



CONSOLIDATED BARGAINING AGREEMENT

UNION COUNCIL
BILLINGS AREA INDIAN HEALTH SERVICE

FEDERAL DISTRICT 1
NATIONAL FEDERATION OF FEDERAL EMPLOYEES

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

AND

BILLINGS AREA INDIAN HEALTH SERVICE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PREAMBLE

Pursuant to the policy set forth by the Civil Service Reform Act of 1978 regarding Federal Labor-Management Relations, the following articles of this agreement, together with any and all supplemental agreements and/or amendments which may be agreed to at later dates, constitute a total agreement by and between the U.S. Department of Health and Human Services, Billings Area Indian Health Service, hereafter referred to as management and/or employer, and the National Federation of Federal Employees, Federal District 1, International Association of Machinists and Aerospace Workers, AFL-CIO, Billings Area Indian Health Service Union Council, hereafter referred to as Union Council, for the employees in the units described herein, hereafter referred to as the employees. Management and union are collectively referred to as the parties.

This agreement is entered into pursuant to the Certification of Representative, DE-UC-20028, dated February 12, 1993, and results of the election where on January 28, 1993, a majority of employees who voted elected for union representation.

WHEREAS; the dignity and well being of employees and the efficient administration of Government are benefited by the recognition by the employers of the diverse cultural heritages of the employees; and,

WHEREAS; the participation of employees is improved through the maintenance of constructive and cooperative relationships at the local level between the union and employer, both parties agree to foster local commitment to constructive problem solving at the local level; and,

WHEREAS; the well-being of employees and efficient administration of Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and,

WHEREAS; the employer and union look forward to building a workplace that treats employees as the most important element of meeting our mission and servicing customers; and,

WHEREAS; Bargaining Unit employees are encouraged to work through their union. The union will provide a means to solve problems, voice concerns and submit suggestions for meeting the mission and promoting employee satisfaction; and,

WHEREAS; the employer and union believe that all employees want to be involved in decisions that affect them. We believe that employees care about their jobs, take pride in themselves and in their contributions and want to share in the success of their efforts. These principles will guide the development of cooperative relationships within this agency.

NOW THEREFORE, the parties thereto, intending to be bound hereby, agree as follows:

1 **ARTICLE 1 - RECOGNITION AND UNIT DESCRIPTION**

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3 Section 1.1 RECOGNITION: Management recognizes that the Union Council is the exclusive
4 representative for all employees in the bargaining units.

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6 Section 1.2 BARGAINING UNIT: The current descriptions of the bargaining units are included
7 in Appendix A to this agreement.

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9 Section 1.3: The parties further agree that this agreement will apply to additional groups of em-
10 ployees for whom the National Federation of Federal Employees, FD1, is certified as the exclu-
11 sive representative.

12

ARTICLE 2 - UNION RIGHTS AND REPRESENTATION

SECTION 2.1 RECOGNITION: The employer recognizes the Union Council, its duly elected officers, appointed representatives as the exclusive representatives of employees in the bargaining units, and that the Union Council has the exclusive right to represent all employees in the bargaining units in negotiations and joint meetings with the employer with regard to matters affecting the conditions of employment.

- A. The properly designated officers or representatives of the Union Council have the right to represent the employees within the entire bargaining unit. The Union Council President will provide the Area Director with a list of officers and representatives for the council within fifteen (15) calendar days of any changes.
- B. Local officers and representatives have the right to represent employees within their Local. Each Local Union President will be the primary person in all contacts with the Chief Executive Officer (CEO)/Area Director or his designee on matters involving personnel policies and/or practices or other general conditions of employment. The Local President will provide the CEO/Area Director with a list of Local Union officials who will carry out representational duties at the Local level within fifteen (15) calendar days of any changes.
- C. In the event no Local officer or representative is designated, the Union Council President will be the primary contact for the Local.

SECTION 2.2: The Union has the right to represent an employee or group of employees in presenting a grievance or other appeal, or when raising matters of concern or dissatisfaction with management. 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 without representation by the Union, provided that the Union is a party to all discussions between the grievant and the appropriate deciding official. The adjustment must be consistent with the terms of this agreement. For written grievances, the Union will have access to all written responses upon request. The Union will be given copies of all decisions.

SECTION 2.3 FORMAL DISCUSSIONS: The Union has the right to be in attendance at any formal discussion between one or more representatives of the employer and any member of the bargaining unit in connection with a grievance or any personnel policy or practice or other general conditions of employment. The Union's request for a response during formal meetings will be honored. The agenda or subject matter will be provided to the Union in a reasonable amount of time prior to the meeting.

SECTION 2.4 INVESTIGATION: The Union has the right to be represented at any examination of a bargaining unit employee by a representative of the employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests the Union to represent them.

SECTION 2.5 NEGOTIATIONS: The employer agrees to respect the rights of the Union and meet jointly and negotiate with the Union on all appropriate matters as defined in 5 USC Chapter 71 affecting general conditions of employment, and agrees to negotiate with the Union the formulation, impact and implementation of proposed new policy or changes in such policy

1 **ARTICLE 2 - continued**

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3 affecting the employees or their general conditions of employment that are under the control of
4 the employer with the view of arriving at a mutually acceptable position.

5
6 **SECTION 2.6 CONSULTATIONS:** It is recognized that the implementation and execution of
7 the provisions of this agreement requires appropriate machinery for effective discussions and
8 communication. In addition, there are other matters concerning personnel policies, procedures
9 and working conditions not covered by this agreement, which may become a matter of interest to
10 either party. In both situations, these matters may be subject to consultation between the Union
11 and the employer.

12
13 **SECTION 2.7 ACCESS TO RECORDS:** The duty of the employer and the Union to negotiate in
14 good faith under the law shall include the obligation of the employer to furnish the Union or its
15 authorized representative upon request and to the extent not prohibited by law data which is
16 normally maintained by the employer in the regular course of business; which is reasonably
17 available and necessary for full and proper discussion, understanding and negotiation of subjects
18 within the scope of collective bargaining; and which does not constitute guidance, advice, coun-
19 sel or training provided for management officials or supervisors relating to collective bargaining.

20
21 **SECTION 2.8 MEMBERSHIP DRIVES:** Upon request and subject to normal security limita-
22 tions, the Union shall be granted authority to conduct up to two membership drives, within a one
23 (1) year period, up to forty-five (45) days duration each, before and after duty hours, and at break
24 periods and lunch periods; the details of which will be worked out among the parties. Upon re-
25 quest, management shall provide the Union with available, reasonable, and visible space, tables,
26 bulletin boards and easels for use in such drive.

27
28 **SECTION 2.9:** The employer will provide the Union with the names of its primary representa-
29 tive for each location within fifteen (15) calendar days after an official change.

30
31 **SECTION 2.10:** Management and the Union Council agree to maintain a cooperative relation-
32 ship. Management will give prompt attention to written inquiries received from the Union and
33 the Union Council representatives and answer such inquires within five work days.

34
35 **SECTION 2.11:** Visits by authorized non-employee Local or Union Council representatives to
36 any facility to conduct business pertinent to this agreement are permitted. Council representa-
37 tives who are IHS employees traveling outside their normal Local area, shall advise the Primary
38 Management Official of the visit and its general purpose prior to their arrival at agency facilities.
39 Non-IHS Union Council representatives and NFFE National Representatives will normally ad-
40 vise the Local of their visit prior to their arrival at agency facilities.

41

1 **ARTICLE 3 - EMPLOYEE RIGHTS**

2
3 **SECTION 3.1:** Each employee shall have the right to form, join or assist any labor organization,
4 or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee
5 shall be protected in the exercise of such right. Except as otherwise provided, such rights include
6 the right:

7 A. To act for the Union in the capacity of a representative and the right, in that capacity, to pre-
8 sent the views of the Union to heads of agencies and other officials of the Executive Branch
9 of the government, the congress or other appropriate authorities, and

10 B. To engage in collective bargaining with respect to conditions of employment through repre-
11 sentatives chosen by employees.

12
13 **SECTION 3.2 OUTSIDE ACTIVITIES:** Employees shall have the right to engage in activities of
14 their own choosing, except as prohibited by law, Government-wide or IHS regulation, without
15 being required to report to the employer on such activities. Refer to form HHS-520.

16
17 **SECTION 3.3 INFORMING EMPLOYEES:** The employer shall take such action consistent
18 with law or regulation, as may be required, in order to inform employees of their rights and obli-
19 gations, as prescribed in the Civil Service Reform Act of 1978, Executive Orders and this agree-
20 ment.

21
22 **SECTION 3.4 NONDISCRIMINATION:** No employee will be discriminated against by either
23 employer or Union because of race, color, religion, gender, national origin, age, marital status,
24 disability, sexual orientation, or lawful political affiliation.

25
26 **SECTION 3.5 NON-CONTRACT MATTERS:** This agreement does not prevent any employee
27 from bringing matters of personal concern to the appropriate officials in accordance with appli-
28 cable laws, regulations, or agency policies. An employee may be represented by an attorney or
29 representative other than NFFE, of the employee's own choosing, in any appeal action not under
30 the negotiated grievance procedure. The employee may exercise grievance or appellate rights
31 which are established by law, rule or regulation.

32
33 **SECTION 3.6:** Management will not take reprisal actions against employees for the exercise of
34 any appeal right granted by law, rule, regulation, or this agreement.

35
36 **SECTION 3.7:** It is agreed that employer/supervisors will not normally search individual(s)
37 lockers, which are under lock and key, without the presence of the individual(s). If such a search
38 is performed, it shall be conducted according to applicable laws and regulations.

39
40 **SECTION 3.8:** Counseling and warning sessions involving employees will be conducted pri-
41 vately and in a professional manner. Written records of counseling sessions will be safeguarded
42 under the provisions of the Privacy Act. At the employee's request, the Union representative
43 may attend counseling sessions.

44
45 **SECTION 3.9 OFFICIAL PERSONNEL FOLDERS (OPFS):** Employees may review the con-

1 tents of their OPF through the e-OPF system. This is a web-based system that provides
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1 **ARTICLE 3 - continued**

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3 online access to OPF data. The e-OPF system allows secured access to employees and Human
4 Resource staff. At the time of hire, each employee will receive an e-OPF ID through the mail.
5 If an employee does not receive their e-OPF ID, the Area Human Resources Office must be con-
6 tacted and they will insure an e-OPF ID is obtained for the employee.

7
8 SECTION 3.10: Management is obligated to keep employees informed of rules, regulations and
9 policies under which they are obligated to operate. To assist employees in the performance of
10 their work, IHS manuals normally will be available during work hours. Management will keep
11 employees abreast of the standards and requirements of the applicable accreditation for their de-
12 partment and work assignments. Specific details concerning access will be arranged at the local
13 level.

14
15 SECTION 3.11: Both parties agree that all IHS employees deserve to be treated with common
16 courtesy and consideration in a professional work environment.

17
18 SECTION 3.12 INDEMNITY OF EMPLOYEES: Consistent with law and regulations, the Gov-
19 ernment may provide legal representation for employees against whom suit is brought in a Civil
20 or Criminal Court based upon activities alleged to be within the scope of their official duties and
21 may assume financial liability for all monies awarded to claimants as the result of activities
22 found to be within the scope of such official duties. Upon request, the employer agrees to pro-
23 vide information, guidance and assistance to employees who are considering and making a re-
24 quest for legal representation.

25
26 SECTION 3.13: Access to the appropriate staff to discuss concerns (Human Resource staff,
27 EEO Officer/Counselor, Union Representative, and/or other persons designated to discuss em-
28 ployee concerns and provide assistance to employees) will be made available. Employees will be
29 informed of what is expected of them, to whom they are directly responsible and what is ex-
30 pected of them in their work relationships with the fellow workers.

31
32 SECTION 3.14: Management will periodically review the employee's performance during the
33 probationary/trial period and shall inform the employee of any shortcomings, deficiencies in per-
34 formance, or instances of misconduct perceived by the supervisor. Although persons selected for
35 employment are presumed to possess the skills and character traits necessary for satisfactory per-
36 formance as a permanent employee, during the initial period of employment supervisors and hu-
37 man resource officials must make a sincere effort to orient new employees and provide essential
38 training in the new work situation.

39
40 SECTION 3.15: The administration of all personnel administration (law, rules, policies, con-
41 tract, etc.) will be on a fair, consistent, and equitable basis.

42
43 SECTION 3.16: There are several avenues of recourse that are available to employees (Union
44 grievance, Agency grievance, Unfair Labor Practice, EEO, Merit System Protection Board, etc).
45 It is the employee's responsibility to become familiar with each forum and determine
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1 **ARTICLE 3 - continued**

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3 which one best meets their needs as generally, once the employee has selected the avenue of re-
4 course, they cannot later utilize another system to review the same matter/concern. It is the re-
5 sponsibility of the Union Representative and/or the Area Human Resource staff to assist employ-
6 ees in becoming familiar with the various forms of recourse.

7

ARTICLE 4 - MANAGEMENT RIGHTS AND RESPONSIBILITIES

SECTION 4.1: Government Regulations

In the administration of all matters covered by this Agreement, the Parties and the Employees are governed by existing or future federal laws and Executive Orders

Management rights are specified in law and Executive Order.

The Labor-Management Relations Statute, Title 5 United States Code Chapter 71 is provided as Appendix D.

Regulations, policies, and manuals in effect on the effective date of this Agreement, shall cover all matters covered by this agreement.

SECTION 4.2 Management Responsibilities

- A. The Employer agrees to respect the privacy of all Employees during the grievance process. The credibility, privacy, and integrity of the grievance process will be protected to the extent Possible.
- B. Management must notify an Employee at the beginning of any investigative meeting that Could reasonably be expected to lead to a disciplinary action that the Employee has the Right to have Union representation. A Counseling session is an investigative meeting. (See Article 2 and Article 3)

SECTION 4.3 Communications

All individuals shall be treated with respect, common courtesy, and consideration. Any Communication with Employees concerning performance or conduct will be done in a private Manner, unless imminent danger exists or is perceived to exist. Even in these situations, any Communication will be done in a most professional manner.

SECTION 4.4 Union Work Performances

Management recognizes the need for Local Representatives to perform their union duties and Responsibilities in accordance with Title 5 USC (Appendix D) and this Agreement in addition to their regular duties.

In this regard, the Employer will not allow any union work related time, in place of regular duties, to be used adversely against the Employee or cause lost opportunities for promotion, details, training, annual leave use, etc.

In this regard, for Employees serving as Union Representatives administering this Agreement, in addition to their regular duties, due consideration will be given to the amount and timeliness of union work when applying performance standards.

1 In this regard, the Employer will fully support an Employee's right to join the Local or act for the
2 union freely and without fear of penalty or reprisal in management controlled matters. (Working
3 conditions, employment, ratings, advancement, etc.
4

5 **SECTION 4.5 Title 5 United States Code Section 7106: Management rights**

6 (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of
7 any management official of any agency-

8
9 (1) To determine the mission, budget, organization, number of employees, and internal
10 security practices of the agency, and

11
12 (A) To hire, assign, direct, layoff, and retain employees in the agency, or to suspend,
13 remove, reduce in grade or pay, or take other disciplinary action against such
14 employees;

15
16 (B) To assign work, to make determinations with respect to contracting out, and to de-
17 termine the personnel by which agency operations shall be conducted;

18
19 (C) With respect to filling positions, to make selections for appointment from

20
21 (i) among properly ranked and certified candidates for promotion; or

22
23
24 (ii) any other appropriate source; and

25
26 (D) to take whatever actions may be necessary to carry out the agency mission
27 during emergencies.

28
29 (b) Nothing in this section shall preclude any agency and any labor organization from
30 negotiating-

31
32 (1) At the election of the agency, on the numbers, types and grades of employees or positions
33 assigned to any organizational subdivision, work project, or tour of duty, or on the
34 technology, methods, and means of performing work;

35
36 (2) Procedures which management officials of the agency will observe in exercising
37 Any authority under this section; or

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39 (3) Appropriate arrangements for employees adversely affected by the exercise of any
40 authority under this section by such management officials.

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ARTICLE 5 - USE OF OFFICIAL FACILITIES AND SERVICES

SECTION 5.1: The Union shall be responsible for the proper use and care of the facilities, service and equipment provided in this article.

SECTION 5.2: The employer agrees to provide office space at each facility to be used for a Local Union office, Local Union meetings and other appropriate activities. Desks, telephone, chairs, locking file cabinets, typewriters and otherwise available customary equipment (faxes, computers, printers, etc.) will be made available. The Local Union office space made available, including equipment use shall be reasonably private and secure to ensure confidentiality of records and conversations.

SECTION 5.3: The Union Council will be provided a private office equipped with all office equipment necessary for efficient office operations at the location of the Union Council President. If Local Union offices are suitable and properly equipped, the Union Council officers and representatives will not normally duplicate space and equipment at that facility.

SECTION 5.4 BULLETIN BOARDS: The employer will provide a bulletin board for Union use. The Union shall not post inappropriate information on those boards.

SECTION 5.5 DUPLICATING MATERIAL: Union representatives will be allowed the use of a copy machine in order to copy material necessary for representational duties within the Unit.

SECTION 5.6. MAIL:

A. Internal Mail.

1. Regular Mail. Internal mail distribution service shall be made available to the Union for distribution of material to employees of the bargaining unit. Material for individuals will be individually addressed and placed in departmental mailboxes by the Union.
2. E-Mail. Internal mail e-mail distribution service shall be made available to the Local Presidents and Union Council President for communication with employees of the bargaining unit.

B. External mail - Franked/metered mail. Management agrees to permit the Union to utilize the Agency postage system in all official Union correspondence as it concerns the Union's administration of this Agreement.

C. Individual mailboxes will be designated at each location for delivery of mail to the Union.

SECTION 5.7 PARKING SPACES:

A. Employee Parking Spaces. The employer agrees to make every reasonable effort to provide sufficient parking space to employees. All existing and future parking will provide for the employees' safety.

B. Local Union Parking Space. The employer agrees to designate one parking space for the Local President at those locations where the Primary Management Representative also has a reserved parking space. All existing Local Union parking spaces shall remain pursuant to the Local negotiations.

1 C. Union Council Parking Space. The employer agrees to make every reasonable effort to des-
2 ignate one parking space for the Union Council President at his/her location. Details of the
3 parking space will be negotiated at the Union Council President's duty location.
4

5 SECTION 5.8: The employer agrees to give access to the Union and employees, personnel pub-
6 lications, including regulations, supplements, and classification standards maintained locally,
7 The Union or employees may request copies of other reasonably necessary publications.
8

9 SECTION 5.9 LISTS OF EMPLOYEES: The employer agrees to furnish the Union on a quarter-
10 ly basis(no later than February 1, May 1, August 1, November 1, each year), an up-to-date list of
11 all employees with the following information: Name, Title, Pay Plan, Series, Grade, and BUS
12 Code. If the Union disagrees with any BUS code they will notify the employer of the disagree-
13 ment. This does not preclude the Union at the Council or Local Level from requesting additional
14 information such as the FLSA status of individuals or more timely lists of bargaining unit em-
15 ployees.
16

17 SECTION 5.10 FACILITIES FOR DAY CARE CENTERS: The parties recognize that working
18 parents may have special child care needs during working hours. The parties also recognized the
19 need of such parents to secure adequate childcare. Therefore, the employer agrees to periodically
20 secure listings of licensed day care centers in the immediate area which are provided by the State
21 or licensed by the State or appropriate agencies and will make these listing available to inquiring
22 employees. During orientation of new employees, the subject of available licensed Day Care
23 Centers will be covered. Consistent with the requirements of mission accomplishment, the em-
24 ployer agrees that it will maintain a liberal leave policy for parents who need to be absent when
25 child care arrangement problems occur which needs the immediate attention of the parent or
26 when the problem is unexpected and could not have been anticipated.
27

ARTICLE 6 - OFFICIAL TIME

SECTION 6.1: Union representatives will be granted reasonable amounts of official time during working hours without loss of leave or pay for the administration of this agreement. These functions are reviewing the employer's proposals concerning negotiations and changes in policies, practices, and matters concerning working conditions, performing representational functions as specified in this agreement and the law, receiving, reviewing, preparing, and presenting grievances, handling an employee complaint, or Union complaint, preparing for negotiations, preparing reports required by 5 U.S.C. 7120 (C) and contacting other Union officers regarding aforementioned functions.

Recognizing that patient care and support of patient care is the first priority of every employee in this agency, reasonable time for receiving, investigating, preparing and presenting a complaint, grievance or appeal must necessarily depend on the facts and circumstances of each case, e.g., number and nature of allegations, number and complexity of supporting specifics, the volume of supporting evidence, availability of documents and witnesses and similar considerations. When management agrees, those employees in off duty status who are needed to effectively resolve complaints and labor management issues will be paid appropriately for the time spent administering this agreement. Travel and per diem will be paid to designated Union representatives who are employees and performing representational functions as specified in this agreement when the travel serves the convenience of the employer or otherwise is in the interest of the Government.

SECTION 6.2 LABOR RELATIONS TRAINING: The employer agrees to grant official time to those employees who are Local officials of the Union, for the purpose of attending Union-sponsored training which concerns 5 U.S.C. 71 and/or other basic statute, agency policy and/or the administration of this agreement, if such employees are otherwise in a duty status. A written request will be submitted at least two (2) weeks in advance by the Local President or Union Council President to the primary management representative. The request will contain the name of the employee for whom the official time is requested and information about the duration, purpose and nature of the training, along with a copy of the schedule and/or agenda. Normally, authorized requests will be approved unless essential workload requirements prohibit the release of the employee during the period requested.

SECTION 6.3 THIRD-PARTY HEARINGS: Union representatives who represent bargaining unit employees before the Federal Labor Relations Authority, Merit System Protection Board, Equal Employment Commission, Federal Mediation and Conciliation Service or Federal Service Impasse Panel shall be authorized official time for such purposes as determined by these authorities.

SECTION 6.4 OFFICIAL TIME FOR UNION REPRESENTATIVES:

A. A Union representative using official time will inform his/her supervisor personally of the approximate length of time needed and the location where the representative will be for representative functions. If pressing work requirements are prohibitive, the representative will be released in a timely manner. If delay in releasing representative for representational functions will cause the missing of a contractual time limit, the representative will be given

1 **ARTICLE 6 - continued**

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3 an extension of time equal to the delay. The supervisor will document all denials of re-
4 quests for official time and provide the Union a copy.

