including deleting the last sentence, so that it reads as follows:

For management directed changes to approved work schedules as defined in this article, with the exception of changes to Maxiflex approved hours of work, and except for abnormal, unusual, or unforeseen circumstances, the supervisor will provide the employee and Union at least 7 calendar days notice prior to the change.

ARTICLE 11 – MERIT PROMOTION

11.4 DETAILS WITH TEMPORARY PROMOTIONS

A. Employees assigned to higher grade positions for more than 75 consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail, unless the employee is not qualified, funding is not available, or in the case of an externally imposed freeze. **Short details shall not be used to avoid temporary promotions.** Management will make every reasonable effort to assign qualified employees for such positions.

Analysis: This provision violates management's right to assign work. 5 USC 7106(a)(2)(B) establishes the assignment of work as a reserved management right. The right to assign work includes the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned. *AFGE, Local 1985 and DVA, Medical Center, Dublin, GA*, 55 FLRA 1145 (1999). In *NTEU and Department of the Treasury, Internal Revenue Service*, 14 FLRA 243 (1984) (Provision 2), the Authority found that a provision substantively restricted management's right to assign work because it barred management from rotating assignments for the purpose of avoiding the temporary promotion of

employees. Also, 5 USC 7117(a)(1) removes from the duty to bargain any provision that is inconsistent with federal law or government-wide rule or regulation. It is immaterial that the provision was included in past contracts. *Portsmouth.*

The clear language of the instant provision bars management from using short details for the purpose of avoiding temporary promotions. Consequently, the provision violates 5 USC 7106(a)(2)(B) and is not with the duty to bargain pursuant to 5 USC 7117(a)(1).

The provision is disapproved because it violates management's right to assign work.

Recommendation: Delete the disputed sentence so that the provision reads as follows:

Employees assigned to higher grade positions for more than 75 consecutive days will be temporarily promoted and receive the higher rate of pay effective on the first day of the detail, unless the employee is not qualified, funding is not available, or in the case of an externally imposed freeze. Management will make every reasonable effort to assign qualified employees for such positions.

ARTICLE 12 –REASSIGNMENTS AND DETAILS

ARTICLE 12 – REASSIGNMENTS AND DETAILS

12.2 DEFINITIONS

Job Swap - Hearing Officers in different duty stations arranging to exchange jobs. An employee is not eligible to job swap during the first year of full-time employment with the Agency. **The Director must approve a job swaps.** [*sic*]

Analysis: This proposal violates management's right to assign employees. 5 USC 7106(a)(2)(B) establishes the assignment of work as a reserved management right. The right to assign work includes the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned. *AFGE, Local 1985 and DVA, Medical Center, Dublin, GA*, 55 FLRA 1145 (1999). In *International Federation of Professional and Technical Engineers, Local 29, Goddard Engineers, Scientists, and Technicians Association and National Aeronautic and Space Administration, Goddard Space Flight Center, Greenbelt, Maryland*, 61 FLRA 382 (2005), the Authority ruled that a proposal impermissibly interfered with management's right to assign work because it identified a certain and specific manager to be responsible for, among other things, providing the Union with any information related to the ADR program. Further, 5 USC 7117(a)(1) removes from the duty to bargain any provision that is inconsistent with federal law or government-wide rule or regulation.

The instant proposal identifies a specific manager, the Director, as the person responsible for approving job swaps. Consequently, the proposal violates 5 USC 7106(a)(2)(B) and is not with the duty to bargain pursuant to 5 USC 7117(a)(1).

The proposal is disapproved because it violates management's right to assign work.

Recommendation: Revise the proposal to read as follows:

Job Swap - Hearing Officers in different duty stations arranging to exchange jobs. An employee is not eligible to job swap during the first year of full-time employment with the Agency. Job swaps must be approved by the Director, or designee, before they are effective.

ARTICLE 29 – CONTRACTING OUT

29.2 COMPLIANCE

The Employer agrees to comply with all controlling laws and regulations relating to contracting out work performed by bargaining unit employees, **including Office of Management and Budget (OMB) Circular A-76, as OMB may revise it from time to time.** The Employer agrees to follow the requirements of Article 13, RIF, where RIF results from a decision to contract out.