5 B. When performing representational functions with employees at other work site requirements,
6 the supervisor shall establish another time at which the Union official can visit the employee.
7 When an employee does not elect to have the Union represent him/her, reasonable time for a
8 Union observer of a grievance will be afforded. This shall be the time necessary to observe
9 the proceedings to their conclusion.

10
11 **SECTION 6.5 OFFICIAL TIME FOR EMPLOYEES:**

12 A. When exercising their rights under this Agreement, employees will be granted a reasonable
13 amount of official time for initiating, reviewing, preparing and presenting the grievance.

14 B. An employee using official time will inform his/her supervisor of the approximate length of
15 time needed and the location where the employee will be. If the employee cannot be released
16 immediately due to work related reasons pertaining to the mandatory short term coverage
17 and/or the critical mission of the functional area, the employee will be released as soon as the
18 mandatory work requirements is met or appropriate arrangements are made. Ordinary work-
19 load will not preclude the release of the employee. If a delay in releasing an employee in-
20 volves a situation with a contractual time limit, the time limit will be extended equal to the
21 delay. The supervisor will document all denials of requests for official time and provide the
22 Union a copy.

23 C. If the employee does not comply with A. and B. above and leaves the work area without au-
24 thorization, they may be subject to disciplinary action.

25
26 **SECTION 6.6:** Management recognizes the need for Union representatives to perform their un-
27 ion duties and responsibilities in accordance with Title 5 USC, Chapter 71 and this Agreement in
28 addition to their regular duties. In this regard, management will not allow any union work related
29 time, in place of regular duties, to be used adversely against the employee or cause lost opportu-
30 nities for promotion, details, training, annual leave use, etc. In this regard, for employees admin-
31 istering this Agreement, in addition to the regular duties, due consideration to the amount and
32 timeliness of work will be given when applying performance standards.

33

1 **ARTICLE 7 - NEGOTIATIONS**

2
3 **SECTION 7.1 MANNER:** The Union and employer have the responsibility of conducting nego-
4 tiations and other dealings in good faith and in such a manner as will further the public interest.
5 The parties agree to make every reasonable effort to resolve all differences that arise between
6 them in connection with the administration of this agreement.

7
8 **SECTION 7.2 SCOPE:** Subjects appropriate for negotiations between the parties are personnel
9 policies and practices and other matters relating to or affecting working conditions of employees
10 within the bargaining unit. In the spirit of bilateral relationships, the parties agree that changing
11 conditions will create a need for both management and the Union Council to propose mid-term
12 negotiations. The parties may propose changes in conditions of employment not in conflict with
13 this agreement.

14
15 If negotiations are requested, the parties are obligated to meet or otherwise communicate at rea-
16 sonable times on a timely basis and bargain in a good faith effort to reach agreement with respect
17 to the proposed changes to conditions of employment. Management may implement changes in
18 conditions of employment, not in conflict with this agreement, after the Union officials at the
19 management level proposing the change have been notified in writing of the changes and given
20 the opportunity to bargain, including conclusion of mediation and impasse procedure.

21
22 Any questions of validity or noncompliance of a Local Supplement Agreement to this controlling
23 Agreement may be submitted by either Local Party to the Union Council and Area Director (or
24 designee) for resolution. A decision will be made by the parties within thirty (30) calendar days.
25 If the parties are unable to agree as to compliance or validity, either party may submit the issue to
26 Arbitration in accordance with Article 9. Any questions of non-negotiability may be submitted to
27 the Federal Labor Relations Authority or to Arbitration.

28
29 Management agrees that it will not unilaterally implement changes in personnel policy or practic-
30 es or conditions of employment, except for emergencies or delay of the effective date of law.

31
32 **SECTION 7.3 SUBORDINATE AGREEMENTS:** This agreement is controlling, and neither the
33 Local Union nor management may negotiate nor implement any change which conflicts with this
34 agreement. Only the Union Council and Area Director (or his designee) may reopen this agree-
35 ment during its term, and only upon mutual consent. Agreements derived from midterm negotia-
36 tions shall not duplicate, conflict with, nor otherwise be inconsistent with this agreement.

37
38 Unless the Local Union notifies management within six (6) months of the effective date of this
39 agreement that they wish to renegotiate or extend existing subordinate agreements, the subordi-
40 nate agreements shall be terminated. It is understood that any changes in conditions of employ-
41 ment after termination of subordinate agreements shall be negotiated.

42
43 A copy of all local level subordinate agreements will be submitted to the Union Council Presi-
44 dent and the Area Director in order to be binding upon the local parties. The Union Council
45

1 **ARTICLE 7 – continued**

2
3 President and Area Director will be responsible for advising the parties within ten work days of
4 receipt if the subordinate agreement is acceptable under the terms of this contract.

5
6 **SECTION 7.4 NEGOTIATION PROCEDURES:** Negotiation procedures are as follows:

- 7 A. Council Level: The proposing party will furnish written proposals delineating proposed
8 changes affecting conditions of employment to the other party. Either party has up to
9 thirty-five (35) calendar days after receipt of the proposed changes to request negotiations by
10 presenting written proposals.
- 11 B. Local Level: The proposing party will furnish written proposals delineating proposed chang-
12 es affecting conditions of employment to the other party. Either party has up to fifteen (15)
13 calendar days after receipt of the proposed changes to request negotiations by presenting writ-
14 ten proposals to the other party.
- 15 C. Documenting Official Notifications: See Appendix E for the format to be used to document
16 official notifications regarding conditions of employment

17
18 **SECTION 7.5 TIME LIMITS:** When data is requested from the other party, the time limits will
19 be automatically extended to that equal to the number of days it takes to receive such data. The
20 parties agree that data requests will be prudent and necessary to respond to the proposal.

21
22 **SECTION 7.6 GROUND RULES FOR MIDTERM NEGOTIATIONS:**

- 23 A. Union negotiators in numbers equal to the number of management negotiators, but no less
24 than two (2), will be entitled to official time. Travel and per diem will be paid for the negoti-
25 ators. Negotiations will be by face-to-face meetings, mail or electronic mail as agreed by the
26 parties.
- 27 B. A chairperson and alternate chairperson will be designated in writing for each negotiating
28 committee. The chairperson of each will speak for the respective committee. Other members
29 may speak with the approval of their chairperson.
- 30 C. Negotiations will normally begin not more than thirty (30) days after receipt of written pro-
31 posals. A suitable room with access to a computer and/or copy machines and telephones will
32 be provided by the employer. A reasonable space for caucusing will be provided.
- 33 D. Upon reaching agreement on all articles, the agreement shall be signed by the members of
34 both negotiating committees.
- 35 E. Additional ground rules can be established by the parties prior to negotiations. Such ground
36 rules can include additional negotiators, location, etc.

37
38 **SECTION 7.7 GROUND RULES FOR MANDATORY 18-MONTH REOPENER:** This
39 Agreement is subject to mandatory negotiation by either party at the mid-point of the contract
40 (See Article 43 Duration and Extent of Agreement). Ground rules will be negotiated immediate-
41 ly upon notification of either party of their desire to reopen specific articles of the Agreement at
42 the mid-point.

43
44 **SECTION 7.8 FURTHER NEGOTIATIONS:** Proposals may be initiated at any level in accord-
45 ance with this section. Memoranda of understanding shall state whether or not negotiations can

1 **ARTICLE 7 – continued**

2
3 take place at the lower organizational level.

4
5 **SECTION 7.9 RESPONSIBLE PARTIES:** Midterm negotiations will occur at the proposing
6 level unless otherwise agreed.

7
8 **SECTION 7.10 DISPUTES AND IMPASSE:**

- 9 A. Disputes. If management believes a written Union proposal is non-negotiable, it will raise
10 the issue of negotiability in a timely fashion at the early stages of the negotiation process so
11 that attempts can be made to cure any negotiability problems. The Union will be provided
12 on request with a written statement of the rationale for a claim of non-negotiability. The Un-
13 ion may submit a negotiability appeal to the FLRA in accordance with applicable regulations.
- 14 B. Impasses: In the event of an impasse at the Local level, the impasse will be submitted to the
15 Union Council and Area Director for resolution. The Federal Mediation and Conciliation
16 Service (FMCS) may be called in by either party. In the absence of such resolution, either
17 party may request the Federal Service Impasses Panel (FSIP) to consider the matter, or by
18 mutual agreement, may refer to matter to binding arbitration in accordance with Article 9. In
19 the event of an impasse at the Union Council/Area Management level, either party may re-
20 quest the FMCS and FSIP to consider the matter.

21
22 **SECTION 7.10 PAST PRACTICES:** Past Practices are privileges of employees which by cus-
23 tom, tradition, and known past practice have become an integral part of working conditions shall
24 not be changed as a result of not being enumerated in this agreement.

25
26 Past practice or procedures which meet the following tests:

- 27 A. Are known to the employer;
28 B. Responsible management knowingly allows to continue and practice; and
29 C. Such practice continues for some significant length of time.

30
31 Such practices will remain in effect provided they are not contrary to law, management rights,
32 and/or this agreement.

33

1 **ARTICLE 8 - GRIEVANCE PROCEDURES**

2
3 **SECTION 8.1 COMMON GOAL:** The purpose of this article is to provide a mutually acceptable
4 method for the prompt resolution of workplace issues raised by the parties and/or employees pur-
5 suant to 5 USC 7121. The parties agree that most grievances and complaints should be resolved
6 in an orderly, prompt, and equitable manner that will maintain the self-respect of the employee
7 and be consistent with the principles of good management and the public interest
8

9 **SECTION 8.2 DEFINITIONS:** Grievance means any complaint by any:

- 10 A. Employee concerning any matter relating to his/her employment.
11 B. Labor organization concerning any matter relating to employment of any employee.
12 C. Employee, labor organization, or agency concerning:
13 1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
14 2. any claimed violation misinterpretation, or misapplication of any law, rule or regulation
15 affecting conditions of employment.
16

17 **SECTION 8.3 APPLICATIONS:**

- 18 A. A grievance may be filed by an employee or group of employees, by the Union, or by Man-
19 agement.
20 B. Only the Union, or a representative designated by the Union, may represent employees in
21 such grievances.
22 C. Any employee or group of employees may personally present a grievance and have it re-
23 solved without representation by the Local Union provided that the Local Union will be given
24 an opportunity to be present at all formal discussions in the grievance process.
25 D. Any resolution must be consistent with the terms of this Agreement.
26 E. Upon request of either party, the number of representatives at representational meetings will
27 be equal. Management will approve additional Union Representatives when reasonably ap-
28 propriate. The parties agree to keep the number of participants at the meetings to a necessary
29 minimum.
30

31 **SECTION 8.4 EXCLUSIONS:** This grievance procedure does not apply to:

- 32 A. A violation relating to political activities;
33 B. Retirement, life insurance, or health insurance;
34 C. A suspension or removal for national security;
35 D. Any examination, certification, appointment or non-selection for promotion from a group of
36 properly ranked and certified candidates;
37 E. Classification of position which does not result in the reduction in grade or pay of the em-
38 ployee;
39 F. Separation/Removal of excepted service employee who does not enjoy appeal rights to the
40 Merit Systems Protections (MSPB) unless otherwise provided for by law.
41 G. Reductions-in-Force for Competitive employee.
42 H. Proposals of disciplinary and adverse action (however, the final decision may be grievable).
43 I. Termination of a probationer/trial period employee prior to the end of the probationary/trial
44 period.
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1 **ARTICLE 8 - continued**

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SECTION 8.5 PRE-GRIEVANCE PROCESS:

- A. The parties agree that the participation in the pre-grievance process does not constitute the formal election of the negotiated grievance procedure.
- B. The grievant and/or representative must file the pre-grievance notification with the appropriate official in writing within twenty-one (21) calendar days of the incident resulting in the complaint or the date the grievant first became aware of the matter.
- C. Pre-grievance notification: When submitting a pre-grievance notification, the grievant or their representative will:
 - 1. Identify the incident resulting in the complaint,
 - 2. Identify the date of the incident,
 - 3. Provide suggestions for remedies; and
 - 4. Identify that this is a “pre-grievance notification.” Grievants are encouraged to state this identification in the subject of e-mail or hard-copy document.
- D. The grievant will file the pre-grievance notification with the appropriate official identified below:
 - 1. Employee Pre-Grievance:**
If the grievant is an employee of the organization listed at the left below, they send the pre-grievance notification to the individual listed at the right:

Service Unit.....	Chief Executive Officer
Area Office.....	Deputy Area Director
 - 2. Local Union Pre-Grievance:**
For a Local Union grievance at the organization level on the left below, the Union Official sends the pre-grievance notification to the individual listed at the right:

Service Unit.....	Chief Executive Officer
Area Office.....	Deputy Area Director
 - 3. Management Pre-Grievance:**
Management officials listed on the left send the pre-grievance notification to the individual listed at the right:

Service Unit.....	Local President
Area Office.....	Local President
- E. The individual receiving the pre-grievance notification will identify the responding official who will act upon the notification.
- F. After the pre-grievance is sent, the grievant and responding official have twenty-one (21) calendar days to resolve the issue using a dispute resolution process that is acceptable to both parties. If they do not reach resolution within twenty-one (21) calendar days, the grievant then has twenty-one (21) calendar days to elect to file a formal grievance.
- G. During pre-grievance discussions, if the grievant and responding official reach the conclusion that they cannot resolve the issue, they will document in writing that they could not reach resolution. The grievant then has twenty-one (21) calendar days to elect to file a formal grievance.
- H. When a settlement agreement is reached it will be documented and signed by the grievant and the appropriate official. If a settlement agreement is signed, no formal grievance will be filed on the issues raised in the pre-grievance.

1 **ARTICLE 8 - continued**

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SECTION 8.6 NEGOTIATED FORMAL GRIEVANCE PROCEDURE:

- A. For those matters that are grievable, this procedure will be the exclusive procedure for the parties and employees. However, nothing in this section will prevent employees from exercising their statutory rights to:
 - 1. File an EEO complaint;
 - 2. Appeal adverse actions or actions for unacceptable performance to the MSPB;
 - 3. File a charge of an unfair labor practice with the FLRA;

Provided that the employee has not filed a grievance in writing on the matter in accordance with this Agreement. If an Agency listed above determines that they have jurisdiction to hear an appeal or complaint of an employee who filed a grievance in writing on the same issue, the grievance will be cancelled.
- B. Nothing in this section will prevent an employee from filing a complaint with the Office of Special Counsel.
- C. If the complaint is not resolved in the pre-grievance process, the grievant may file a formal written grievance within twenty-one (21) calendar days of the end of the pre-grievance period or date of the agreement that the complaint could not be resolved informally. A formal grievance may not be filed unless the grievant has attempted to resolve the complaint through the pre-grievance notification process as described in Section 5 above.
- D. In the case of grievance taken in response to a written decision letter notifying the employee of an action under 5 USC 7512 (Adverse Actions) or 5 USC 4303 (Unacceptable Performance), no pre-grievance notification is required. An employee must file a formal grievance within thirty (30) days of the effective date of the action.
- E. A formal grievance will contain the following:
 - 1. A copy of the pre-grievance notification (except as described in item D above);
 - 2. The mutual agreement that the issues could not be resolved, if applicable;
 - 3. The issue(s) being grieved;
 - 4. Any supporting evidence, including the date of the occurrence, and,
 - 5. The relief requested.
- F. The grievant will file the formal grievance with the appropriate official identified below.
 - 1. Employee Formal Grievance:**
If the grievant is an employee of the organization listed at the left below, they send the formal grievance notification to the individual listed at the right:
Service Unit..... Area Director
Area Office..... Area Director
 - 2. Local Union Formal Grievance:**
For a Local Union grievance at the organization level on the left below, the Union Official sends the formal grievance notification to the individual listed at the right:
Service Unit..... Area Director
Area Office..... Area Director
 - 3. Management Formal Grievance:**
Management officials listed on the left send the formal grievance notification to the individual listed at the right:
Service Unit..... Council President

1 Area Office..... Council President
2

1 **ARTICLE 8 - continued**
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3 G. A written decision will be transmitted to the grievant within twenty-one (21) calendar days
4 after the filing of the formal grievance.

5 H. This response will be the final decision on the grievance. If the grievance is not resolved, the
6 matter may be referred to arbitration in accordance with Article 9.
7

8 **SECTION 8.7 AUTHORITY:**

9 A. The responding official in the pre-grievance process and deciding official in the formal grievance
10 must have full authority to resolve all issues raised by the grievant.

11 B. In the case of a grievance involving disciplinary action, it is not appropriate for the deciding
12 official for the formal grievance to be the same individual as the deciding official for the disciplinary
13 action.
14

15 **SECTION 8.8 MEDIATION:** If dissatisfied with a decision reached at the formal stage or in the
16 absence of a decision, the grievant may request the Union to refer the grievance to mediation in
17 accordance with the provisions of this article. The Union will within ten (10) work days, request
18 the immediate services of a mediator from the Federal Mediation and Conciliation Service. Requests
19 for mediation will be signed by the Union President or designee. The chosen mediator
20 will meet with the parties at the earliest possible date and attempt to resolve the grievance
21 through voluntary methods. If the mediation procedure is unsuccessful and the grievance is still
22 unresolved, the Union may request arbitration in writing within thirty (30) calendar days from the
23 date of the last mediation meeting. A request for arbitration shall be valid only if signed by the
24 Local Union President or Union Council President, as appropriate.
25

26 **SECTION 8.9 TIME LIMITS:**

27 A. Time limits for this Article start with "Day One" on the day following transmittal or occurrence.
28

29 B. The intent of the parties is for all participants to act within the time limits allowed within this
30 Article. However, time limits in this Article may be extended by mutual consent of the
31 grievant and appropriate responding official.

32 C. When information needed by management to process a formal grievance is requested from a
33 grievant or the Union the time limits will be extended equal to the amount of time required to
34 receive the information but not more than fifteen (15) calendar days. If the information is not
35 received during that time period, management will render a decision based on the information
36 they have at the time.

37 D. When information needed by the Union to process a formal grievance or to determine whether
38 a formal grievance exists is requested from management the time limits will be extended
39 equal to the amount of time required to receive the information.

40 E. Failure by the grieving party to meet time limits, or to request and receive an extension of
41 time, will automatically cancel the grievance, unless mitigating circumstances prevail.

42 F. Failure of the deciding official to meet time limits on formal grievances, or to request and
43 receive an extension of time, will result in the deciding Party's liability for the arbitrator's
44 fees and expenses, unless mitigating circumstances prevail.
45

1 **ARTICLE 8 - continued**

2

3 SECTION 8.10 GRIEVANCE TERMINATION: Management will cancel an employee's grievance:
4

5 A. At the employee's request;

6 B. Upon termination of employment with the agency, unless the personal relief to the employee
7 may be granted after termination of employment;

8 C. Or upon the death of the employee, unless the grievance involves a question of pay.

9

1 **ARTICLE 9 - ARBITRATION**

2
3 **SECTION 9.1 RIGHT TO ARBITRATION:** If the decision on a grievance processed under the
4 negotiated grievance procedure is not satisfactory, the Union, either as grievant or as representa-
5 tive of the grievant(s), may refer the issue to arbitration. The notice referring an issue to arbitra-
6 tion must be in writing, signed by the Union Council President and submitted within thirty (30)
7 calendar days following receipt of the decision or completion of mediation efforts.

8
9 **SECTION 9.2 SELECTING THE ARBITRATOR:** Within five workdays from date of receipt of
10 a valid arbitration notice, the parties shall attempt to select an arbitrator. If the parties are unable
11 to agree upon an arbitrator, they shall immediately request the Federal Mediation and Concilia-
12 tion Service (FMCS) to submit a list of seven impartial persons to act as arbitrators. A brief
13 statement of the nature of the issues in the dispute will accompany the request to enable the
14 FMCS to submit the names or arbitrators qualified for the issues involved. The request shall also
15 include a copy of the Collective Bargaining Agreement. In the event that the entire agreement is
16 not available, a verbatim copy of any provision relating to arbitration of the grievance shall ac-
17 company the request. The parties shall meet within ten workdays after receipt of such list to se-
18 lect an arbitrator. If they cannot agree upon one of the listed persons, the employer and Union
19 will strike one arbitrator's name from the list of seven and shall repeat this procedure until only
20 one name remains. The remaining name shall be the only duly selected arbitrator. A flip of the
21 coin will determine which party shall strike the first name. The Union may withdraw the griev-
22 ance at any time prior to the actual convening of a hearing or submission to the arbitrator.

23 **SECTION 9.3 FEES AND EXPENSES:**

- 24
25 A. The arbitrators fees and expenses shall be borne by the losing party, except that in any deci-
26 sion not clearly favoring one party's position over the other, the arbitrator may specify that
27 cost be split proportionate to the arbitrator decision of issues, i.e., 10 issues, 8 for grievant
28 then grievant may be required to pay 20% or 10-day suspension reduced to a 2-day suspen-
29 sion.
30 B. If clarification of an arbitrator's decision is necessary, the requesting party will pay for the
31 additional arbitration fees and expenses.

32
33 **SECTION 9.4 ARBITRATOR'S AUTHORITY:** The arbitrator's decisions shall be final and
34 binding and the remedy shall be effective in its entirety unless either party invokes Section 7122,
35 Title VII, Civil Service Reform Act.

36 **SECTION 9.5 ARBITRATOR'S AUTHORITY IN DISPUTES OVER THE AGREEMENT:**

37 The arbitrator shall have the authority to resolve any questions of arbitrability and interpret and
38 define the explicit terms of this agreement, agency policy, etc., as necessary to render a decision.
39 The arbitrator shall have no authority to add to or modify any terms of this agreement or agency
40 policy.
41

42
43 **SECTION 9.6 TIME LIMIT:** The arbitrators will be told that in order to fulfill the delegation to
44 arbitrate, he/she must render a decision and remedy to the employer and Union as quickly as
45

1 **ARTICLE 9 - continued**

2
3 possible, but in any event no later than thirty (30) days after the conclusion of the hearing unless
4 the parties otherwise agree.

5
6 **SECTION 9.7 ARBITRATION PROCESS:**

7 A. The process to be utilized by the arbitrator may be one of the following:

- 8 1. A "stipulation" of facts to the arbitrator can be used when both parties agree to the facts at
9 issue and a hearing would serve no purpose. In this case, all facts, data, documentation,
10 etc., are jointly submitted based upon the facts presented.
11 2. An "arbitrator inquiry" can be used when a formal hearing would serve no purpose. In
12 this case the arbitrator would make such inquiries as he/she deemed necessary (e.g., in-
13 specting worksites, taking statements).
14 3. A "submission to arbitration hearing" should be used when a formal hearing is necessary
15 to develop and establish the facts relevant to the issue. In this case, a formal hearing is
16 convened and conducted by the arbitrator.
17 4. A "mini-arbitration" may be used to expedite the resolution of the grievance. In this case,
18 the arbitrator would make such inquiries as he/she deemed necessary, prepare a brief
19 summary of the facts and render an on-the-spot decision without an opinion.

20 B. The parties may mutually agree on a stipulation of facts to the arbitrator or the parties may
21 agree to request an inquiry, mini-arbitration, or hearing.

22 C. The parties may agree to direct the arbitrator to simplify or eliminate a written opinion when
23 using the process in (1), (2), or (3) above.

24 D. The arbitration hearing or inquiry shall be held on the employer's premises during the regular
25 day-shift work hours of the basic work week. Witnesses will be given excused absence for
26 the period of time they are actually testifying in arbitration proceedings.

27 E. In considering grievances concerning actions based on unacceptable performance and adverse
28 actions appealable to the Merit Systems Protection Board, the arbitrator shall be governed by
29 5 U.S.C. 7701(c)(1), existing MSPB Case Law and FLRA precedent and case law as applica-
30 ble.

31
32 **SECTION 9.8 EXCEPTIONS:**

33 A. Either party may seek judicial review of the arbitrator's decision on matters which could have
34 been appealed to the MSPB within thirty (30) calendar days, beginning on the date the award
35 is served on the filing party. Such review will be sought in the Court of Claims, or the U.S.
36 Court of Appeals in accordance with the provisions of 5 U.S. C. 7703.

37 B. Either party may file an exception with the Federal Labor Relations Authority to the arbitra-
38 tor's award in any matter other than those described in A. above. Such exceptions must be
39 filed within thirty (30) calendar days of issuance of the decision in accordance with Federal
40 Labor Relations Authority procedures. If no exceptions are filed, the arbitrator's decision
41 shall be effected immediately.
42

1 **ARTICLE 10 - PRE-NOTIFICATION FOR UNFAIR LABOR**
2 **PRACTICE CHARGE**

3
4 SECTION 10.1: The parties recognize that law and regulation encourage the resolution of unfair
5 labor practice allegations in an informal and voluntary manner. To this end, the party making an
6 unfair labor practice allegation will normally communicate such to the other party prior to filing a
7 charge with the Federal Labor Relations Authority. The charging party should normally allow a
8 reasonable amount of time for discussion and/or resolution of the dispute.

9
10 SECTION 10.2: The parties will have full authority to mutually agree to any procedures neces-
11 sary during the process of resolution.

12
13 SECTION 10.3: If an Unfair Labor Practice charge is filed against the employer or the Union,
14 the appropriate head of the parties will be the person charged. The employer Unit Head is the
15 Area Director. The Union head is the Union Council President.
16

1 **ARTICLE 11 - ORIENTATION OF NEW EMPLOYEES**

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3 SECTION 11.1: All new employees shall be informed by the employer that the Union is the Ex-
4 clusive Representative of employees in the Unit. Each new employee shall be advised that the
5 Agreement and any existing supplemental agreements are available on the Billings Area IHS
6 Homepage. The employer shall also provide each new unit employee the most current list of the
7 officers and representatives of the local union, and the council officers.

8
9 SECTION 11.2: The Union will be notified when each new employee enters on duty and will be
10 authorized official time, normally not to exceed 15 minutes, to introduce the new employee to the
11 purposes, goals and achievements of the Union. This will normally be accomplished at scheduled
12 group orientation sessions by the employer.

13
14 SECTION 11.3: The employer shall furnish the President of each Local union, on a bi-weekly
15 basis, the following information regarding all new permanent employees: Name, Title, Pay Plan,
16 Series, Grade and BUS Code.

17

1 **ARTICLE 12 - POSITION DESCRIPTIONS/DESK AUDITS/**
2 **CLASSIFICATION APPEALS**

3
4 SECTION 12.1 GENERAL: The parties agree that each employee is entitled to a current, com-
5 plete and accurate position description which accurately reflects the principle duties and respon-
6 sibilities of the position. The position description shall be reviewed annually by the employee
7 and work supervisor in an effort to insure position descriptions are kept current.
8

9 The phrase "performs other duties assigned" will not be reflected in the position description. The
10 Union recognizes that in cases of emergency, it may be necessary to work temporarily outside
11 his/her position description. In no case will any employee be required to perform duties which
12 might result in injury to the employee, fellow employees or the general public served, due to lack
13 of knowledge of the task.
14

15 The union will be provided a copy of new or revised position descriptions upon written request.
16 Upon request, the union may review the material utilized to arrive at the assigned title, series and
17 grade which may include copies of any new classification standards for bargaining unit positions,
18 and copies of any position classification audits performed on unit positions resulting in a change
19 of series and/or grade.
20

21 **SECTION 12.2 POSITION DESCRIPTIONS:**

- 22 A. The employer will maintain a complete, and up-to-date file of descriptions of all classified
23 positions in the bargaining unit, and will provide each employee with a copy of his/her de-
24 scription.
- 25 B. If an employee believes that significant changes have occurred in their regularly assigned re-
26 sponsibilities and regularly performed duties, or that their current position descriptions are
27 not accurate and/or complete, or that the title, series, or grade of their position is incorrect,
28 the employee will discuss the issue with their supervisor.
- 29 1. If the supervisor determines the position description is incorrect, the supervisor will pre-
30 pare an accurate position description, certify to its accuracy on the OF-8, Position Descrip-
31 tion Cover Sheet, and submit it with an SF-52, Request for Personnel Action, through es-
32 tablished channels to the Human Resources Office for appropriate classification and ac-
33 tion.
 - 34 2. If the supervisor determines the position description is current and correct, considering the
35 employee's concern, he/she will explain the classification to the employee. If the supervi-
36 sor cannot resolve the employee concerns to the employee's satisfaction, within ten (10)
37 calendar days the supervisor will arrange for a Human Resource Specialist to provide fur-
38 ther information to the employee within sixty (60) calendar days. As a part of any such
39 communication, the Human Resource Specialist will talk with the employee(s) whose du-
40 ties are affected. Any such discussion may include an explanation by the Human Re-
41 source Specialist of the applicable job grading process. The employer agrees to consider
42 fully any information on this subject which the employee may wish to present, and to dis-
43 cuss the finding with the employee. If a satisfactory resolution of the employee's concerns
44 is not reached, the employer will furnish the affected employee(s) with copies of the find-
45 ings in writing which will include the employee's classification
46

ARTICLE 12 - continued

appeal rights. This will include the evaluation of the position results of any recent audits and/or reviews, and an explanation of the classification standard used in determining the title, series and grade.

SECTION 12.3 DESK AUDITS: A desk audit is a structured conversation or formal interview conducted by a Human Resource Specialist with an employee regarding their position and position description. The desk audit usually includes a review of the major duties and all applicable factors to insure the position description is accurate. Following the desk audit, the classification of the position's title, series, and grade is reviewed to insure the position is properly classified. At any time, an employee may request a desk audit of their position. A desk audit may also be requested by the immediate supervisor or higher level supervisor or manager within the applicable organizational structure. A desk audit may also be initiated by Human Resource staff.

If an employee wishes to request a desk audit, they will contact their supervisor. The supervisor will contact the Area Human Resources Office within ten (10) calendar days. The Area Human Resources Office will contact the supervisor within thirty (30) calendar days to set a date for completion of the desk audit. The supervisor will keep the employee informed of the status of their request.

SECTION 12.4 CLASSIFICATION APPEALS: At any time, an employee may file a Classification Appeal. Title 5 CFR 532.703b(4), allows that an employee may elect to be represented either by the Union representative or another representative of his/her choice to assist him/her in the submission of such appeal. If the employee elects to select a representative, the representative shall be granted up to eight (8) hours of official time, when requested in writing to the employer representative, to carry out appropriate representational duties. If the employee chooses not to select a representative, the employee shall be granted up to eight (8) hours of official time when requested in writing and approved by the supervisor in presenting the appeal and shall be assured freedom from restraint, interference, coercion, or reprisal in pursuing the appeal.

A. A General Schedule (GS) employee wishing to file a Classification Appeal may submit their appeal as follows:

Step 1 REGIONAL HUMAN RESOURCE OFFICE, Northern Plains Region, P.O. Box 36600, Billings, MT 59107. The employee may elect to bypass Step 1 and proceed directly to Step 2.

Step 2 Office of Human Resources (OHR), IHS, 12300 Twinbrook Pkwy, Suite 230, Rockville, MD 20852. The employee may elect to bypass Step 2 and proceed directly to Step 3.

Step 3 OFFICE OF PERSONNEL MANAGEMENT, Dallas Oversight Division Agency Compliance and Evaluation Division, South West Region, 1100 Commerce Street, Room 4C22, Dallas, TX 75242.

If the employee elects to bypass any of the above steps, they may not elect to retreat to the bypassed step at a later date. Employees may proceed to the next step in the Classification

ARTICLE 12 - continued

Appeal process if they are not satisfied with the decision issued at the lower level. However, if he/she is dissatisfied with the OPM (Step 3) decision, there are no subsequent appeal rights as decisions made by OPM are final on both the employee and employer.

B. Wage Grade (WG) employees do not have the optional appeal procedures afforded to General Schedule employees. WG employees must first appeal to the Headquarters Support office. The resulting decision may then be appealed to OPM.

C. The Classification Appeal must be submitted in writing to the appropriate selected appeal authority and must include the following specific information:

1. Full name;
2. Home address;
3. Title and address of the immediate organization to which he/she is officially assigned; i.e., IHS Blackfeet Community Hospital, Medical Records Department, etc.;
4. Title, series, grade and position number of the position to which he/she is officially assigned;
5. Title, series, and/or grade he/she considers to be proper, if known;
6. Reasons he/she considers the present classification to be incorrect, and reasons supporting the classification he/she considers proper;
7. A statement that a like appeal is not pending adjudication by the OPM if the employee chooses to first submit the appeal to the Office of Human Resources. Simultaneous appeals to the Department and OPM are not permitted;
8. A statement as to whether or not the reconsideration processes in Section 12.1 and/or a desk audit has been accomplished. Failure to indicate such may delay action on the request;
9. A statement as to whether or not the employee considers the position description to which he/she is officially assigned to be accurate;
10. The full name, address and organizational designation and Union affiliation if appropriate, of the representative if the employee chooses to select one.

ARTICLE 13 - PERFORMANCE MANAGEMENT SYSTEM

SECTION 13.1: The parties recognize that high level performance by Indian Health Service employees is essential to the efficient operation of the agency and is necessary for the achievement of its goals and programs. The purpose of this article is to set forth a fair and equitable procedure to be utilized when informing employees of their performance. The parties agree that the Performance Management Appraisal Program for bargaining unit employees will be the IHM, Part 7, Chapter 7 established 09/26/2009 (Appendix F) as modified by the following provisions and applicable laws, rules, and government-wide regulations. Changes to the IHM Part 6 Chapter & will require fulfillment of bargaining obligations by the parties.

SECTION 13.2 EMPLOYEE PARTICIPATION: Each employee should actively participate in developing his or her performance plan for the appraisal period. Employee participation includes raising the issue of the accuracy of their position description. At the beginning of the appraisal period the rating official and employee shall meet and discuss the PMAP. No employee will be required to back date any PMAP document. Employees will be afforded a minimum of two (2) workdays to review evaluation documents prior to signing.

SECTION 13.3 PROGRESS REVIEWS: There should be continuous feedback between the employee and their supervisor. At a minimum, one formal progress review shall be held between the supervisor and employee at approximately the midpoint in the rating period. Interactions regarding progress reviews and feedback will be held in a setting that protects the employee's privacy. At any time during the rating period, employees and supervisors will work closely together to enhance and elevate the employee's performance.

SECTION 13.4 DISAGREEMENT WITH THE RATING OF RECORD: Employees are encouraged to discuss disagreements normally with the rating official and if appropriate with the rating and reviewing officials, in an attempt to resolve the issue informally. An employee may file a grievance utilizing the grievance procedures in Article 8 of this agreement if they disagree with their rating of record.

SECTION 13.5 PERFORMANCE AWARDS: Each year the Area Director (or designee) and Union Council President (or designee) will execute a Memorandum of Understanding (MOU) prior to payment of performance awards to establish and document the terms and conditions that shall govern performance awards for that year. All employees will be treated equally regardless of bargaining unit status.

SECTION 13.6 PERFORMANCE IMPROVEMENT PLANS (PIP'S): If performance of any critical element is determined to be Unacceptable at any time during the rating period, the supervisor will provide assistance to help the employee improve performance to a Minimally Successful level. The supervisor must, at a minimum, give written notice to the employee of his/her failure to demonstrate acceptable performance and give the employee an opportunity to demonstrate acceptable performance under a PIP. At the employee's request, they may have a Union Representative present at the time the PIP is issued for the purpose of assisting the employee in understanding the PIP.

1 **ARTICLE 14 - PRODUCTIVITY**

2
3 **SECTION 14.1:** Delivery of health care services in the most efficient, effective and courteous
4 manner is paramount importance to the Union and to management. Such achievement is recog-
5 nized to be a mutual obligation of both parties within their respective roles and responsibilities.
6

7 **SECTION 14.2:** The parties agree to encourage the highest degree of efficiency and effective-
8 ness of Agency operations as well as management and employee performance and productivity.
9 This includes, but is not limited to the following:

- 10 A. Conservation of materials, manpower, and supplies.
11 B. Correction of conditions causing grievances and misunderstandings.
12 C. Enhancing the public image of the Agency.
13 D. Encouragement of beneficial suggestions and provisions of incentive awards for money sav-
14 ing ideas as well as high quality performance.
15 E. Maintain good attendance, promptness, and carefulness.
16 F. Eliminate waste.
17 G. Improvement of the quality of workmanship.
18 H. Encourage the proper use of sick leave.
19 I. Encourage the employee to use proper channels.
20

1 **ARTICLE 15 - AWARDS PROGRAM**

2
3 **SECTION 15.1 PURPOSE AND POLICY:** The parties agree that the employee suggestions and
4 incentive awards programs are beneficial to both management and the employee. The incentive
5 awards program will be managed in accordance with 5 CFR 451, IHS Circular 97-10, and any
6 supplemental instructions thereto.

7
8 **SECTION 15.2 INCENTIVE AWARDS:** An award is a method of recognizing and motivating
9 employees to increase their productivity and creativity for the benefit of the IHS and the served
10 public. An employee or group of employees may receive incentive award for special contribu-
11 tions such as heroic acts, inventions, special acts, savings to the Government, outstanding service
12 to the community, etc. The award may be monetary or non-monetary.

13
14 **SECTION 15.3:** The parties agree to encourage employees to file suggestions under the employ-
15 er suggestion program. The suggestion will be considered in a manner consistent with applicable
16 regulations. Should a suggestion be rejected by the employer, the employee will be informed in
17 writing. In the event a rejected suggestion is later implemented, it will be considered in accord-
18 ance with the applicable suggestion system policy. If it is finally determined that an award is ap-
19 propriate, it shall be processed accordingly. Employees will submit a copy of all individual sug-
20 gession(s), which have been presented to the employer for consideration under this article, to the
21 appropriate Union official for future reference. Should the employer reject an employee sugges-
22 tion, a copy of the rejection will be presented to the Local President, stating the reason. Should
23 the employer consider a suggestion presented by an employee, then the employer will inform
24 both the employee and Local President that such is the case.

25
26 **SECTION 15.4 AWARDS INFORMATION:** At least annually, the employer will publicize the
27 criteria for various awards.

28
29 **SECTION 15.5:** The employer agrees the Union may also present awards to Union members for
30 outstanding service. These awards may be monetary or otherwise. The employer further agrees
31 that awards presented by the Union will in no way prohibit an employee from receiving an award
32 from management for the same contribution.

33
34 **SECTION 15.6:** Additional items applicable to this article are subject to local supplemental ne-
35 gotiations.

36

ARTICLE 16 - MERIT SYSTEM PROMOTION AND DETAILS

SECTION 16.1 GENERAL: The employer will ensure that all qualified people have equal opportunity for promotion in accordance with applicable law, regulation, including but not limited to established Indian Preference Policy and Veterans Preference.

SECTION 16.2 PROCEDURES: Both parties agree to utilize the procedures outlined in the IHS Merit Promotion Plan and IHS Excepted Examining Plan for the purposes of this agreement, the negotiated grievance procedures outlined in this agreement will be utilized by employees who have a grievance in relation to Merit Promotion.

SECTION 16.3 DETAILS:

- A. A detail is the temporary assignment of an employee to a different position for a specified period, with the employee returning to their regular duties at the end of the detail. Details will be made in accordance with applicable regulations and this agreement.
- B. An employee temporarily assigned to a higher graded position or to a position with a special salary rate will be temporarily promoted or have his/her pay adjusted if she/she meets basic qualifications and applicable law, rule, and regulation. An employee can elect to accept a temporary assignment to a higher graded position without being temporarily promoted.
- C. Documentation. All details be documented on an SF-50, Notification of Personnel Action, and placed in the employee's Official Personnel Folder. The request for detail will be submitted to the Area Human Resource Office and the request must be approved prior to the proposed effective date of the detail.
- D.
 1. Whenever one or more employees are needed to be detailed to another work area or location to perform their duties the Union will be notified in writing as far in advance as possible, but no less than ten (10) days. On matters concerning in-house details the Union will be notified in writing, as soon as possible, but not less than three (3) days. The Union will be provided in writing, but not limited to, the following information that is applicable to the detail:
 - a) The number and type of employees affected;
 - b) The location of the detail;
 - c) A description of the work to be performed;
 - d) The expected actual duration of the detail;
 - e) The expected impacts of the detail on employees;
 - f) The transportation, lodging, and per diem arrangements;
 - g) The time and attendance procedures;
 - h) The reporting supervisor.
 2. The Union may request negotiations as appropriate over the details that involve another physical work area or location within ten (10) days of receipt of the employer's written notification. Should negotiations be requested, the union will submit written proposals within ten (10) workdays. Negotiations will commence on the day of submission or no more than two (2) workdays after the employer's receipt.
 3. The Union may request negotiations on in-house details. Should negotiations be requested the Union will submit proposals to the Chief Executive Officer within three

ARTICLE 16 - continued

days of being notified of the proposed detail. Negotiations will commence on the day following the submissions of the Union proposals, or upon a time agreed mutually by both parties. In accordance with this agreement and Article 7 the employer agrees to negotiate as appropriate with the Union on the impact and implementation of the employer's statutory right to assign employees to a detail prior to implementation.

4. The employees(s) affected by a detail will be given written notice of the detail and all information concerning the detail as soon as possible, but in no case later than ten (10) days in advance when the detail is to a position outside of the commuting area or three (3) days in advance when the detail is to a position within the commuting area. Whenever employee(s) and the employer meet or discuss this change in the employees(s) condition of employment, the Union will be a party to this meeting/discussion.

SECTION 16.4: Specific information on such areas as vacancy announcements, temporary promotion, re-promotion, career ladder promotions, non-selected employee rights, etc., is found in IHS Merit Promotion Plan and IHS Excepted Examining Plan.

SECTION 16.5: Vacancies are posted on USA Jobs and IHS Jobs. Also, the Billings Area Homepage includes a vacancy report.

SECTION 16.6 APPLYING FOR POSITIONS: Unless otherwise stated on the vacancy announcement, employees wishing to apply for vacant positions within the Billings Area must apply on Quickhire.

1 **ARTICLE 17 - PERFORMANCE IMPROVEMENT PLANS (PIP's)**
2 **AND ACTIONS BASED ON UNACCEPTABLE**
3 **PERFORMANCE**
4

5 SECTION 17.1: The requirements of 5 USC 43 applies to this section.
6

7 SECTION 17.2 PERFORMANCE IMPROVEMENT PLANS (PIP's). Raters are required to as-
8 sist employees whose performance is less than successful (pass). A Performance Improvement
9 Plan (PIP) will be prepared for employees whose performance is less than successful (pass), ex-
10 plaining how their performance is less than successful, what specific assistance will be provided
11 to assist them in improving their performance and that they have at least 90 days to improve their
12 performance to the successful (pass) level. If the level is brought up to the pass level during the
13 PIP period, that level must be maintained for at least a year. Normally, management is not obli-
14 gated to provide more than one PIP in one year. If an employee does not improve the level to
15 pass during the PIP, a performance-based adverse action or other alternative action may be pro-
16 posed by management.

17 A. Performance Improvement Plan (PIP). All PIP's must be in writing and must include:

- 18 1. Notice of unacceptable performance in one (1) or more critical elements of the employee's
19 performance standards that specifically identifies a formal 90 days or longer opportunity
20 to improve shall be given to the employee to bring their performance to an acceptable lev-
21 el. During the PIP, the employee will be given the opportunity to work on those portions
22 of the job that are unacceptable. The supervisor will ensure that the employee receives a
23 reasonable opportunity to improve the area(s) that has been declared unacceptable;
- 24 2. Information as to how the supervisor will assist the employee in that effort;
- 25 3. Information as to what the employee must do to bring performance to acceptable level in
26 that period;
- 27 4. A statement that the employee's performance will be re-evaluated after the PIP and the
28 employee will be notified in writing as to the results of this evaluation. If the supervisor
29 provides up-date discussions regarding the employee's progress, the employee has the
30 right to Union representation at such meetings.