Analysis: This provision violates a government-wide rule or regulation. The U.S. Supreme Court decided in *Department of Treasury, Internal Revenue Service v. Federal Labor Relations Authority,* 110 S. Ct. 1623 (1990) *(IRS v. FLRA),* that OMB Circular A-76 was a government-wide rule or regulation. The Court also noted that OMB Circular A-76 specifically restricts the use of any dispute resolution process that is not contained in the regulation. In overruling the FLRA, the Supreme Court determined that a proposal to allow Office of Management and Budget Circular A-76 to be enforced through the collective bargaining agreement was non-negotiable. Subsequently, in *Department of the Treasury, Internal Revenue Service v. Federal Labor Relations Authority (NTEU, Intervenor); DOJ, Justice Management Division v. FLRA; Treasury Department, Bureau of the Public Debt v. FLRA (NTEU, Intervenor),* 996 F.2d 1246 (1993) (*Treasury v. FLRA*), the D.C. Circuit Court of Appeals ruled that contract proposals requiring an agency to comply with the Circular were non-negotiable because they were inconsistent with the Circular as a government-wide rule or regulation and thus violated 5 USC 7117(a)(1). Consequently, under *IRS v. FLRA* and *Treasury v. FLRA*: 1) any proposal that would subject any aspect of an Agency's contracting out decision to arbitral review is nonnegotiable; and 2) any proposal that is inconsistent with provisions of OMB Circular A-76 is nonnegotiable. It is immaterial that the provision was included in past contracts. *Portsmouth.*

The instant provision is in all relevant ways similar to the proposal in *IRS v. FLRA* and *Treasury v. FLRA* cited above. The provision subjects the agency's compliance of OMB Circular A-76 to grievances and arbitration in contravention of 5 USC 7117(a)(1) and is therefore outside the duty to bargain.

The provision is disapproved because it violates a government-wide rule or regulation.

Recommendation: Revise the provision to read as follows:

The Employer agrees to comply with all controlling laws and regulations relating to contracting out work performed by bargaining unit employees, provided, however that such laws and regulations do not specifically prohibit enforcement through grievances, arbitration, and/or

collective bargaining. The Employer agrees to follow the requirements of Article 13, RIF, where RIF results from a decision to contract out.

If you have any questions or need clarification regarding this matter, please contact my office.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Agency Head Review was served by on this day, August 24, 2010, to the following parties regarding the Collective Bargaining Agreement between the U. S. Department of Agriculture, National Appeals Division and the American Federation of State, County and Municipal Employees, Council 26, AFL-CIO, Local 3020:

Roger, K, Administrator, Director — via Email
National Appeals Division, USDA
3101 Park Center Drive, Suite 1100
Alexandria VA 22302

Steven Placek, Special Assistant to the Director — via Email
National Appeals Division, USDA
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Alexandria VA 22302

Karen Messmore, Director — via Email
Office of Human Resources Management
Departmental Management, USDA
Jamie L. Whitten Building, Room
1400 Independence Avenue, SW, Mail Stop

Ron Stubblefield, President — via Email and First Class USPS
AFSCME Local 3020
4287 Beltine Road, #231
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Carl Goldman, Executive Director — via Email and First Class USPS
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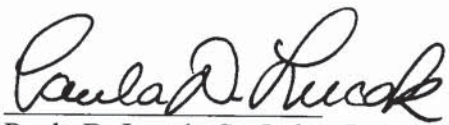
729 15th Street NW, Suite 700
Washington, DC 20005



Paula D. Lucak, Sr. Labor Relations Specialist
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OFFICE OF PRESIDENT
AFSCME LOCAL 3020, COUNCIL 26

September 8, 2010

Director
National Appeals Division
United States Department of Agriculture
3101 Park Center Drive, Suite 1100
Alexandria VA 22302

Mr. Klurfeld:

I am pleased to report to you that Local 3020, AFSCME Council 26, has again ratified the newly negotiated Collective Bargaining Agreement, after incorporation of changes required by the USDA Office of Human Resources Management. The vote was conducted from August 31 through September 7, and again resulted in a unanimous approval of the agreement.

I look forward to your future notice to me that the agreement is in effect.

Respectfully,

Ronald J. Stubblefield
President, Local 3020

Cc: Steve Placek, NAD
Jerry Jobe, NAD
AFSCME Council 26
Attn: Carl Goldman

STATEMENT OF ACCEPTANCE

Having made an effort to familiarize myself with the Collective Bargaining Agreement that was recently negotiated between Local 3020, AFSCME Council 26 and representatives of management, as modified to meet the requirements of the review conducted in August 2010 under 7 U.S.C. 7114(c)(2), and having been informed that the members of the union have ratified the modified agreement unanimously, my signature below indicates my acceptance of the Collective Bargaining Agreement on behalf of the National Appeals Division of the United States Department of Agriculture.

Roger Klurfeld
Director

Sept. 30, 2010
Date