31 B. Notice of Proposed Action (downgrade, removal): An employee whose reduction in grade or
32 removal is proposed based on unacceptable performance is entitled to at least a thirty (30) day
33 advance notice, unless otherwise authorized in regulation or law, which informs the employ-
34 ee:

- 35 1. Of the nature of proposed action;
- 36 2. Of the specific instances of unacceptable performance by the employee on which the pro-
37 posed action is based;
- 38 3. Of the critical elements of the employee's position involved in each instance of unac-
39 ceptable performance;
- 40 4. The time to reply;
- 41 5. The right to be represented by the Union or other representative;
- 42 6. The right to make an oral and/or written reply and to receive a written decision with ap-
43 peal rights;
- 44

1 **ARTICLE 17 - continued**

- 2
- 3 C. Decision on a Proposed Action: An employee whose reduction in grade or removal has al-
- 4 ready been proposed is entitled to a written decision which:
- 5 1. Unless proposed by the head of the agency, has been concurred with by an official who is
- 6 in a higher position than the official who proposed the action.
- 7 2. Summarizes the efforts the employer has made to assist the employee in improving
- 8 his/her performance and how these efforts have fallen short.
- 9 3. Informs the employee of the option to appeal the action to the Merit Systems Protection
- 10 Board or grieve through the negotiated grievance procedure but not both. Any such griev-
- 11 ance will be initiated at the formal step of the negotiated grievance procedure. The choice
- 12 of the appeal forum is irrevocable. An employee shall be deemed to have exhausted
- 13 his/her option at such time as the employee timely initiates an action under the statutory
- 14 procedure or timely files a written grievance, whichever occurs first.
- 15 4. Will normally be delivered at least five calendar days prior to the effective date of the ac-
- 16 tion.
- 17

18 SECTION 17.2: If the employee is the subject of action based on unacceptable performance, the

19 employer will counsel the employee on any applicable options regarding retirement.

20

21 SECTION 17.3: Performance based actions do not apply to:

- 22 A. The reduction in grade or removal of an employee in the competitive service who is serving a
- 23 probationary or trial period under initial appointment or who has not completed 1 year of cur-
- 24 rent continuous employment; or
- 25 B. The reduction in grade or removal of an employee in the excepted service who has not com-
- 26 pleted 1 year of current continuous employment in the same or similar position.
- 27

ARTICLE 18 - EMPLOYEE ASSISTANCE PROGRAM

SECTION 18.1: Management shall maintain an Employee Assistance Program, meeting the requirements of applicable laws, regulations and guidelines (P.L. 91-616, P.L. 92-255). The program will be consistent with agency regulations. Employee participation in the program shall be voluntary, though supervisors have a responsibility to identify poor job performance or conduct and refer an employee to this program as corrective action. An employee may bring a Union representative to any discussion in connection with this Article. Management will publicize the content of the EAP Program to ensure that all employees are aware of its existence. Employee's can directly access the EAP by calling 1-800-222-0364. The EAP is available 24 hours a day, 7 days a week, 365 days a year.

SECTION 18.2 POLICY:

- A. The parties acknowledge that the employee has the primary responsibility to maintain acceptable performance and for taking any actions or treatment necessary to maintain it. When an employee sincerely seeks treatment in order to maintain or regain acceptable performance or conduct, management will provide assistance, create an atmosphere of understanding, and attempt to remove the effects of social stigma associated with the problem.
- B. Management will attempt to provide employees with the appropriate assistance to overcome problems which contribute to poor performance or conduct.
- C. It is a basic function of a supervisor to identify poor job performance or conduct and to take corrective action.
- D. Management recognizes alcoholism, other drug dependencies, and mental illness as illnesses. Employees who have these illnesses will receive the same careful consideration and respect as employees who have other illnesses. The same consideration will be given to employees who have other personal problems which contribute to poor performance or conduct. Employees who may be impacted by other employees or family members with these illnesses will receive the same careful consideration upon request.
- E. Diagnosis and treatment should be accomplished by referral of employees to outside professional treatment and assistance sources.

SECTION 18.3 RESPONSIBILITIES AND GUIDELINES:

- A. When a supervisor, through daily job contact, observes that an employee is experiencing difficulties in maintaining his/her job performance, the supervisor will discuss the apparent difficulties with the employee.
- B. If the employee is unable to correct his/her job performance difficulties through his/her own efforts, management will refer the employee to the EAP.
- C. The focus of corrective discussions by supervisors is restricted to the issue of job performance or conduct, and the possible job-related consequences.
- D. Conduct which has medical aspects, such as conduct which evidences emotional disorder or impaired judgment, or alcohol or drug abuse, will be addressed as medical problems in an effort to provide rehabilitation to the employee. An employee who refuses professional help or is unable to improve his/her performance or conduct with the assistance of a medical rehabilitation program may be subject to disciplinary action which may include separation.

1 **ARTICLE 18 - continued**

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E. Supervisors shall consider the guidance of the referral sources in establishing reasonable expectations for recovery time of an employee.

F. Participation in the program shall not jeopardize an employee’s job security or his/her opportunity to compete for promotion.

G. Sick leave is an appropriate form of leave for treatment or counseling sessions.

H. In most circumstances, a disciplinary action may be held in abeyance if the employee enters an appropriate rehabilitation program and permits the counselor to report to management on the employee’s attendance in the program, and if the employee is making observable progress in conduct and/or performance on the job.

SECTION 18.4 CONFIDENTIALITY: The confidential nature of records of employees with medical/behavioral illnesses shall be maintained. No release of information will be made by any party without the employee’s written consent.

SECTION 18.5 TRAINING: Union representatives will receive the same training as supervisors receive.

1 **ARTICLE 19 - DISCIPLINE AND ADVERSE ACTIONS**

2
3 SECTION 19.1: The parties agree the objective of disciplinary and adverse action is to maintain
4 an orderly, competent, and productive organization. All disciplinary/adverse actions against
5 employees must be based on just cause, be consistent with applicable laws and regulations, and
6 be fair and equitable. This Article applies to reprimand, suspension, removal, reduction in grade
7 or pay, and furlough of thirty (30) days or less. The least degree of discipline likely to correct the
8 problem shall normally be taken.

9
10 SECTION 19.2: It is recognized that the Agency retains the right to discipline. However, it is
11 recognized that any disciplinary action demands the exercise of responsible judgment so that an
12 employee will not be penalized out of proportion to the character of the offense. It is further rec-
13 ognized that in order for disciplinary action to be effective, it must be initiated within a reasona-
14 ble time of the incident precipitating the action.

15
16 SECTION 19.3: This Article does not apply when the employer has taken a performance based
17 action under another legal authority.

18
19 SECTION 19.4: An employee, upon request, will be permitted to review that material which is
20 relied on to support the reason(s) for the action given in the proposal notices referred to in Sec-
21 tions 19.6 and 19.7.

22
23 SECTION 19.5 REPRIMAND: A reprimand is written disciplinary action which specifies the
24 reason(s) for the action. The reprimand will specify that the employee will be subject to more
25 severe disciplinary action upon any further offense, and that a copy of the reprimand will be
26 made a part of the Official Personnel Folder (OPF) for a specified period of time not to exceed
27 two (2) years. An employee receiving a reprimand may, by using the negotiated grievance pro-
28 cedures, contest the action.

29 SECTION 19.6 SUSPENSION OF FOURTEEN (14) CALENDAR DAYS OR LESS:

30
31 A. An employee against whom a suspension for fourteen (14) calendar days or less is proposed
32 is entitled to:

- 33 1. An advance written notice of thirty (30) calendar days stating the specific reason(s) for
34 the proposed action;
- 35 2. Fourteen (14) calendar days, to answer orally and/or in writing and to furnish affidavits
36 and other documentary evidence in support of the answer;
- 37 3. Be represented by an attorney or other representative of his/her own choosing.

38 B. Following the deadline for the employee's response, the Deciding Official will investigate the
39 incident, carefully consider all of the evidence, including the employee's response (if any)
40 and any mitigating factors. Based upon all information and applicable factors, the Deciding
41 Official will determine which of the following will occur:

- 42 1. Withdraw the proposed action;
- 43 2. Institute a lesser action than the proposed action;
- 44 3. Institute the proposed action;

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ARTICLE 19 - continued

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3 C. Any time after the end of the 30-day advance notice period, the Deciding Official will issue a
4 written decision. Although there is no statutory time limit for issuance of a decision, every
5 effort will be made to issue the decision within fifteen (15) work days following the end of
6 30-day advance notice period. The written decision will clearly state what action, if
7 any, will be taken, the reason(s) for the action, the effective date of the action (if applicable),
8 and the applicable grievance rights.
- 9 D. If the decision is unfavorable to the employee, the decision may be grieved through the nego-
10 tiated grievance procedure. If the negotiated grievance procedure is used, it will begin at the
11 final step of the grievance procedure.
- 12

**SECTION 19.7 REMOVAL, SUSPENSION FOR MORE THAN FOURTEEN (14)
13 CALENDAR DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR THIRTY
14 (30) DAYS OR LESS:**

- 15
- 16 A. An employee against whom such an action is proposed is entitled to:
- 17 1. A thirty (30) calendar day advance written notice stating the specific reason(s) for the
18 proposed action except as noted in B below.
 - 19 2. Fourteen (14) calendar days to answer orally and/or in writing, and to furnish affidavits
20 and other documentary evidence in support of the answer; and
 - 21 3. Be represented by an attorney or other representative of his/her own choosing.
- 22 B. A thirty (30) calendar day advance written notice is not required under any of the following
23 conditions:
- 24 1. The employer has reasonable cause to believe the employee has committed a crime for
25 which a sentence of imprisonment may be imposed;
 - 26 2. The advance written notice and the opportunity to answer are not necessary for a furlough
27 without pay because of unforeseeable circumstances such as a sudden breakdown in
28 equipment, natural disasters, or sudden emergencies requiring immediate curtailment of
29 activities. If the furlough is expected to exceed thirty days, RIF procedures must be used.
- 30 C. Following the deadline for the employee's response, the Deciding Official will investigate the
31 incident, carefully consider all of the evidence, including the employee's response (if any)
32 and any mitigating factors. Based upon all information and applicable factors, the Deciding
33 Official will determine which of the following will occur:
- 34 1. Withdraw the proposed action;
 - 35 2. Institute a lesser action than the proposed action;
 - 36 3. Institute the proposed action;
- 37 D. Any time after the end of the 30-day advance notice period, the Deciding Official will issue a
38 written decision. Although there is no statutory time limit for issuance of a decision, every
39 effort will be made to issue the decision within fifteen (15) work days following the end of
40 30-day advance notice period. The written decision will clearly state what action, if any, will
41 be taken, the reason(s) for the action, the effective date of the action (if applicable), and the
42 applicable grievance/appeal rights.
- 43 E. The employee may have entitlement to appeal the decision to the Merit Systems Protection
44 Board (MSPB) or, the employee may file a written grievance under the terms of this
45

1 **ARTICLE 19 - continued**

2
3 Agreement, but not both. Any such grievance will be initiated at the formal step of the nego-
4 tiated grievance procedure. The choice of the appeal forum is irrevocable. An employee
5 shall be deemed to have exhausted his/her option at such time as the employee timely initi-
6 ates an action under the statutory procedure or timely files a written grievance, whichever oc-
7 curs first.

8
9 **SECTION 19.8 LAST CHANCE AGREEMENTS (LCA'S):** Both parties agree that LCA's may
10 be appropriate in lieu of a traditional decision. Either party may suggest utilization of a LCA;
11 however, use of a LCA is not mandatory.

12 A. The employer will not coerce any employee into signing a LCA.

13 B. The LCA will be comprehensive, freely made, and fair.

14 C. The LCA will be specific to the misconduct the employee is charged with in the original pro-
15 posed action.

16 D. The employer recognizes that LCA's cannot modify the contract.

17 E. Procedures:

18 1. The LCA will be presented to the Union for review and negotiation to specific terms prior
19 to presentation to the employee.

20 2. The Union will have the opportunity to be present at meetings concerning LCA's.

21 3. If all parties agree to the terms, the LCA will be signed by the employee, Union repre-
22 sentative, primary management representative, and Area Labor Relations Officer.

23
24 **SECTION 19.9 SETTLEMENT AGREEMENTS:** The parties may enter into settlement agree-
25 ments if full agreement is reached. Settlement agreements differ from LCA's in that there are no
26 stipulations placed upon the employee; i.e., no instances of AWOL for a specific period, which
27 would result in sanctions to the employee. The LCA's generally includes this type of stipulation.

28
29 **SECTION 19.10 DIRECTED REASSIGNMENTS:** Management has the authority to direct an
30 employee's reassignment to a different position, including one outside the commuting area. If a
31 reassignment is directed as a disciplinary measure, this must be specifically stated in the written
32 notice to the employee and the employee must be advised that they have the right to utilize the
33 negotiated grievance procedures to contest the action.

34

ARTICLE 20 - TRAINING AND CAREER DEVELOPMENT

SECTION 20.1: The employer and Union agree that training and development of employees in the bargaining unit by this agreement are matters of importance and concerns. Consistent with needs and budget and travel limitations, the employer will conduct a training and development program in accordance with applicable laws and regulations such as CFR 410. It is recognized that this training policy may encompass the goals of upward mobility and career development.

SECTION 20.2: The employer will identify training needs of bargaining unit employees and will, to the maximum extent possible and within budget limitations, provide training designed to assure continued efficiency of employees in the performance of their officially assigned duties and for their career development needs. To assist in the identification of these training needs, supervisors and employees are encouraged to discuss training requirements at the time of the employee's final appraisal. However, employees may request training at any time.

SECTION 20.3: The employer agrees that it will not make its training nominations or selection determinations for bargaining unit employees on any non-merit factors. Rather, nominations will be made based on the need of the employer and subject to the availability of funds.

SECTION 20.4: It shall be a matter of interest and concern for the employer and the Union that appropriate training courses, seminars, conferences and meetings be scheduled whenever possible during work hours to allow the employees the opportunity to gain information, education and training. All feasible efforts will be made to reschedule tours of duty or work schedules to allow employees who are directed to attend training to do so.

SECTION 20.5: Supervisors will insure that Employees record all training of one (1) hour or more on ARMS (Administrative Resource Management System), regardless of whether or not there are costs associated with the training.

SECTION 20.6: The employer agrees to extend every reasonable consideration to the reimbursement of expenses incurred by an employee in attendance at approved work-related courses on his/her own time. An employee desiring to enroll in a non-Government facility shall submit a memorandum of request, via the supervisor prior to registration. Partial or full reimbursement, if approved, shall be in accordance with existing policies and regulations.

SECTION 20.7: When employees request training and funds are not available for training, the employee may be allowed official time for appropriately approved training; when the employee elects to bear the associated training costs.

SECTION 20.8: If an employee is required to train a new employee, the supervisor may provide additional help in the position to compensate for the time spent training the employee, if required. If the employee's work falls behind due to training another employee, management may provide help, if available, to bring the work up-to-date. (No employee will be disciplined, have their performance appraisal, within-grade increase, etc., negatively affected for training a new employee).

1 **ARTICLE 20 - continued**

2

3 SECTION 20.9 USE OF EQUIPMENT: The employer agrees to make academic aids, available
4 on the premises, such as desk calculators, computers, etc., available to employees enrolled in ap-
5 proved training courses, at mutually agreeable times during the employee's non-duty hours.

6

7 SECTION 20.10: For employees who are required to obtain continuing education in order to
8 maintain their state board certification, management will make a reasonable effort to approve re-
9 quests.

10

11 SECTION 20.11: The local union shall be allowed membership on all training committees es-
12 tablished at the facility level which develop training plans covering bargaining unit employees
13 and/or consider requests for unit employee training.

14

15 SECTION 20.12: Consistent with budget and staffing restrictions, management agrees to make
16 every effort to provide training to any unit employee whose position is adversely affected by re-
17 organization or changes in the mission, budget or technology, in order to assist in the placement
18 of the employee in existing or projected vacancies.

19

20 SECTION 20.13: The employer agrees to provide training to all employees on Sexual Harass-
21 ment.

22

23 SECTION 20.14: Management will make reasonable efforts to provide and/or make available
24 appropriate stress management training for unit employees. Participation in such training will be
25 excuse with no charge to leave if otherwise in a duty status.

26

1 **ARTICLE 21 - HOURS OF WORK AND TOURS OF DUTY**

2
3 SECTION 21.1: Management agrees to establish and administer work weeks, hours and tours of
4 duty in accordance with appropriate laws, regulations and this agreement.

5
6 SECTION 21.2: TOURS OF DUTY. If no other workweek has been established, the standard
7 workweek for full-time employees will consist of five (5) consecutive eight (8) hour days (40
8 hours per week). Days off will normally be two (2) consecutive days. When local management
9 knows in advance, it will give employees at least ten (10) workdays written notice before chang-
10 ing tours or shifts, except for emergency or unforeseen situations. Schedules will normally be
11 posted in an area accessible to the employee.

12
13 SECTION 21.3 ALTERNATE WORK SCHEDULES (AWS): The parties agree that AWS,
14 which are flexible and compressed work schedules, will be used Area-wide according to 5 CFR
15 610, for the purpose of improved productivity and greater service to the public.

16
17 SECTION 21.4: An employee who has a need to work a different tour of duty, through consulta-
18 tion with management and if consistent with the needs of the job, may be assigned to that tour of
19 duty. Management will give consideration to employees' personal needs when changing tours
20 and shifts. Union representation may be requested during said consultations.

21
22 SECTION 21.5 REST BREAKS: Each employee is authorized one (1) fifteen (15) minute rest
23 break within each four (4) hour work period, including overtime. Where possible, employees
24 shall be allowed to take the rest break away from the immediate worksite. It is agreed that the
25 rest periods may not be continuations of the meal break and they may not be granted immediately
26 after the beginning of the work shift or immediately prior to the end of the work shift, nor may
27 rest breaks be accumulated. It is recognized by both parties that rest breaks occur during DUTY
28 TIME and are a privilege afforded to the employee. Although there may be rare occasions when
29 the employee may not be able to exercise this privilege, it will not be arbitrarily withheld by the
30 supervisor.

31 32 SECTION 21.6 MEAL BREAKS:

- 33 A. Employees will take a meal break as close to the midway point of their shift as practicable.
34 However, it is understood that in an emergency, an employee's meal break may be postponed
35 or canceled. It is recognized by both parties that meal breaks occur during NON-DUTY
36 TIME. If an employee is directed to continue working through their meal break, the supervi-
37 sor must insure one of the following occurs:
- 38 1. The meal break is taken as soon as possible during the tour; however, the meal break will
39 not be taken immediately preceding the end of the employee's tour; OR
 - 40 2. If the meal break cannot be taken, the employee must be compensated through overtime
41 or compensatory time equal to the amount of time worked during the meal break.
- 42 B. In certain situations, including a meal break in the employee's tour may not be possible e.g.,
43 only employee that possess specialized skills that have direct patient care duties. In
44

1 **ARTICLE 21 - continued**

2

3 those rare cases, no meal break will be included in the employee's tour and the employee will
4 be appropriately compensated in accordance with law, rule, and regulation for all hours
5 worked. In the majority of cases, a meal break will be included in the employee's tour.

6

7 SECTION 21.7: The details of additional tour of duty policies are subject to local supplemental
8 negotiations.

9

1 **ARTICLE 22 - OVERTIME**

2
3 SECTION 22.1: Overtime is hours of work that exceed the tour/schedule established for the em-
4 ployee.

5 A. Overtime for employees on a regular tour is work that is more than 8 hours in a day or more
6 than 40 hours in a week.

7 B. Overtime for employees on an alternate work schedule is work that exceeds their scheduled
8 tour or more than 80 hours in a pay period. Example: The tour/schedule for the day is 10
9 hours and the employee works 12 hours then the employee is entitled to overtime payment for
10 the 2 hours that exceed the scheduled tour.

11
12 SECTION 22.2 OVERTIME ASSIGNMENTS: When overtime, including call-back overtime, is
13 required, employees will not be required to perform duties that are higher graded than their regu-
14 larly assigned duties. If there is a need to assign employees to higher graded duties on overtime,
15 the provisions of Article 16, Section 16.3 (temporary promotion) must be adhered to. Care will
16 be taken to ensure that employees in the same job classification performing the work during the
17 normal duty hours receive the opportunity for such work on the basis of equitable distribution. In
18 no case will overtime work be assigned to any employee as a reward or punishment.

19
20 SECTION 22.3 COMPENSATION: An employee directed or authorized to work overtime will
21 be compensated to the extent permitted by law.

22 A. Employees directed or authorized to work overtime shall be compensated for any partial hour
23 worked in increments of fifteen (15) minutes.

24 B. FLSA exempt employees may request compensatory time in lieu of overtime pay. FLSA
25 non-exempt employees must be paid overtime unless they request compensatory time, in
26 writing, in advance of working. An FLSA non-exempt employee may not be forced to work
27 compensatory time in lieu of overtime.

28 C. An employee who is called back and performs duty will receive a minimum of two (2) hours
29 of compensation for each instance of call-back overtime.

30 D. Employees will not be routinely scheduled to work overtime that cannot be compensated be-
31 cause it exceeds the pay cap established by law, if other appropriate scheduling can be ac-
32 complished.

33
34 SECTION 22.4 CALL BACK OVERTIME WORK: Irregular or occasional overtime work per-
35 formed by an employee on a day when work was not scheduled for him, or for which he is re-
36 quired to return to his place of employment, is deemed to be at least 2 hours in duration for the
37 purpose of premium pay, either in money or compensatory time.

38
39 The Employer recognizes that call-back work potentially has a negative impact on the employ-
40 ee's off-duty time and agrees that call-back work will be limited to those emergency or urgent
41 situations that cannot be postponed.

42 A. Employees may be placed on a call-back to work status.

43 B. An employee is off-duty, and time spent in an on-call status is not hours of work if:
44

ARTICLE 22 – continued

1. The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius (See Section 22.8); or
2. The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

Call-Back Lists/Schedules:

- A. A list of employees on call-back will be posted well in advance. The list will be provided to all affected employees upon posting.
- B. The call-back list will first identify volunteers willing to respond and after the volunteers are called in rotating order, the remaining listed employees will be called on a rotating basis. If the employee called cannot be reached, the next name on the call-back list will be contacted.
- C. The Employer must notify the employee prior to being placed on each call-back list whether the employee will be held accountable for not responding. When an employee is held accountable for responding they will be considered on duty and time spent on Standby.
- D. The Employer may at anytime declare an emergency and call-back employees. Employees will be responsible for responding as soon as possible. All such emergency situations will be documented and provided to the Union.

SECTION 22.5 STANDBY: An employee will be considered on duty and time spent on Standby Duty will be considered hours of work if:

- A. For work-related reasons, the employee is restricted by official order to a designated post of duty or location; and
- B. Is assigned to be in a state of readiness to perform work; and
- C. Has their activities substantially limited.
 1. An employee will be provided a written notification on the specific restricted activities to ensure that the employee will be able to perform his or her duties and responsibilities. Restrictions on alcohol consumption or use of certain medications will be detailed in the notification.
 2. An employee is not considered restricted for “work related reasons” if, for example, the employee remains at the post of duty voluntarily, or if the restriction is a natural result of geographic isolation or the fact that the employee resides on the agency’s premises.
 3. If the employee does not volunteer and is restricted to agency facilities or worksite, or so close that the employee cannot use the time effectively for their own purpose they shall be in Standby. Simply being in government owned living quarters would not be a basis for being restricted for work related reasons.

SECTION 22.6: Records showing the overtime distribution shall be maintained, and all employees within each organizational segment and at the appropriate grade and series, shall have an equal opportunity to share in the overtime, unless an employee indicates unwillingness to perform overtime duties. In the event an employee does not desire to work overtime, the employer shall make every effort to accommodate the employee's request to be excused from overtime work provided that another qualified employee is available for the overtime.

1 **ARTICLE 22 – continued**

2

3 **SECTION 22.7 RELIGIOUS COMP TIME:** It is Departmental policy to make every reasonable
4 effort to accommodate employee's request for compensatory time off for religious observance
5 when personal religious beliefs require employees to abstain from work during
6 periods of the workday or workweek. Employees must request such compensatory time in writ-
7 ing. Should an employee not use earned religious compensatory time at the originally scheduled
8 time, the time will be preserved for future religious compensatory time utilization or be paid to
9 the employee in a lump sum should they separate from the Department.

10

11 **SECTION 22.8:** Details of overtime (beepers, cell phones, response time for call-back overtime,
12 etc.) are subject to local negotiations and this agreement.

13

ARTICLE 23 - HOLIDAYS

SECTION 23.1: This applies to holiday leave requests for bargaining unit employees who will prioritize their holiday leave scheduling in accordance with the Article on Hours of Work and Tours of Duty. Employee choices are to be granted to the extent feasible. Where conflicts arise, employees will be given the opportunity to work it out between them. If no decision can be reached among employees, the decision will be made by the immediate supervisor in a fair and equitable manner. The deciding factors will include who had the holiday off last year and who had the most choices granted previously. However, all requests are subject to the needs and approval of the employer.

SECTION 23.2: For employees with Monday through Friday workweek if a holiday falls on Saturday, the preceding Friday is a day off for holiday purposes. If the holiday falls on a Sunday then the following Monday is the day off for holiday purposes. For an employee whose tour of duty is other than Monday through Friday and the holiday falls on the employees first scheduled day off the previous day is the day off for holiday purposes. For example: If an employee's normal days off are Wednesday and Thursday and the holiday falls on Thursday, then Friday would be the day off for holiday purposes. Employees who are not given the day off, but are required to work the holiday, will be compensated.

SECTION 23.3: The employer will consider any day designated by Federal Law or Executive Order as a legal holiday.

1 **ARTICLE 24 - LEAVE**

2
3 SECTION 24.1: All leave will be administered on a fair, consistent, and equitable basis in ac-
4 cordance with appropriate statutory and regulatory requirements set forth in 5 CFR 630. Deter-
5 minations of approval/disapproval must be based on sound, factual criteria present in each situa-
6 tion. Leave will not be denied solely on the basis of the employee's leave balance.
7

8 SECTION 24.2: The employee is responsible for making all requests for leave by signing on to
9 the Integrated Time and Attendance System (ITAS). The supervisor will utilize ITAS to record
10 approval/disapproval of the request. The supervisor will advise the employee if any supporting
11 documentation is required for any leave request. Sick leave for five (5) or more days requires a
12 physician's statement; however, the supervisor may require a physician's statement for shorter
13 absences based upon applicable circumstances.
14

15 SECTION 24.3: Leave will be earned and accrued in accordance with the specific statutes set
16 forth in the references above, and those prevailing laws.
17

18 SECTION 24.4: Leave will be charged in increments of fifteen (15) minutes.
19

20 SECTION 24.5: Authorities for Approval:

21 A. Supervisors have been delegated the authority approve/charge the following for employees
22 under their supervision:

- 23 • Accrued annual and sick leave;
- 24 • Leave without pay (LWOP) up to 40 hours in a calendar year;
- 25 • Charge absence without official leave (AWOL)
- 26 • Excuse absences without charge to leave for occasional, unavoidable absences of less
27 than one (1) hour
- 28 • Grant other types of paid leave authorized by law or regulation (e.g., military leave, court
29 leave, etc.).

30 B. Chief Executive Officers have been delegated the authority to grant LWOP not to exceed 12
31 weeks for employees at their respective service units.

32 C. The Associate Area Director, Office of Administrative Support has been delegated the au-
33 thority to grant/approve the following for all employees in the Billings Area:

- 34 • Advance sick/annual leave
- 35 • LWOP for more than 12 weeks
- 36 • Donated Annual Leave

37 D. The Area Director retains the authority to excuse absences that exceed one (1) hour.
38

39 SECTION 24.6: In accordance with appropriate authority set forth above, the following guides
40 will constitute general leave policies to be adhered to within the bargaining unit.
41

42 SECTION 24.7: The employer and employee will tentatively schedule vacation time for the year
43 in order to allow the employee rest and recreation from the worksite.
44

1 **ARTICLE 24 - continued**

2
3 SECTION 24.8: Following are the various types of leave which may be available to an employ-
4 ee, consistent with applicable rule and regulation. The employer agrees to ensure that
5 employees are appropriately advised of leave which may be available for use depending upon
6 their individual circumstances.

7 A. ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) is an unapproved absence in a non-pay
8 status. This is NOT requested by the employee. The supervisor should consult with their local
9 Administrative Officer or the Employee Relations Officer when they place an employee in an
10 AWOL status.

11 B. *ADVANCE ANNUAL LEAVE may be granted to an employee when they do not have ac-
12 crued annual leave available. Advance annual leave is granted only in extreme circumstances
13 and is not intended for routine absences. The advance amount cannot exceed the amount of an-
14 nual leave that the employee will earn through the end of the leave year or the end of their ap-
15 pointment if they are temporary.

16 C. *ADVANCE SICK LEAVE can be granted to an employee for the reasons described in 5 USC
17 6307. The advance amount cannot exceed 240 hours.

18 D. ANNUAL LEAVE can be used for any reason.

19 E. CONTINUATION OF PAY (COP) may be granted to an employee for up to 45 calendar days if
20 they were injured on-the-job and they must be absent from work as a result of the injury. COP
21 cannot be used for occupational diseases. The day of the injury is charged to excused absence
22 and subsequent absences are charged to COP.

23 F. COURT LEAVE is an excused absence for certain attendance at court in an official capacity
24 with a State, municipal, Federal, or District of Columbia Court, certain attendance in an unoffi-
25 cial capacity as a witness on behalf of a State or local government, legitimate preparation time
26 in preparing that testimony the witness is required to present, or to serve as a member of a jury.

27 G. *DONATED ANNUAL LEAVE is appropriate when an employee or a family member of an
28 employee is affected by a medical emergency. A medical emergency is defined as "a medical
29 condition that is likely to require an employee's absence from duty for a prolonged period of
30 time and to result in a substantial loss of income to the employee because of the unavailability
31 of paid leave." This definition specifically does not include maternity leave for a normal preg-
32 nancy, normal postnatal care, or death/funerals. Donated Leave is also not appropriate for use
33 when the employee is pursuing an application for disability retirement.

34 H. EDUCATIONAL LEAVE (LWOP) is when an employee requests leave to attend an education-
35 al institution to pursue a post-secondary degree/certification program. The supervisor will assist
36 employees to fullest extent possible in accommodating the request in accordance with applica-
37 ble law and regulation.

38 I. EXCUSED ABSENCE (Administrative Leave) is when the employee is excused from duty
39 without charge to any other type of leave. Supervisors may grant up to one (1) hour of excused
40 absence. Longer absences must be approved by the Area Director unless it is to accommodate
41 for a permanent change of station. IHS policy allows for up to 80 hours of excused leave to be
42 used either at the losing station, the gaining station, or a combination of the two.

43

1 **ARTICLE 24 - continued**

- 2
- 3 J. *FAMILY AND MEDICAL LEAVE provides for an entitlement to a total of 12 workweeks of
- 4 unpaid leave (LWOP) during any 12-month period for any of the following:
- 5 1. The birth of a son or daughter of the employee and the care of such son or daughter;
- 6 2. The placement of a son or daughter with the employee for adoption or foster care;
- 7 3. The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daugh-
- 8 ter, or parent has a serious health condition;
- 9 4. A serious health condition of the employee that makes the employee unable to perform
- 10 the essential functions of his/her position.
- 11 K. FUNERAL LEAVE is an excused absence for up to three (3) work days to make arrange-
- 12 ments for or to attend the funeral, or memorial service for, an immediate relative who died as
- 13 a result of wounds, disease, or injury incurred as a member of the Armed Forces in a combat
- 14 zone.
- 15 L. *LEAVE WITHOUT PAY (LWOP) is an approved absence in a non-pay status which must
- 16 be requested by the employee. LWOP is generally used when an employee must be absent
- 17 and does not have accrued leave available for their use. LWOP generally is not granted when
- 18 an employee has paid leave available.
- 19 M. MATERNITY/PATERNITY LEAVE is a combination of annual leave, sick leave, and/or
- 20 leave without pay.
- 21 N. MILITARY LEAVE may be appropriate for employees with full-time permanent or term ap-
- 22 pointments who are members of the National Guard or Reserve components of the Armed
- 23 Forces. All requests for military leave must include a copy of the applicable military orders.
- 24 O. OFFICE CLOSINGS (excused absence). All employees at all times are to presume, unless
- 25 otherwise notified, that their office will be open each regular workday regardless of any
- 26 weather or other emergency conditions which may develop. Employees are expected to be
- 27 prepared to cope with difficult driving conditions and disruptions of public transportation fa-
- 28 cilities. When the employer decides it is necessary to close the workplace for a full day, due
- 29 to inclement weather or other conditions, employees not required to work at their assigned
- 30 worksite or at another location will be granted excused absence in accordance with applicable
- 31 laws, rules and regulations. When Employees request leave, because of conditions discussed
- 32 above and early dismissals or office closing have not been authorized, the supervisor, con-
- 33 sistent with the needs of the employer, will apply a liberal leave policy.
- 34 P. RELIGIOUS COMPENSATORY TIME is a special category of compensatory time that is
- 35 appropriate for use when the employee's sincerely held religious beliefs require him/her to
- 36 abstain from working. Religious compensatory time, if approved by the supervisor, can be
- 37 earned either before or after the actual absence.
- 38 Q. SICK LEAVE can be used for any of the following reasons:
- 39 1. Receives medical, dental, or optical examination or treatment;
- 40 2. Is incapacitated for the performance of duties by sickness, injury, or pregnancy, or child
- 41 birth;
- 42 3. Provides care for a family member as a result of physical or mental illness; injury;
- 43 pregnancy; childbirth; or medical, dental or optical examination or treatment;
- 44 4. Provides care for a family member with a serious health condition;
- 45

ARTILCE 24 - continued

5. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
6. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his/her presence on the job because of exposure to a communicable disease;
7. Must be absent from duty for purposes relating the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
8. Employees with medical problems may use sick leave for treatment by traditional tribal methods.

NOTE: The amount of sick leave granted under items 3 and 5 may not exceed 104 hours in a leave year, subject to restrictions contained in 5 CFR 630.401. The amount of sick leave granted under item 4 may not exceed a total of 480 hours in a leave year (or, in the case of a part-time employee, an amount of sick leave equal to 12 times the average amount of hours in his/her scheduled tour of duty each week) subject to restrictions contained in 5 CFR 630.401.

*FINAL APPROVAL MUST BE OBTAINED FROM THE AAD/OAS, THROUGH THE AREA HUMAN RESOURCES OFFICE FOR ADVANCE LEAVE, DONATED LEAVE, AND LEAVE WITHOUT PAY.

SECTION 24.9: The employer recognizes that its service is mainly to Indian people. Accordingly, the employer will, to the extent possible, adopt a liberal leave policy for employees to observe Native American Day, local cultural events, etc.

SECTION 24.10 LEAVE RESTRICTION: When conditions arise such as those reflected below and the employee has not provided valid reasons for the excessive use of sick or annual leave, then the supervisor will consider imposing a leave restriction. Some of the indications of leave abuse are excessive tardiness, failure to request leave in advance and having no truly unanticipated or emergency situations, repeated instances of AWOL, repeated unplanned absences on Mondays and Fridays as well as before or after holidays, etc. When such conditions occur, the leave approving official will contact the Administrative Officer for procedures, guidance and assistance. Should it be determined that a referral to the EAP is appropriate, such a referral by the supervisor will be made after contact with the Administrative Officer and will not cancel the requirement that the employee be placed on a leave restriction. In the instance leave restriction is imposed, those restrictions will be reviewed at least every six (6) months.

SECTION 24.11: The details of additional local leave policies are subject to local supplemental negotiations.

SECTION 24.12 RESTORED ANNUAL LEAVE: Employees should refer to the HHS Timekeeper's Manual for information and instructions regarding restored annual leave.

ARTICLE 25 - PAY

SECTION 25.1: In accordance the Debt Collection Improvement Act of 1996 (P.L. 104-134), all employees are required to receive their salary payments through Direct Deposit (Electronic Fund Transfer). Employees may submit a written request for waiver of P.L. 104-134 to the Associate Area Director, Office of Administrative Support.

SECTION 25.2: Management agrees to provide accurate and timely reports of time and attendance for pay purposes and to assist any employee who does not receive a salary payment by Monday following the scheduled payday.

SECTION 25.3: Management agrees to follow-up with the Area Payroll Liaison or appropriate authorities on lost, stolen, or late salary payments.

SECTION 25.4: Employees will be paid the applicable wage for their position according to the wage scale for their area. This applies to overtime, call-back, standby, night differential, Sunday differential, etc. Employees may request a copy of the wage scale for their area

SECTION 25.5: Management agrees that if the employee is overpaid for whatever reason, the employee will be advised of the waiver for overpayment procedures. The employee will advise the employer anytime they suspect they were overpaid. Terms for any repayment are negotiable within the existing rules, law or regulation. In the event the employee is notified of the overpayment prior to receipt, the employee will normally be expected to repay the overpayment on the applicable payday.

SECTION 25.6: The Parties agree the employee is responsible for accessing myPAY to obtain a copy of their leave and earning statement (LES) each pay period. If the employee has a payroll issue, it is the employee's responsibility to provide a copy of the LES to their timekeeper. The employee has the option of establishing or cancelling limited access in myPay for their timekeeper. This allows the timekeeper the ability to review and reconcile the employee's leave balances. It is encouraged that all employee's utilize this option.

ARTICLE 26 - HEALTH AND SAFETY

SECTION 26.1: The parties agree that safety is of prime consideration in the accomplishment of the Indian Health Service mission and commit themselves to establishing and maintaining safe working conditions. The IHS is committed to maintaining a safety program that meets the requirements of applicable statutes and government-wide regulations.

SECTION 26.2: Safety and health matters are appropriate subjects for labor-management LMR and Partnership committees. At such meetings the safety and health officer (or designee) will be a participant if safety and health matters are discussed. Each Local will have at least one Union representative on any local safety and health committee that considers safety and health issues for employees in the bargaining unit. Such representative will be allowed to participate in committee meetings on official time if otherwise in a duty status. Where no committees are established, management agrees to meet with the Union upon request to discuss safety and health matters. Such meetings will include the safety officer and other management officials concerned with the matter. Union members of the committee will receive training in their duties and will have access to agency information necessary in the performance of their duties.

SECTION 26.3: Local Union officials will be allowed access to any information pertinent to unit employees' safety that is available at the facility and which is releasable under applicable laws and government-wide regulations.

SECTION 26.4: A Local Union representation will be given the opportunity to accompany any appropriate management official, safety officer, health official, etc., during a physical inspection of any workplace as well as the official who conducts an inspection in response to a report made by a bargaining unit employee of any unsafe or unhealthful condition. The Union representative will also be given the opportunity to accompany an OSHA inspector at any time the inspector conducts an inspection of the workplace of any bargaining unit employee. Copies of the inspection reports will be furnished to the Union.

SECTION 26.5: Management agrees to provide any special and/or unusual safety equipment or supplies (such as personal protective clothing or equipment and devices) necessary to as identified in an approved Job Hazard Analysis. Each facility will have a Job Hazard Analysis and will be reviewed at least annually. The Job Hazard Analysis will be jointly reviewed by the employee and supervisor as part of the JHA process. A copy will be provided to the employees and/or Local Union upon request. The specific type of safety equipment and safety supplies defined as a result of the Job Hazard Analysis may be further negotiated at the local level.

In addition, if there is serious concern for an employee's safety and the facility has security officers the employee will, upon request, be provided escort on IHS premises. If asbestos is found within a working area, management will negotiate with the union as appropriate, if requested.

SECTION 26.6: The employer agrees to provide adequate lighting, heating and ventilation in the work area. In extreme conditions, considerations will be given to excusing employees

1 **ARTICLE 26 - continued**

2
3 without charge to leave. If a decision is made not to excuse employees, supervisors will be liber-
4 al in granting employee requests for leave. The employer agrees that in extreme conditions, em-
5 ployee performance may be adversely affected.

6
7 SECTION 26.7: The employer will encourage employees to work safely and to report any ob-
8 served unsafe or unhealthy conditions to the employee's immediate supervisor. Stewards and
9 other representatives of the Union, in the course of performing their normally assigned responsi-
10 bilities, are encouraged to observe and report unsafe practices, equipment and conditions which
11 may represent health or safety hazards. The employer assures there will be no retaliation as a re-
12 sult of an employee reporting an unsafe practice or condition.

13
14 SECTION 26.8: Management agrees to assure prompt response of unsafe or unhealthy working
15 conditions and will require an inspection within 24 hours for employee reports of imminent dan-
16 ger conditions, or within 3 workdays for potentially serious safety and health conditions. If any
17 inspection is made, the Union will be informed and given an opportunity to be present and partic-
18 ipate during the inspection. The Union will be given an opportunity to be present at the final in-
19 spection before the acceptance of the area for employee occupancy. However, an inspection
20 may not be necessary if, through normal management action and with prompt notification to em-
21 ployees and safety and health committees, the hazardous condition(s) identified can be abated
22 immediately. Any employee, or representative of the employees, who believe that an unsafe or
23 unhealthy working condition exists in any workplace where such employee is employed, is en-
24 couraged to report the unsafe condition to his/her supervisor and will have the right to make a
25 report of the unsafe or unhealthful working condition to the appropriate safety officer and health
26 inspector and/or OSHA and request an inspection of such workplace for this purpose.

27
28 SECTION 26.9: Management agrees to ensure prompt abatement of unsafe and unhealthy work-
29 ing conditions. Once it has been determined that an unsafe or unhealthy working condition ex-
30 ists, a notice will be posted in accordance with 29 C.F.R. 1960. Whenever the facility cannot
31 abate an unsafe or unhealthy working condition within 30 calendar days, it will prepare an
32 abatement plan with the cooperation of the facility's safety and Health official or designee and
33 the safety and Health Committee. The safety officer who prepares the abatement plan will for-
34 ward a copy of the plan to the Safety and Health committee. If there is no committee, the plan
35 will be sent to the Union. Such plan will contain a proposed time table for abatement and a sum-
36 mary of steps being taken in the interim to protect employees from being injured as a result of the
37 unsafe or unhealthful working condition. All unit employees subject to the hazard will be ad-
38 vised of the interim measures in effect and will be kept informed of subsequent progress on the
39 abatement plan. Prior to establishment of the abatement plan, the facility Safety and Health offi-
40 cial will request that the supervisor take interim steps for protection of the employees. The su-
41 pervisor will comply with this request.

42

ARTICLE 26 – continued

SECTION 26.10: The term “imminent danger” means any condition or practices in any work place which are such that a danger exists which could be reasonably be expected to cause death or serious physical harm immediately before the imminence of such danger can be eliminated through normal procedures. This includes communicable diseases. In the case of imminent danger situations, employees will make reports by the most expeditious means available. The employee has the right to decline to perform his or her assigned tasks because of a reasonable belief that under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. However, in these instances, the employee must report the situation to his/her supervisor who is immediately available. If the supervisor believes the condition or corrected condition does not pose an immediate danger, then the supervisor will request an inspection by the appropriate safety officer as well as contact designated Union representative. A Union representative will be afforded the opportunity to be present at the time inspection is made. If the safety officer decides the condition does not pose an immediate danger, the instruction to return to work will be in writing and contain a statement declaring the area or assignment to be safe. Any refusal to perform such assignment after the safety officer’s decision or written instruction to return to work might be cause for discipline. However, continued refusal by the employee at this point would be justified if there was a reasonable basis for the employee to believe the immediate danger still exists. It is also understood that at any time the management official finds there is an immediate danger, the employee will not be obligated to return to the assignment until the imminent danger is removed. Any refusal to perform such assignment after the safety officer’s decision or written instruction to return to work might be cause for discipline.

SECTION 26.11: Employees must report any and all job-related injuries to their supervisor. The supervisor will take appropriate action to insure that:

- A. The employee has the opportunity to report to the facility health unit or his/her personal physician for treatment and to complete the necessary reports, etc.
- B. The Administrative Officer is promptly notified to insure timely processing of necessary reports and employee claims.

Management agrees that the Administrative Officer will provide assistance to employees in preparing necessary forms and documents, and, if appropriate to submit them to the Office of Workers compensation Program (OWCP), and management agrees to provide employees with assistance under the Federal Employees Compensation Act (FECA). Management agrees to provide employees with assistance in all phases of claims processing, including follow-up contacts with OWCP on the employees behalf. When management determines that employees are temporarily unable to perform their duties due to injury or occupational illness, but may be capable of returning to or remaining in duty status, management will make a good faith effort to locate a work assignment compatible with the employee’s physical condition before sending the employee home. This good faith effort will include an examination as to whether the employee’s regular duties may be temporarily tailored to meet the situation.

1 **ARTICLE 26 - continued**

2

3 SECTION 26.12: The employer agrees to maintain an employee occupational health program
4 and to provide the following services:

5 A. Emergency diagnosis and initial treatment of injury or illness that becomes necessary during
6 working hours and that is within the competency of the professional staff and facilities of the
7 health service unit. If the illness or injury is job-related and if the health service unit is un-
8 able to provide the level of medical services necessary, the employee will be transported to the
9 nearest appropriate medical facility. Provisions for special health examinations for specific
10 categories of employees work environment presents peculiar health hazards.

11 B. Subject to availability of resources and staff, individual facilities may provide diagnosis
12 and/or screening tests and health educational programs for unit employees as a health service.

13 C. Referral, upon request of the employee, to private physicians, dentists, and other community
14 health resources. An employee will normally be expected to notify his/her supervisor of his
15 intention to seek medical treatment in a health unit.

16

17 SECTION 26.13: In the interest of the safety of employees, when requested, the employer agrees
18 to provide assistance, when available, to employees who are requested to move furnishings such
19 as desks, filing cabinets, etc. When such assistance is not immediately available management
20 will normally wait a reasonable time before making the move in order to see if assistance be-
21 comes available.

22

23 SECTION 26.14 MOTOR VEHICLE OPERATION: Safety and restraint devices required by
24 law and employer will be provided by the employer and will meet or exceed the standard pro-
25 posed by the Department of Transportation. All employees are required to use seat belts. The
26 employer will strive to keep all unit vehicles in a high state of safety at all times. Employees are
27 encouraged to report any unsafe condition which may injure employee(s) or public to the appro-
28 priate official or immediate attention or repair.

29

30 SECTION 26.15: Additional details of Health and Safety, at the appropriate level, are subject to
31 negotiations.

32

1 **ARTICLE 27 - OFFICIAL TRAVEL**

2
3 **SECTION 27.1 POLICY:** Employees may be required to perform official travel as part of their
4 assigned duties. It is the employer's responsibility to pay for authorized travel expenses. Em-
5 ployees who are required to travel five (5) or more times per year have the option of applying for
6 a government-sponsored travel credit card (travel credit card) for the purpose of paying for offi-
7 cial travel costs. All other employees will utilize the travel advance and travel voucher proce-
8 dures.

9
10 **SECTION 27.2 TRAVEL CHARGE CARDS:** Employees who possess a travel credit card must
11 understand and agree that:

- 12 A. The travel charge card may be used **ONLY** for their own authorized official business expend-
13 es associated with temporary duty travel, including cash travel advances at an ATM, and al-
14 lowable relocation expenses (such as en-route travel and an authorized house-hunting trip) –
15 use of the card for any other purpose is misuse;
- 16 B. They are responsible for securing their travel credit card to prevent its unauthorized use by
17 others.
- 18 C. Using the card for personal purchases or other non-travel related expenses or ATM with-
19 draws other than for official travel for which such use is authorized, is misuse.
- 20 D. Using the card for local travel expenses is misuse unless a specific exception (listed in sec-
21 tion 9-00-10 of the 2005 HHS Travel Manual) applies;
- 22 E. Official Reprimands, suspension from duty without pay, and removal from the Federal ser-
23 vice are some actions that may be taken for misuse or abuse of the Government-issued travel
24 charge card.
- 25 F. They must pay the travel charge card bill on time every month they receive a bill, although
26 they may dispute any charge they believe is inaccurate by following the specified procedures
27 in the Cardholder Agreement with the card issuer;
- 28 G. An applicable Federal statute grants HHS the authority to collect undisputed delinquent
29 amounts owed to a contract travel charge card issuer through involuntary salary offset under
30 Public Law 105-264 and 5 USC 5701(d);
- 31 H. The travel charge card contractor who issued the card may suspend or cancel the card and
32 may ultimately report the delinquency to credit bureau(s). This may have unfavorable effects
33 on the employee's personal credit rating and reports; and
- 34 I. The employee's failure to adhere to the terms of the Traveler's Agreement and the Individual
35 Cardholder Agreement may be considered misconduct and could subject the employee to dis-
36 ciplinary and/or adverse action, up to and including removal from Federal Service.

37
38 The travel credit card may be cancelled due to failure to pay the bill in a timely manner and/or for
39 unauthorized use (personal expenses). If the travel credit card is cancelled for either reason, the
40 employee **WILL NOT BE ELIGIBLE FOR TRAVEL ADVANCES** and will be expected to pay
41 for their travel expenses and submit a travel voucher for reimbursement.

42
43 **SECTION 27.3 TRAVEL ADVANCES:** If the employee is not a travel charge card holder, they
44 may apply for a travel advance if they are required to perform official travel. Requests for
45

1 **ARTICLE 27 - continued**

2

3 travel advance must be initiated at least ten (10) work days in advance of the start of the travel.
4 Travel advances are limited to 60% of the estimated travel expenses, excluding airfare. Howev-
5 er, if the employee establishes that this limit would cause a financial hardship, the percentage
6 may be raised to 80%. Travel advances are paid through electronic fund transfer (EFT) directly
7 to the employee's checking or savings account. It is the employee's responsibility to provide the
8 EFT routing number for their bank and their account number in order for the travel advance to be
9 processed.

10

11 **SECTION 27.4 TRAVEL REIMBURSEMENTS:** The employer agrees that processing of travel
12 vouchers will be considered a high priority and will be processed accordingly.

13 A. The employee is responsible for submitting their travel voucher within five (5) work days af-
14 ter completion of the trip, unless circumstances as approved by their supervisor requires later
15 submittal.

16 B. Travel vouchers will be processed within thirty (30) calendar days of submission. Reim-
17 bursement will be paid through electronic fund transfer (EFT) directly to the employee's
18 checking or savings account. It is the employee's responsibility to provide the EFT routing
19 number for their bank and their account number in order for the travel reimbursement to be
20 paid.

21 C. If there is a delay in receipt of reimbursement, it is the employee's responsibility to work with
22 their local travel coordinator. The local travel coordinator will work with the Area Finance
23 Office to determine the cause for the delay and to determine what corrective action is re-
24 quired. If the employee is travel credit card holder, the Area Finance Office will be responsi-
25 ble for contacting the credit card company to advise them of the delayed reimbursement and
26 will advise the credit card company of an approximate date when reimbursement should be
27 received by the employee.

28

1 **ARTICLE 28 - REDUCTION-IN-FORCE/TRANSFER OF FUNCTION/
2 IPA ASSIGNMENTS/CONTRACTING OUT**
3

4 SECTION 28.1 GENERAL: The parties jointly recognize the desirability of maintaining the
5 stability of employment for employees. It is further recognized that occasions may arise when
6 Reduction-in-Force (RIF), Transfer of Function (TOF), Intergovernmental Personnel Agreements
7 (IPA'S) and Contracting Out (CO) may be necessary. The primary reason for such actions will
8 normally be as the result of a Tribe contracting with the Indian Health Service to take over a
9 function or entire organization under Indian Self-Determination regulations. When a RIF, TOF,
10 and/or IPA is necessary and it will affect employees, Office of Personnel Management (OPM)
11 Regulations, as set forth in the 5 CFR 351, and DHHS Instruction 351-1, or such superseding
12 instructions and Indian Preference Law, will be complied with.
13

14 SECTION 28.2 IMPACT BARGAINING: When it has been determined that a RIF, TOF, CO,
15 and/or IPA is necessary, the employer will notify the Union as far in advance as possible and ful-
16 fill its obligation to bargain consistent with 5 USC 71 and this Agreement.
17

18 SECTION 28.3 PROCEDURES FOR UNION INVOLVEMENT:

- 19 A. When a decision is made to effect a planned RIF, TOF, CO, and/or IPA, and the action will
20 affect employees, prior to notification to employees, the Union will be informed of the deci-
21 sion. Such notification will be in writing and will provide the following information:
22 1. The reason for the RIF, TOF, CO, and/or IPA;
23 2. The competitive area;
24 3. The approximate number of employees who may be affected;
25 4. The types of positions anticipated to be affected; and
26 5. The anticipated effective date that the action will be taken.
27 B. The employer will provide specific material related to the action to the Union as soon as is
28 administratively possible. The Union will be bound by the regulatory requirements of the
29 Privacy Act to insure no unauthorized access is provided to those who do not have a valid
30 need to know.
31 C. The employer will provide the Union with the following information in accordance with the
32 preceding section.
33 1. Access to OPM and DHHS Regulations and Instructions concerning the RIF Procedures,
34 Grade and Pay Retention, Veteran's Preference Rights, and Indian Preference Rights, and
35 proposed changes to such regulations;
36 2. A copy of RIF Authority;
37 3. A final list of identified positions to be abolished;
38 4. Final copies of applicable established Retention Registers;
39 5. Copies of General Notices; and
40 6. Copies of Specific Notices.
41 D. The employer will continue to keep the Union informed as to the status of the actions being
42 taken.
43

44 SECTION 28.4 EMPLOYEE INFORMATION AND ASSISTANCE: The employer will make
45 every effort to preclude or deal with employee fears and anxieties concerning the RIF, TOF,
46

1 **ARTICLE 28 - continued**

2
3 and/or IPA by insuring, to the extent possible, every effort is made to protect their employment
4 status; and to provide affected employees with as much information as possible. This will in-
5 clude, but not be limited to:

- 6 A. As much advance notice of RIF, TOF, CO, and/or IPA as is administratively possible, but in
7 no case will such notice be less than thirty (30) calendar days prior to the proposed effective
8 date;
- 9 B. Counseling concerning the importance of current information in their Official Personnel
10 Folders (OPF's); procedures for conducting RIFs; procedures and as much assistance as pos-
11 sible in converting from the excepted service to competitive service; retirement and individu-
12 al counseling as may be necessary and/or desired by the employee;
- 13 C. Specific Notice of RIF, normally not less than fourteen (14), but in no case less than five (5)
14 calendar days preceding the effective date of the action to be taken. Specific Notices will in-
15 clude the employee's right to grieve, and the appropriate grievance procedures, including ap-
16 plicable time limitations.

17
18 **SECTION 28.5 TIE BREAKING PROCEDURES TO BE APPLIED:** In the event two (2) or
19 more employees affected by the RIF and/or TOF tie for placement on a retention register because
20 all related mandatory ranking criteria are identical, the following items will be used in tie break-
21 ing in the following respective order to the extent required to break the tie:

- 22 A. Competitive employees who have Indian Preference eligibility will be given preference over
23 excepted employees, who have Indian preference;
- 24 B. The employee with the greatest length of service in the Indian Health Service will be given
25 preference over those who have a lesser length of service with the Indian Health Service;
- 26 C. The employee with the greatest length of service in the competitive area will be given prefer-
27 ence over those who have a lesser length of service in the competitive area.

28
29 **SECTION 28.6 OUTPLACEMENT PROGRAM:** The employer, in the interest of effective and
30 efficient management of the IHS mission, agrees to maintain an Outplacement Program, in con-
31 junction with the Displaced Employee Program and the Re-employment Priority Lists (which
32 afford assistance to competitive status Employees) as outlined in the CFR 330 and 351, and
33 DHHS Regulations and Instructions. The purpose of this program is to help place both competi-
34 tive career and/or career-conditional employees who have been displaced or are scheduled or are
35 scheduled to be displaced from their positions. Career conditional employees will be provided
36 outplacement services for a period of one (1) year, or until they are placed; and career employees
37 for a period of two (2) years, or until they are placed; whichever comes first. The parameters of
38 the program will be those outlined in the guides referenced previously. In addition, every effort
39 will be made to provide information regarding vacancies in other Federal agencies and local
40 and/or private governments and sectors.

41

ARTICLE 29 - EQUAL EMPLOYMENT OPPORTUNITY

SECTION 29.1: Within the scope of Indian Preference, Affirmative Action, and any other applicable program, management will not in any way discriminate for or against an individual regarding employment or conditions of employment because of race, color, religion, gender, national origin, age, disability or sexual orientation. Policy will be in the strictest adherence to both the letter and spirit of the Equal Employment Opportunity Act, the Civil Service Reform Act, and all other applicable laws and regulations.

SECTION 29.2: The Union may nominate employees to serve as EEO counselors. The employer retains the right to select EEO counselors from among employees nominated by the Union or others, including employees outside the bargaining unit. The name, work location, and phone number of each EEO counselor will be prominently posted in the appropriate unit or installation. Employees and their representatives will have a reasonable amount of official time to discuss the pre-complaint counseling issues with the designated EEO counselor.

SECTION 29.3: The employer and the Union agree that formal EEO complaints will be processed by the applicable provisions of public law, rules and regulations.

SECTION 29.4: The employer will make available to the Union copies of the Equal Employment Opportunity Complaint Procedure and will periodically publish the names of EEO counselors who will periodically advise employees of the EEO Complaint Procedure. The employer will make available to the Union, as it is received, copies of all published EEO regulations, policies, and procedures applicable to the employer.

SECTION 29.5 SEXUAL HARASSMENT: The employer acknowledges that sexual harassment undermines the integrity of the Federal Government and will not be condoned. Merit System principles require that all employees be allowed to work in an environment free from sexual harassment. Further, sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advance or refusal to promote employees who resist or protest sexual overtures. Union officials will receive the same training on sexual harassment that is afforded to supervisors. Sexual harassment is defined as: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual employment;
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

1 **ARTICLE 30 - VETERANS PREFERENCE**

2
3 SECTION 30.1: The employer agrees to abide by and honor all legislative laws that apply to
4 employees who meet the definition of veteran for employment purposes. Thus the employer rec-
5 ognizes that honorably discharged veterans have faithfully served our country, further the em-
6 ployer agrees not to impede any veteran employee from joining veteran support groups.

7
8 SECTION 30.2: Veterans may file a grievance if rights and privileges afforded by law or regula-
9 tion are violated.

10
11 SECTION 30.3: The Uniformed Services Employment and Reemployment Rights Act
12 (USERRA) of 1994 offers employment and benefits protections to those who are members of the
13 National Guard or Reserves or who serve in the uniformed services of the United States.
14 USERRA guarantees reemployment rights for up to five (5) years following an employee's entry
15 into a period of uniform service. It also prohibits discrimination on the basis of uniformed ser-
16 vice with respect to initial employment, reemployment, retention in employment, promotion or
17 any other benefit of employment. It also clarifies the employee's rights with regard to leave that
18 is taken in connection with active duty service. Employees who believe their USERRA rights
19 have been violated may file a complaint with the Secretary of Labor or file an appeal directly to
20 the Merit Systems Protection Board (MSPB).

21
22 SECTION 30.4: Excused absence for funeral leave may be granted for a veteran to enable
23 him/her to participate in a military funeral as an active pallbearer or as a member of a firing
24 squad or guard of honor. The maximum excused absence allowed in this instance may not ex-
25 ceed four hours in any one day.

26

1 **ARTICLE 31 - BENEFITS: PENSION AND INSURANCE**

2

3 Upon request of an employee who is within sixty (60) days of, or otherwise eligible, for retire-
4 ment, the employer will make pre-retirement counseling available to employees prior to date of
5 retirement. Such counseling will inform the employees of such items as the approximate amount
6 of annuity, eligibility to continue health and life insurance, lump sum payment of annual leave,
7 eligibility for future employment, and the effect of outside earnings on the annuity if appropriate.

8

1 **ARTICLE 32 - CIVIL DISTURBANCE/ASSAULT AGAINST**
2 **EMPLOYEES**

3
4 SECTION 32.1: In case of a civil disturbance in or near employee's work location, an employee
5 fearful of his/her safety should contact their immediate supervisor for instructions as to work as-
6 signment.

7
8 SECTION 32.2: The employer will make a determination as to the extent of possible personal
9 danger to the employee and will take such into consideration as to whether the employee should
10 report to his/her normal worksite or an alternate location. If released from duty, the employee
11 will make daily contact with his/her immediate supervisor for instructions, unless otherwise in-
12 structed by the supervisor.

13
14 SECTION 32.3: All cases of physical threat or violence to an employee will be reported to the
15 employee's immediate supervisor immediately. If in the judgment of the employee and/or super-
16 visor, the assault and/or threat is sufficiently severe, the proper law enforcement officials will be
17 notified. The employer will take the circumstances into consideration and determine whether
18 further assistance is necessary.

19
20 SECTION 32.4: A thorough written report of the incident will immediately be prepared by the
21 employee and forwarded to the proper authority for his/her review. This report will contain spe-
22 cific recommendations by the employee for future prevention of such incidents.

23
24 SECTION 32.5: Absence from work of the employee because of injury resulting from assault
25 while on duty may be handled in accordance Federal Employee Compensation Act regulations.

26
27 SECTION 32.6: The employer agrees to make every reasonable effort to safeguard the employ-
28 ees while performing their duties.

29
30 SECTION 32.7: Verbal threats that are abusive, intimidating and are a cause of the employee to
31 fear for their safety will also be reported immediately to their immediate supervisor, and/or prop-
32 er authorities.

33

1 **ARTICLE 33 - DISTRIBUTION**

2

3 SECTION 33.1: Management will be responsible for reproduction of the agreement for distribu-
4 tion. The Agreement will be available on the Billings Area IHS Homepage and 20 hard-copies
5 will be provided to each Local.

6

7 SECTION 33.2: The Union will distribute the agreement as they deem appropriate. If copies of
8 the contract are required, the contract can be printed from the copy located on the Billings Area
9 IHS Homepage.

10

1 **ARTICLE 34 - VOLUNTARY ALLOTMENT OF UNION DUES**

2
3 **SECTION 34.1 PAYROLL ALLOTMENT:** Management will continue to deduct dues
4 allotments in place when this Agreement becomes effective. An employee may authorize a
5 payroll allotment for the payment of union dues, based on the following criteria:

- 6 A. The employee is a member in good standing of the bargaining unit.
7 B. The employee's earnings are sufficient to cover the amount of the allotment.
8 C. The employee has voluntarily authorized a payroll deduction for union dues by properly
9 completing and certifying an SF-1187. The forms shall be made available to employees by
10 the union.
11 D. The Union has certified the employee's completed SF-1187.
12 E. The completed form has been submitted to the Area Human Resource Office.

13 **SECTION 34.2 ALLOTMENT CHANGES:**

- 14 A. Dues Amount: The local President, Union Council President, or National Union

15 **SECTION 34.4 CANCELLATION BY THE UNION:** The Local President, Union Council Pres-
16 ident, or National Union Representative will notify the ALRO in writing when a member of the
17 Local on dues withholding is expelled or suspended by the Union.

18
19
20 **SECTION 34.5 CANCELLATION BY EMPLOYEE:** An employee may request voluntary revo-
21 cation of dues by submitting an SF-1188, Revocation of Voluntary Authorization, to the ALRO
22 between April 1 and May 1 of any year, providing the employee has been on dues withholding
23 for one (1) year.

24
25 **SECTION 34.6 CANCELLATION BY MANAGEMENT:** An allotment for the deduction of
26 dues with respect to any employee will terminate when the agreement between the employer and
27 Union ceases to be applicable to the employee. Management will have the sole responsibility for
28 dropping persons who move out of the unit from withholding. Failure of management to do so
29 will not result in any financial liability on the part of the Local.

30 **SECTION 34.7 EFFECTIVE DATES:**

- 31 A. Withholding Start/Change in Dues Amount - will be effective at the beginning of the first
32 full pay period after receipt of notification by the ALRO.
33 B. Cancellation by Union/Management - will be effective at the end of the first full pay period
34 after receipt of notification by the ALRO or the personnel action which removes the em-
35 ployee from the unit.
36 C. Cancellation by the Employee - will be effective at the end of the first full pay period which
37 begins after May 1.

38 Any delays in processing will be reported to the Local Union by the ALRO.
39

40
41 **SECTION 34.8 REMITTANCE AND REPORTS:** Deductions will be made each pay period by
42 the employer and remittances will be made each pay period to the National Office of NFFE
43 (1016 16th Street, NW, Washington, D.C.). Remittance reports for each pay period will be dis-
44 tributed by management to NFFE National; Local Union President; and ALRO.
45

ARTICLE 35 - UNIFORM ALLOWANCES

SECTION 35.1: Management will pay uniform allowance to employees who are required to wear a uniform in the performance of his/her official duties. Appendix C is the list of positions, by occupational series, which are generally required to wear a uniform. Other positions may be designated by Management as required to wear a uniform based upon a case-by-case designation. Uniforms are distinguished from protective gear as such gear protects the employee from hazards presented by official duties, whereas uniforms do not provide such protection.

SECTION 35.2: Uniform allowance amounts will be based on the typical cost and upkeep of uniforms, not to exceed the maximum amount allowable by law and/or regulation. Management will conduct annual reviews to determine whether allowance amounts should be changed. Changes are subject to negotiations.

SECTION 35.3: Employees who wear uniforms which are not provided by the employer and maintenance is not provided by the employer, will receive \$400 per annum.

ARTICLE 36 - LABOR-MANAGEMENT RELATIONS COMMITTEE

SECTION 36.1 PURPOSE: Upon request of either party at the Local and/or Council level, the parties agree to establish a Labor-Management Relations Committee (LMR Committee). The purpose of the Committee is to provide an exchange of views between parties and discuss possible problems in the unit, but will not be a formal negotiation session. The LMR Committee meeting will not normally be utilized for discussion of individual grievances, but may be used to discuss problems which have led to or could lead to grievances.

SECTION 36.2 PROCEDURES: The individual Committee will establish policies and procedures which will govern the manner in which the Committee will conduct its business, which do not conflict with this agreement. Following the minimum requirements for all Committees in establishing their policies and procedures.

A. Committee members will be on official time and meetings will take place during regular duty hours.

B. The policies and procedures will be in writing and will be effected in accordance with Articles 37.

C. Meetings will be conducted in as short a time as the agenda permits.

D. Meetings will be held at least monthly. Meetings for Local Committees will occur the 1st Tuesday of the month at 10:00 a.m. unless agreed otherwise by the Parties.

E. The Parties will post/publish the schedule.

F. Minutes will be kept for all meetings.

G. Local Committees will consist of the Chief Executive Officer and Local President and may include up to three (3) members each from Management and the Union. Area Office Committee will consist of Area Executive Officer and Local President and may include up to three (3) members each from Management and the Union.

H. Local Committee meetings will be in a face-to-face format.

I. Meetings for the Council Committee will occur at least every 6 months. Meetings for the Council Committees will occur 2nd Tuesday in May and October at 10:00 a.m. unless agreed otherwise by the Parties. The meetings will generally be conducted via conference call. Council Committee will consist of the President, NFFE Council; each Local President; Area Director' Area Executive Officer; Northern Plains Human Resource Representative.

SECTION 36.3 COMMITTEE OBJECTIVES:

A. To identify problems and craft solutions to better serve the agency's employees, customers and mission;

B. To create a quality workplace through improved working conditions, enhanced working relationships and recognition for accomplishments.

C. To increase creative dialogue, influence change, and sharing of workplace issues in a positive and professional manner;

D. To enhance and establish policy and program improvement initiatives through pre-decisional involvement;

E. To act as equal partners to address issues from a problem-solving interest-based perspective;

F. To provide a harmonious relationship from which to build a mutual trust, respect, and understanding, based upon creativity and open mindedness.

ARTICLE 37 - LOCAL NEGOTIATIONS/SUPPLEMENTAL AGREEMENTS

SECTION 37.1: The parties recognize that not all subjects can be covered in a manner that is appropriate for all Locals depending on many variables such as the size and physical limitations of a facility, nature of services provided, hours of operation, etc. The items listed in Section 37.3 are appropriate for local negotiation and development of supplemental agreements and are not referenced in other articles within this agreement. This is note an all-inclusive list. In addition, several articles within these agreement state additional items are subject to local negotiations.

SECTION 37.2: The negotiating parties cannot exceed the provisions in this agreement when developing supplemental agreements and the following must occur:

- A. All agreements must be in writing and signed/dated by the Local President and Chief Executive Officer.
- B. Agreements must clearly state the items agreed to by the parties.
- C. All agreements must be forwarded to the Union Council President and Area Director before implementation and must include a concurrence line for both individuals to sign and date.
- D. The Union Council President and Area Director will review all agreements within 10 work days of receipt and will sign as concurring and provide a signed copy to the negotiating parties or if there are concerns, will advise of the parties of the concerns and work with the parties to resolve any issues.

SECTION 37.3: In addition to any other provisions contained in this agreement, Union and Management have agreed to the parameters described below regarding the following subject.

- A. **GOVERNMENT QUARTERS:** The details of government quarters are subject to local negotiations.
- B. **VOLUNTEERS:** The parties recognize that the volunteer program may impact the working conditions of the bargaining unit employee. Furthermore, the parties agree that adverse impacts to the bargaining unit employees when identified by the Union, such as changes in duties, responsibilities, training, safety, are subject for negotiations, upon request, at the local level. In order for the Union to determine adverse impacts, all available data concerning the use of volunteers, such as number of volunteers, their assigned duties, work locations, or periodic reports, will be provided the Union upon request.
- C. **BREAK AREAS:** Both parties recognize the issue of appropriate break areas for employees is an important issue and those specific areas are a subject for local negotiations. All existing areas, practices, and facilities in current use will continue until the local parties agree to changing the local practices. The details of break areas are subject to local negotiations.
- D. **VENDING MACHINES:** The employer will allow reasonable use of vending machines by the Union, for food items, the proceeds of which will be administered by the Union, unless prohibited by law or regulation. The details of break areas are subject to local negotiations.
- E. **EMPLOYEE SPACE:** The employer agrees to provide employees adequate space to store personal items (coats, shoes, purses, etc.) while the employee is on duty. The employee space must allow reasonable access to the employee while taking breaks. The details of employee space are subject to local negotiations.

1 **ARTICLE 38 - INDIAN CHILD PROTECTION AND FAMILY**
2 **VIOLENCE PROTECTION ACT**

3
4 Section 38.1: P.L. 101-630, Section 408, requires that the Secretary of HHS conduct an investi-
5 gation of the character of each individual who is employed, or is being considered for employ-
6 ment, in a position with duties and responsibilities that involve regular contact with or control
7 over Indian children.

8

1 **ARTICLE 39 - COMPUTER ACCESS**

2
3 **SECTION 39.1:** Employees are specifically authorized to access automated and web-based func-
4 tions during duty hours for the purpose of dealing with their employment benefits, applying for
5 positions within the Department of Health and Human Services, accessing e-mail, etc.

6
7 **SECTION 39.2:** Many functions applicable to employee benefits have been automated, includ-
8 ing the job application procedure. The nature of the work generally dictates which employees
9 will have a computer on their desk. It is not cost effective to place a computer on the desk of
10 each employee if the computer is infrequently used to carry out official duties.

11 A. Employees with an assigned computer on their desk. These employees are expected to utilize
12 their assigned computer to access the various automated functions.

13 B. Employees without an assigned computer. If 100% of the employees in a unit do not have an
14 assigned computer, at least one general use computer will be available within that work unit
15 (example: Dental Unit, Housekeeping Unit, Medical Records Unit, etc.)

16
17 **SECTION 39.3:** The employer agrees that employees will be afforded access to the internet for
18 the purpose of conducting official duties. It is also appropriate for limited personal use during
19 breaks. Employees are responsible for insuring they do not access inappropriate internet sites;
20 i.e., pornographic sites, sites which condone illegal activities, etc. Inappropriate access to such
21 sites could result in disciplinary action which could include removal.

22
23 **SECTION 39.4:** In the event an employee accidentally accesses a site that appears to be inap-
24 propriate, they must notify their supervisor and their local Site Manager. The Site Manager will
25 make a record of the access and will notify appropriate officials so that this site will be blocked
26 and future inadvertent accesses do not occur.

27
28 **SECTION 39.5:** Additional details of computer access are subject to local negotiations.
29

1 **ARTICLE 40 - FLEXIBLE WORKPLACE**

2
3 SECTION 40.1: The parties agree that the policy contained in the Indian Health Manual, Part 7,
4 Chapter 6, Flexible Workplace Arrangements Program, (FWAP) will be adhered to. Any
5 Billings Area IHS FWAP policy is subject to Council negotiations.

6
7 SECTION 40.2: The parties agree that all flexible workplace agreements will be in writing. The
8 parties also agree the Local Union President will be afforded the opportunity to review all agree-
9 ments for bargaining unit employees and will indicate their concurrence by signing the agree-
10 ment.

11

1 **ARTICLE 41 - SEVERE WEATHER OR OTHER EMERGENCY**
2 **SITUATIONS POLICY**
3

4 SECTION 41.1: GENERAL BACKGROUND STATEMENT: Periodically, weather conditions
5 or other emergency situations impact on the ability of the employees to report for duty as sched-
6 uled and may cause the facility to be closed or minimally staffed.
7

8 SECTION 41.2: All employees are to presume, unless otherwise notified, that their facility will
9 be open each regular workday regardless of weather or other emergency conditions.
10

11 SECTION 41.3:

12 A. FACILITY CLOSED: If the respective facility is closed, employees who were not otherwise
13 scheduled to be on leave will be granted excused absence for the period of closure.

14 B. LATE ARRIVAL/EARLY DEPARTURE: For those employees who request to leave early or
15 they arrive late for work due to severe weather or other emergency situations (i.e., road clo-
16 sures) management will adopt a liberal leave policy in granting requests for annual leave,
17 LWOP, and/or comp time to those employees. Supervisors and Chief Executive Officers
18 have the authority to grant excused absence for occasional, unavoidable absences of 1 hour or
19 less. This authority is appropriate for this type of situation.

20 C. ENTIRE TOUR/SHIFT: For those employees who are absent for the entire tour/shift due to
21 severe weather or other emergency situations (i.e., road closures) management will adopt a
22 liberal leave policy grand requests for annual leave, LWOP, and/or comp time for those em-
23 ployees.

24 D. Employees who cannot be released will be paid in accordance with applicable law, rule, and
25 regulation. Generally there will be no impact to an employee's salary unless they work be-
26 yond their scheduled hours and simply working while others have been allowed to leave or
27 otherwise be excused, does not entitle the employee to additional compensation.
28

29 SECTION 41.4: Additional details are subject to local negotiations.
30

1 **ARTICLE 42 - CULTURAL DISTINCTIONS**

2

3 SECTION 42.1: The parties recognize the value of specialized skills of employees such as their
4 ability to communicate in multiple languages. The work environment and patient care is uplifted
5 when the employee is able to better communicate with patients, the public, and other workers.

6 Management recognizes the need for employees to maintain their cultural distinctions as well as
7 to perform their duties and responsibilities.

8

ARTICLE 43 - DURATION AND EXTENT OF AGREEMENT

SECTION 43.1 EFFECTIVE DATE AND TERM: The effective term of this agreement will be the date it is signed by the designee of the secretary of Health and Human Services or thirty (30) calendar days after it is signed by the parties, whichever comes first, unless disapproved in accordance with law. It will remain in effect for three (3) years. The agreement will be renewed for an additional one (1) year period on the anniversary date, unless between 60 and 105 calendar days prior to such date, either party gives written notice to the other of its desire to amend or modify the agreement. If such notice is given, this agreement will remain in full force and effect until the changes have been negotiated and approved.

SECTION 43.2: MANDATORY 18-Month Reopener: This agreement is subject to mandatory negotiation by either party at the mid-point of the contract. Either party may give written notice to the other of its desire to amend or modify the agreement between 30 and 90 days prior to the mid-point between the effective date and the expiration date of the 3 year length of the agreement. Ground rules will be negotiated immediately upon notification of either party of their desire to reopen specific articles of the Agreement at the mid-point.

SECTION 43.3: Union initiated mid-term bargaining is allowed as appropriate under law. The provisions of any article in this agreement may not be reopened through the mid-term bargaining process except by mutual agreement or when necessitated by statutory changes as per 43.2 above.

SECTION 43.4: Should Union mid-term or 18- month reopener bargaining occur, agreement reached will be approved in accordance with 5 U.S.C. 7117.

APPENDIX A**BARGAINING UNIT DESCRIPTIONS****BILLINGS AREA OFFICE / LOCAL 478****Non-Professional Employees**

INCLUDED: All full-time non-supervisory employees of the Billings Area Office.

EXCLUDED: All temporary employees, supervisors, managers and personnel officials except those in purely clerical positions, professionals, and security guards.

BLACKFEET SERVICE UNIT / LOCAL 2107**Professional and Non-Professional Employees**

INCLUDED: All permanent full-time and part-time professional and non-professional employees of the Indian Health Service's Blackfeet Service Unit.

EXCLUDED: All supervisors, managers, and personnel officials except those in purely clerical positions, and security guards.

CROW SERVICE UNIT / LOCAL 224**Professional and Non-Professional Employees**

INCLUDED: All professional and non-professional non-supervisory employees of the Crow Service Unit.

EXCLUDED: All supervisors, managers, and personnel officials except those in purely clerical positions, and security guards.

FORT BELKNAP SERVICE UNIT / LOCAL 58**Professional and Non-Professional Employees**

INCLUDED: All full-time non-supervisory employees of the Fort Belknap Service Unit.

EXCLUDED: All supervisors, managers, and personnel officials except those in purely clerical positions, and security guards.

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FORT PECK SERVICE UNIT / LOCAL 2171
Non-Professional Employees

INCLUDED: All full-time non-supervisory employees of the Fort Peck Service Unit.

EXCLUDED: All supervisors, managers, and personnel officials except those in purely clerical positions, professionals, and security guards.

NORTHERN CHEYENNE SERVICE UNIT / LOCAL 1801
Professional and Non-Professional Employees

INCLUDED: All full-time non-supervisory employees of the Northern Cheyenne Service Unit.

EXCLUDED: All supervisors, managers, and personnel officials except those in purely clerical positions, professionals, and security guards.

1 **APPENDIX B**
2 **GLOSSARY**
3
4

5 ABSENTEEISM - Failure of worker to report to work when scheduled.
6

7 ADVANCE NOTICE - In general, an announcement of an intention to carry out a certain action,
8 given to an affected or interested party in sufficient time to prepare for the action.
9

10 ADVERSE ACTION - An official personnel action, usually taken for disciplinary reasons, which
11 adversely affects an employee and is of a severity such as suspension for more than 14 days, re-
12 duction in grade, or removal. For most Federal employees, an appeal system established by stat-
13 ute exists and the employee may choose to use the statutory procedure or, if coverage under the
14 contract permits, the negotiated procedure, but not both.
15

16 AFFIRMATIVE ACTION: A written program to actively eliminate employment standards and
17 practices which tend to discriminate on the grounds of race, creed, sex, or national origin.
18

19 AGENCY: For purposes of this contract, agency refers to the Department of any entity of the
20 Department above the activity level.
21

22 AGREEMENT: See Collective Bargaining Agreement.
23

24 ARBITRATION: Method of settling employment disputes through recourse to an impartial third
25 party whose decision is usually final and binding.
26

27 ARBITRATOR: An impartial third party to whom disputing parties submit their differences for
28 decision (award).
29

30 ARBITRABILITY: Refers to whether a given issue is subject to arbitration under the negotiated
31 agreement.
32

33 AUTHORITY: See Federal Labor Relations Authority.
34

35 AWARD: In Labor-Management arbitration, the final decision of an arbitrator, binding on both
36 parties.
37

38 BACK PAY: Pay awarded an employee for compensation lost due to an unjustified management
39 action.
40

41 BARGAINING: See Collective Bargaining.
42

43 BARGAINING RIGHTS: Legally recognized right of the labor-organization to represent em-
44 ployees in negotiations with employers.
45

1 BINDING ARBITRATION: Method of settling employment disputes through recourse to an
2 impartial third party (an arbitrator). The arbitrator's decision is usually final and binding. (In the
3 Federal Government binding arbitration is required as the final step in a negotiated grievance
4 procedure. It may also be used to settle impasses if its use is approved by the Federal Labor Re-
5 lations Authority).

6
7 CALL-BACK OVERTIME WORK: Irregular or occasional overtime work performed by an
8 employee on a day when work was not scheduled for him, or for which he is required to return to
9 his place of employment, is deemed to be at least 2 hours in duration for the purpose of premium
10 pay, either in money or compensatory time. (Also, see STANDBY).

11
12 CIVIL SERVICE REFORM ACT OF 1978 (CSRA): Legislation enacted in October 1978 for
13 the purpose of reforming and upgrading the Federal Civil Service System and improving effi-
14 ciency and quality of public service. The CSRA gives to management the tools and flexibility it
15 needed to improve operations. The new law also guaranteed protection of the basic rights of
16 Federal employees. In the Labor management relations area, CSRA was important because it
17 gives Federal employees legal basis for their right to organize, bargain collectively, and partici-
18 pate through labor unions in decisions which affect their working conditions.

19
20 COLLECTIVE BARGAINING (COLLECTIVE NEGOTIATIONS, NEGOTIATIONS,
21 NEGOTIATION OF AGREEMENT): The performance of the mutual obligations of the employ-
22 er and the exclusive representative to meet at reasonable times, to consult and bargain in good
23 faith, and to execute a written agreement with respect to terms and conditions of employment.
24 This obligation does not compete either party to agree to proposals or make concessions.

25
26 COLLECTIVE BARGAINING AGREEMENT (AGREEMENT, CONTRACT, BARGAINING
27 CONTRACT, NEGOTIATED AGREEMENT): A written agreement between an employer (or
28 an association of employers) and a labor organization (or organizations), usually for a definite
29 term, defining conditions of employment, rights of employees and labor organizations, and pro-
30 cedures to be followed in settling disputes or handling issues that arise during the life of the
31 agreement.

32
33 COMPELLING NEED: If the Federal Government, a basis upon which rules or regulations is-
34 sued by an agency or a primary national subdivision of any agency may serve as a bar to negotia-
35 tions with a labor organization. A labor organization may challenge the agencies interpretation
36 of compelling need before the Federal Labor Relations Authority (FLRA). In its regulations,
37 FLRA prescribes illustrative criteria for determining compelling need.

38
39 CONCILIATION: See Mediation.

40
41 CONFIDENTIAL EMPLOYEE: Employee who acts in a confidential capacity with respect to an
42 individual who formulates or administers management policies in the field of labor-management
43 relations.

44

1 CONDITIONS OF EMPLOYMENT (WORKING CONDITIONS): In the Federal sector, this
2 terms means personnel policies, practices and matters whether established rule, regulation or oth-
3 erwise, affecting working conditions. It does not include policies, practices and matters relating
4 to prohibited political activities, to the classification of any position, or to the extent the matters
5 are specifically provided for by Federal statute.

6
7 CONFLICT OF INTEREST: In labor-management officials (managers and supervisors) which
8 could cause or appear to cause a lessening of loyalty to management's interests due to involve-
9 ment in the leadership of management of a labor organization.

10
11 CONSOLIDATION: A procedure to combine existing bargaining units into one or more larger
12 appropriate bargaining units.

13
14 CONSULTATION: An obligation on the part of employers to consult the labor organization on
15 particular issues before taking action on them. In the Federal government consultation refers on-
16 ly to the duty owed by agencies to labor organizations which have been accorded national consul-
17 tation rights. That duty involves informing the union of substantive changes in conditions of
18 employment, giving the union time to present its views and recommendations, considering those
19 views and recommendations, and giving union written reasons for the final action.

20
21 CONTRACTING OUT: Practice of having certain steps in a work function performed by out-
22 side contractors, using their own workforces.

23
24 CONTRACT (AGREEMENT, COLLECTIVE BARGAINING AGREEMENT, NEGOTIATED
25 AGREEMENT): See Collective Bargaining Agreement.

26
27 CREDITED SERVICES: Years of employment counted for seniority. See Seniority.

28
29 DISCIPLINARY ACTIONS: Management-initiated actions designed to correct errant employee
30 behavior.

31
32 DISPUTE: Any disagreement between an employer and a labor organization requiring resolu-
33 tion; for example, the inability to agree on contract terms or grievances.

34
35 DOWNGRADING (DEMOTION, REDUCTION IN GRADE): Assignment of workers to tasks
36 or jobs with lower rates of pay.

37
38 DUES ALLOTMENT (DUES WITHHOLDING, DUES CHECK-OFF): Practice whereby the
39 employer, by agreement with the union (and upon written authorization form the employee where
40 required by law or agreement), regularly withholds union dues from employee's wages and
41 transmits these funds to the union. In the Federal government dues allotment occurs without
42 charge to the employee or the union.

43

1 EMERGENCY SITUATION: A situation which possess immediate and/or unforeseen work re-
2 quirements for the employer as a result of natural phenomenon or other circumstances beyond the
3 employer's reasonable control.

4
5 EMPLOYEE: An individual employed by the Billings Area Indian Health Service who is in-
6 cluded in the bargaining unit as described in Article I, Section 2.

7
8 EMPLOYEE COMPLAINT: A discussion between an employee and a union representative in
9 advance of a determination as to a final course of action by the employee, and a management of-
10 ficial if appropriate.

11
12 EMPLOYER: Broad term used to define any individual who represents the agency in an official
13 capacity, most commonly, supervisors and managers.

14
15 EXCLUSIVE RECOGNITION/REPRESENTATIVE: In the Federal government, the status con-
16 ferred on a labor organization which (1) receives a majority of votes cost in a representation elec-
17 tion and (2) is certified by the Federal Labor Relations Authority (FLRA) to represent all em-
18 ployees in an appropriate unit. Certification by the FLRA means that only this particular union is
19 authorized to act for the employees in the bargaining unit and negotiating agreements on their
20 behalf. The labor organization enjoying this status is known as the exclusive representative.

21
22 EXPIRATION DATE: Formal termination date established in a collective bargaining agreement
23 or the earliest date at which the agreement may be terminated.

24
25 FAMILY MEMBER: In relation to an employee, family member is the spouse and parents there-
26 of; children including adopted children, and spouses thereof; parents; brothers and sisters and
27 spouses thereof; and any person related by blood or affinity whose close association with the de-
28 ceased was such as to have been the equivalent of a family relationship.

29
30 FEDERAL LABOR RELATIONS AUTHORITY (FLRA): An administrative body empowered
31 by Title VII of the Civil Service Reform Act of 1978 to provide leadership in Federal service la-
32 bor-management relations matters by establishing policies and guidance.

33
34 FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS): An independent Federal
35 agency which provides mediators to assist the parties involved in negotiations, or in a labor dis-
36 pute, in reaching a settlement; provides lists of suitable arbitrators on requests; and engages in
37 various types of "preventive mediation."

38
39 FEDERAL SERVICE IMPASSE PANEL (FSIP): Organizational entity within the FLRA, which
40 resolves bargaining impasses in the Federal service. The Panel may recommend procedures, in-
41 cluding arbitration, for the settling of impasses or it may direct settlement of the impasse itself.

42

1 FORMAL DISCUSSION: Any formal discussion between one or more representatives of the
2 agency and one or more employees in the unit or their representatives concerning any grievance
3 or any personnel policy or practices or other general conditions of employment.
4

5 GENERAL COUNSEL: An individual, appointed by the President, to the FLRA. The General
6 Counsel is responsible for investigation unfair labor practice (ULP) allegations, filing and prose-
7 cuting ULP complaints and exercising others powers prescribed by the FLRA.
8

9 GENERAL WORKING CONDITIONS: Pertaining to, or applicable to, each and all bargaining
10 unit employees and/or employees within the work unit; e.g., Maintenance, Housekeeping, Medi-
11 cal Records, etc.
12

13 GOOD FAITH BARGAINING: Defined by law as the obligation to approach negotiations with
14 a sincere resolve to reach a collective bargaining agreement; to be represented by properly au-
15 thorized representatives who are prepared to discuss and negotiation; to meet at reasonable times
16 and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations;
17 and in the case of the agency, to furnish insofar as possible information requested by the union.
18

19 GRIEVANCE: Any complaint by an employee or by any labor organization relating to the em-
20 ployment of the employee(s). Also, any complaint concerning the effect or interpretation or
21 claim of breach of a collective bargaining agreement; or any claimed violation, interpretation, or
22 misapplication of any law, rule or regulation affecting conditions of employment. Whether a
23 complaint is formally recognized and handled as a grievance depends on whether the subject of
24 the complaint is covered under the grievance procedure.
25

26 GRIEVANCE PROCEDURE: See Negotiated Grievance Procedure.
27

28 INVESTIGATORY EXAMINATION: Any examination of an employee in the unit by a repre-
29 sentative of the agency in connection with investigation if (1) the employee reasonably believes
30 that the examination may result in disciplinary action against the employee; and (2) the employee
31 requests representation.
32

33 JUST CAUSE: Good or fair reasons to take some action.
34

35 LOCAL UNION (LOCAL, CHAPTER): Labor organization representing a bargaining unit locat-
36 ed in a particular area or establishment, which is chartered by an affiliated with, a national or in-
37 ternational union.
38

39 MANAGEMENT: Broad term used to define any individual who represents the agency in an
40 official capacity, most commonly, supervisors and managers.
41

42 MEDIATION: A procedure by which an impartial third party (a mediator) is used to settle dis-
43 putes. The mediator assists in resolving the dispute by attempting to find a solution
44

1 satisfactory to both parties in a dispute but renders no binding decisions. In the Federal govern-
2 ment, mediation is required before impasses can be referred to the Federal Service Impasses Pan-
3 el.

4
5 NEGOTIABILITY: Negotiability refers to whether a given topic is subject to bargaining be-
6 tween the agency and the union. The Federal Labor Relations Authority makes final decisions on
7 whether a subject is negotiable.

8
9 NEGOTIATION: The process of offers and counter-offers on a proposal to reach a mutual
10 agreement.

11
12 NEGOTIATED GRIEVANCE PROCEDURE: The systematic procedure agreed to by the nego-
13 tiating parties for the resolution of grievances. The negotiated grievance procedure is applicable
14 only to employees in the bargaining unit.

15
16 OFFICIAL TIME: Duty time that is granted to a union representative to perform designated
17 functions without loss of pay or charge to that employee's leave account.

18
19 OPEN PERIOD (WINDOW PERIOD): In the Federal government, the 45-day period (105 to 60
20 days prior to contract expiration) when a union holding exclusive recognition is subject to chal-
21 lenge by a competing union or by employees in the bargaining unit who no longer desire repre-
22 sentation by the recognized union.

23
24 ORGANIZING: That initial stage of union activity at an installation when a membership based
25 is developed. This may then be followed by attempts to gain exclusive recognition.

26
27 PANEL: See Federal Service Impasses Panel.

28
29 PAST PRACTICE: Those privileges of employees which by custom, tradition and known prac-
30 tice have become an integral part of their working condition will not be changed as a result of not
31 being enumerated in this agreement.

32
33 PRIMARY MANAGEMENT OFFICIAL: The Primary Management Official for each Service
34 Unit is the respective Chief Executive Officer. The Primary Management Official for the Area
35 Office is the Area Director.

36
37 RECOGNITION: EMPLOYER acceptance of a labor organization as the one authorized to ne-
38 gotiate, usually for all members of a negotiating unit.

39
40 RECOGNITION ELECTION: See Representation Election.

41
42 RECOGNITION PETITION: Document filed by a union, group of employees, or management
43 with the Federal Labor Relations Authority requesting an election to determine whether or not
44 employees wish to be (or continue to be) exclusively represented by a given labor organization.

45

1 REOPENER: See Reopening Clause.

2
3 REOPENING CLAUSE: Clause in a collective agreement stating the time or the circumstances
4 under which negotiations can be requested prior to the expiration of contract. Reopenings usual-
5 ly restrict the number of issues subject to renegotiation during the term of the agreement.

6
7 REPRESENTATIONAL ELECTION (ELECTION, RECOGNITION ELECTION): Election
8 conducted to determine whether the employees in an appropriate unit desire a labor organization
9 to act as their exclusive representative.

10
11 REPRESENTATIONAL ACTIVITIES: Activities performed by a union (or the union's repre-
12 sentative) on behalf of the employees the union represents. Such activities include meeting and
13 negotiating with management, investigating problems, handling grievances, and policing the
14 terms of the collective bargaining contract.

15
16 SHOWING OF INTEREST: The required evidence of employee evidence through petition sig-
17 natures, signed and dated authorization cards, allotment of dues forms executed by the employee,
18 an existing or recently expired agreement, or other evidence which is submitted to FLRA re-
19 questing a representation election or inclusion on the ballot. In decertification requests, a "show-
20 ing of interest" can consist of signed and dated petitions or cards, from employees indicating that
21 they no longer desire to be represented by the currently certified union.

22
23 STANDBY: An employee will be considered on duty and time spent on standby duty will be
24 considered hours of work if: (1) the employee is restricted to an agencies premises, or so close
25 thereto that the employee cannot use the time effectively for his or her own purposes; or (2) the
26 employee, although not restricted to the agencies premises; (i) is restricted to his or her living
27 quarters or designated post of duty; (ii) has his or her activities substantially limited; and (iii) is
28 required to remain in a state of readiness to perform work. (Also, see Call-back).

29
30 STATUTE: A law.

31
32 STEWARD (UNION OR SHOP STEWARD): A local union's representative in a plant or de-
33 partment elected by union members (or sometimes appointed by the union) to carry out union
34 duties, such as handling grievances, collecting dues, and soliciting new members. Stewards are
35 usually fellow employees who are trained by the union to carry out the duties described above.

36
37 SUPPLEMENTAL AGREEMENT: An agreement negotiated subsequent to the basic or initial
38 agreement. Also, an agreement often negotiated at the local level to augment a national agree-
39 ment.

40
41 SUSPENSION: Form of a disciplinary action of a temporary nature, as in removing a worker
42 from his job for a stipulated time with the consequent loss of pay.

43
44 THIRD PARTY PROCESS: Refers to a method of settling a dispute through recourse to an im-
45 partial party

46

1 TOUR OF DUTY: Term applied to whatever shift or which an employee is working.

2

3 UNFAIR LABOR PRACTICE: Action by either an employer or union which violates the provi-
4 sions of national or state labor relations laws, such as refusal to bargain in good faith.

5

6 UNILATERAL ACTION: Implementation of management decisions concerning personnel poli-
7 cies and matters affecting working conditions which were developed without union input. Uni-
8 lateral actions in areas requiring consultation or negotiation are subject to unfair labor practice
9 charges.

10

11 UNION: See Labor Organization.

12

13 UNION OBSERVER: Person present at an event but not participating.

14

15 UNIT: See Bargaining Unit.

16

17 VOLUNTARY APPLICATION: An application received that is not for a specific announcement
18 and which has not been solicited.

19

20 WEINGARTEN RIGHT: Name taken from a private sector case. Refers to the right of a bar-
21 gaining unit employee to be represented by the union under specific circumstances. That right
22 exists when (1) the employee is examined in an investigation (an investigatory examination)
23 conducted by an agency representative, (2) the employee reasonably believes disciplinary action
24 against him or her may result, and (3) the employee requests union representation.

25

26 WORKING CONDITIONS: See Conditions of Employment.

27

28 WORK HOURS: The hours during which the employer normally provides official services.

29

**APPENDIX C
POSITIONS APPROVED TO RECEIVE
UNIFORM ALLOWANCE**

The following positions are approved by management as being eligible to receive Uniform Allowance:

<u>TITLE</u>	<u>SERIES</u>
Security Guard	GS-0085
Medical Officer	GS-0602
Physician Assistant	GS-0603
Nurse/Community Health Nurse	GS-0610
Practical Nurse	GS-0620
Nursing Assistant/Aide	GS-0621
Medical Supply Technician	GS-0622
Dietitian/Nutritionist	GS-0630
Physical Therapist	GS-0633
Physical Therapy Assistant	GS-0636
Health Technician	GS-0640
Medical Technologist	GS-0644
Medical Technician	GS-0645
Diagnostic Radiologic Technologist/Technician	GS-0647
Pharmacist	GS-0660
Pharmacy Technician	GS-0661
Optometrist	GS-0662
Podiatrist	GS-0668
Medical Records Librarian	GS-0669
Medical Records Clerk/Technician	GS-0675
Dental Officer	GS-0680
Dental Assistant	GS-0681
Dental Hygienist	GS-0682
Custodial Worker	WG-3566
Motor Vehicle Operator	WG-5703
Cook	WG-7404
Food Service Worker	WG-7408
Maintenance Mechanic	WG-4749
Utility Systems Operator	WG-5406

APPENDIX D

5 USC CHAPTER 71

**The Federal Service
Labor-Management
Relations
Statute**

Subpart F--Labor-Management and Employee Relations

CHAPTER 71 -- LABOR-MANAGEMENT RELATIONS

SUBCHAPTER 1 -- GENERAL PROVISIONS

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7106. Management rights.

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7112. Determination of appropriate units for labor organization representation.

7113. National consultation rights.

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7116. Unfair labor practices.

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

7118. Prevention of unfair labor practices.

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

SUBCHAPTER I--GENERAL PROVISIONS

Sec. 7101. Findings and purpose

(a) The Congress finds that--

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize,

1 bargain collectively, and participate through labor organizations of
2 their own choosing in decisions which affect them--

3 (A) safeguards the public interest,

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

6 (C) facilitates and encourages the amicable settlements of
7 disputes between employees and their employers involving
8 conditions of employment; and
9

10 (2) the public interest demands the highest standards of
11 employee performance and the continued development and
12 implementation of modern and progressive work practices to
13 facilitate and improve employee performance and the efficient
14 accomplishment of the operations of the Government.
15

16 Therefore, labor organizations and collective bargaining in the civil
17 service are in the public interest.

18 (b) It is the purpose of this chapter to prescribe certain rights
19 and obligations of the employees of the Federal Government and to
20 establish procedures which are designed to meet the special requirements
21 and needs of the Government. The provisions of this chapter should be
22 interpreted in a manner consistent with the requirement of an effective
23 and efficient Government.
24

25 Sec. 7102. Employees' rights 26

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

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

37 (2) to engage in collective bargaining with respect to
38 conditions of employment through representatives chosen by employees
39 under this chapter.
40

41 Sec. 7103. Definitions; application 42

43 (a) For the purpose of this chapter--

44 (1) ``person'' means an individual, labor organization, or
45 agency;

46 (2) ``employee'' means an individual--

47 (A) employed in an agency; or

48 (B) whose employment in an agency has ceased because of any
49 unfair labor practice under section 7116 of this title and who
50 has not obtained any other regular and substantially equivalent
51 employment, as determined under regulations prescribed by the
52 Federal Labor Relations Authority;
53

54 but does not include--

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

57 (ii) a member of the uniformed services;

58 (iii) a supervisor or a management official;

59 (iv) an officer or employee in the Foreign Service of the
60 United States employed in the Department of State, the
61 International Communication Agency, the Agency for International

1 Development, the Department of Agriculture, or the Department of
2 Commerce; or

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

5
6 (3) ``agency'' means an Executive agency (including a
7 nonappropriated fund instrumentality described in section 2105(c) of
8 this title and the Veterans' Canteen Service, Department of Veterans
9 Affairs), the Library of Congress, the Government Printing Office,
10 and the Smithsonian Institution \1\ but does not include--

11 (A) the General Accounting Office;

12 (B) the Federal Bureau of Investigation;

13 (C) the Central Intelligence Agency;

14 (D) the National Security Agency;

15 (E) the Tennessee Valley Authority;

16 (F) the Federal Labor Relations Authority;

17 (G) the Federal Service Impasses Panel; or

18 (H) the United States Secret Service and the United States
19 Secret Service Uniformed Division.

20
21 (4) ``labor organization'' means an organization composed in
22 whole or in part of employees, in which employees participate and
23 pay dues, and which has as a purpose the dealing with an agency
24 concerning grievances and conditions of employment, but does not
25 include--

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

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

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

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

39
40 (5) ``dues'' means dues, fees, and assessments;

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

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

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

48 (9) ``grievance'' means any complaint--

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

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

53 (C) by any employee labor organization, or agency
54 concerning--

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

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

60
61 (10) ``supervisor'' means an individual employed by an agency

1 having authority in the interest of the agency to hire, direct,
2 assign, promote, reward, transfer, furlough, layoff, recall,
3 suspend, discipline, or remove employees, to adjust their
4 grievances, or to effectively recommend such action, if the exercise
5 of the authority is not merely routine or clerical in nature but
6 requires the consistent exercise of independent judgment, except
7 that, with respect to any unit which includes firefighters or
8 nurses, the term ``supervisor'' includes only those individuals who
9 devote a preponderance of their employment time to exercising such
10 authority;

11 (11) ``management official'' means an individual employed by an
12 agency in a position the duties and responsibilities of which
13 require or authorize the individual to formulate, determine, or
14 influence the policies of the agency;

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

25 (13) ``confidential employee'' means an employee who acts in a
26 confidential capacity with respect to an individual who formulates
27 or effectuates management policies in the field of labor-management
28 relations;

29 (14) ``conditions of employment'' means personnel policies,
30 practices, and matters, whether established by rule, regulation, or
31 otherwise, affecting working conditions, except that such term does
32 not include policies, practices, and matters--

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

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

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

38 (15) ``professional employee'' means--

39 (A) an employee engaged in the performance of work--

40 (i) requiring knowledge of an advanced type in a field
41 of science or learning customarily acquired by a prolonged
42 course of specialized intellectual instruction and study in
43 an institution of higher learning or a hospital (as
44 distinguished from knowledge acquired by a general academic
45 education, or from an apprenticeship, or from training in
46 the performance of routine mental, manual, mechanical, or
47 physical activities);

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

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

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

56 (B) an employee who has completed the courses of specialized
57 intellectual instruction and study described in subparagraph

58 (A)(i) of this paragraph and is performing related work under
59 appropriate direction or guidance to qualify the employee as a
60
61

1 professional employee described in subparagraph (A) of this
2 paragraph;

3
4 (16) ``exclusive representative'' means any labor organization
5 which--

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

9 (B) was recognized by an agency immediately before the
10 effective date of this chapter as the exclusive representative
11 of employees in an appropriate unit--

12 (i) on the basis of an election, or

13 (ii) on any basis other than an election,

14
15 and continues to be so recognized in accordance with the
16 provisions of this chapter;

17
18 (17) ``firefighter'' means any employee engaged in the
19 performance of work directly connected with the control and
20 extinguishment of fires or the maintenance and use of firefighting
21 apparatus and equipment; and

22 (18) ``United States'' means the 50 States, the District of
23 Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands,
24 the Trust Territory of the Pacific Islands, and any territory or
25 possession of the United States.

26
27 (b)(1) The President may issue an order excluding any agency or
28 subdivision thereof from coverage under this chapter if the President
29 determines that--

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

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

36
37 (2) The President may issue an order suspending any provision of
38 this chapter with respect to any agency, installation, or activity
39 located outside the 50 States and the District of Columbia, if the
40 President determines that the suspension is necessary in the interest of
41 national security.

42
43 Sec. 7104. Federal Labor Relations Authority

44
45 (a) The Federal Labor Relations Authority is composed of three
46 members, not more than 2 of whom may be adherents of the same political
47 party. No member shall engage in any other business or employment or
48 hold another office or position in the Government of the United States
49 except as otherwise provided by law.

50 (b) Members of the Authority shall be appointed by the President by
51 and with the advice and consent of the Senate, and may be removed by the
52 President only upon notice and hearing and only for inefficiency,
53 neglect of duty, or malfeasance in office. The President shall designate
54 one member to serve as Chairman of the Authority. The Chairman is the
55 chief executive and administrative officer of the Authority.

56 (c) A member of the Authority shall be appointed for a term of 5
57 years. An individual chosen to fill a vacancy shall be appointed for the
58 unexpired term of the member replaced. The term of any member shall not
59 expire before the earlier of--

60 (1) the date on which the member's successor takes office, or

61 (2) the last day of the Congress beginning after the date on

1 which the member's term of office would (but for this paragraph)
2 expire.

3
4 (d) A vacancy in the Authority shall not impair the right of the
5 remaining members to exercise all of the powers of the Authority.

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

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

14 (2) The General Counsel may--

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

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

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

20
21 (3) The General Counsel shall have direct authority over, and
22 responsibility for, all employees in the office of General Counsel,
23 including employees of the General Counsel in the regional offices of
24 the Authority.

25
26
27 Sec. 7105. Powers and duties of the Authority

28
29 (a)(1) The Authority shall provide leadership in establishing
30 policies and guidance relating to matters under this chapter, and,
31 except as otherwise provided, shall be responsible for carrying out the
32 purpose of this chapter.

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

35 (A) determine the appropriateness of units for labor

36 organization representation under section 7112 of this title;

37 (B) supervise or conduct elections to determine whether a labor
38 organization has been selected as an exclusive representative by a
39 majority of the employees in an appropriate unit and otherwise
40 administer the provisions of section 7111 of this title relating to
41 the according of exclusive recognition to labor organizations;

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

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

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

50 (F) prescribe criteria relating to the granting of consultation
51 rights with respect to conditions of employment under section
52 7117(d) of this title;

53 (G) conduct hearings and resolve complaints of unfair labor
54 practices under section 7118 of this title;

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

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

59
60 (b) The Authority shall adopt an official seal which shall be
61 judicially noticed.

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

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

16 (e)(1) The Authority may delegate to any regional director its
17 authority under this chapter--

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

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

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

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

25
26 (2) The Authority may delegate to any administrative law judge
27 appointed under subsection (d) of this section its authority under
28 section 7118 of this title to determine whether any person has engaged
29 in or is engaging in an unfair labor practice.

30 (f) If the Authority delegates any authority to any regional
31 director or administrative law judge to take any action pursuant to
32 subsection (e) of this section, the Authority may, upon application by
33 any interested person filed within 60 days after the date of the action,
34 review such action, but the review shall not, unless specifically
35 ordered by the Authority, operate as a stay of action. The Authority may
36 affirm, modify, or reverse any action reviewed under this subsection. If
37 the Authority does not undertake to grant review of the action under
38 this subsection within 60 days after the later of--

39 (1) the date of the action; or

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

42
43 the action shall become the action of the Authority at the end of such
44 60-day period.

45 (g) In order to carry out its functions under this chapter, the
46 Authority may--

47 (1) hold hearings;

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

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

55
56 (h) Except as provided in section 518 of title 28, relating to
57 litigation before the Supreme Court, attorneys designated by the
58 Authority may appear for the Authority and represent the Authority in
59 any civil action brought in connection with any function carried out by
60 the Authority pursuant to this title or as otherwise authorized by law.

61 (i) In the exercise of the functions of the Authority under this

1 title, the Authority may request from the Director of the Office of
2 Personnel Management an advisory opinion concerning the proper
3 interpretation of rules, regulations, or policy directives issued by the
4 Office of Personnel Management in connection with any matter before the
5 Authority.

6
7 Sec. 7106. Management rights

8
9 (a) Subject to subsection (b) of this section, nothing in this
10 chapter shall affect the authority of any management official of any
11 agency--

12 (1) to determine the mission, budget, organization, number of
13 employees, and internal security practices of the agency; and

14 (2) in accordance with applicable laws--

15 (A) to hire, assign, direct, layoff, and retain employees in
16 the agency, or to suspend, remove, reduce in grade or pay, or
17 take other disciplinary action against such employees;

18 (B) to assign work, to make determinations with respect to
19 contracting out, and to determine the personnel by which agency
20 operations shall be conducted;

21 (C) with respect to filling positions, to make selections
22 for appointments from--

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

25 (ii) any other appropriate source; and

26
27 (D) to take whatever actions may be necessary to carry out
28 the agency mission during emergencies.

29
30 (b) Nothing in this section shall preclude any agency and any labor
31 organization from negotiating--

32 (1) at the election of the agency, on the numbers, types, and
33 grades of employees or positions assigned to any organizational
34 subdivision, work project, or tour of duty, or on the technology,
35 methods, and means of performing work;

36 (2) procedures which management officials of the agency will
37 observe in exercising any authority under this section; or

38 (3) appropriate arrangements for employees adversely affected by
39 the exercise of any authority under this section by such management
40 officials.

41
42
43 SUBCHAPTER II--RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

44
45 Sec. 7111. Exclusive recognition of labor organizations

46
47 (a) An agency shall accord exclusive recognition to a labor
48 organization if the organization has been selected as the
49 representative, in a secret ballot election, by a majority of the
50 employees in an appropriate unit who cast valid ballots in the election.

51 (b) If a petition is filed with the Authority--

52 (1) by any person alleging--

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

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

61 or

1
2 (2) by any person seeking clarification of, or an amendment to,
3 a certification then in effect or a matter relating to
4 representation;

5
6 the Authority shall investigate the petition, and if it has reasonable
7 cause to believe that a question of representation exists, it shall
8 provide an opportunity for a hearing (for which a transcript shall be
9 kept) after a reasonable notice. If the Authority finds on the record of
10 the hearing that a question of representation exists, the Authority
11 shall supervise or conduct an election on the question by secret ballot
12 and shall certify the results thereof. An election under this subsection
13 shall not be conducted in any appropriate unit or in any subdivision
14 thereof within which, in the preceding 12 calendar months, a valid
15 election under this subsection has been held.

16 (c) A labor organization which--

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

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

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

24
25 may intervene with respect to a petition filed pursuant to subsection
26 (b) of this section and shall be placed on the ballot of any election
27 under such subsection (b) with respect to the petition.

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

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

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

35
36 In any election in which no choice on the ballot receives a majority of
37 the votes cast, a runoff election shall be conducted between the two
38 choices receiving the highest number of votes. A labor organization
39 which receives the majority of the votes cast in an election shall be
40 certified by the Authority as the exclusive representative.

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

45 (f) Exclusive recognition shall not be accorded to a labor
46 organization--

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

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

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

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

1 (B) the petition for exclusive recognition is filed not more
2 than 105 days and not less than 60 days before the expiration
3 date of the collective bargaining agreement; or
4

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

10
11 (g) Nothing in this section shall be construed to prohibit the
12 waiving of hearings by stipulation for the purpose of a consent election
13 in conformity with regulations and rules or decisions of the Authority.
14

15 Sec. 7112. Determination of appropriate units for labor
16 organization representation
17

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

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

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

33 (2) a confidential employee;

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

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

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

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

44 (7) any employee primarily engaged in investigation or audit
45 functions relating to the work of individuals employed by an agency
46 whose duties directly affect the internal security of the agency,
47 but only if the functions are undertaken to ensure that the duties
48 are discharged honestly and with integrity.
49

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

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

55 (2) which is affiliated directly or indirectly with an
56 organization which represents other individuals to whom such
57 provision applies.
58

59 (d) Two or more units which are in an agency and for which a labor
60 organization is the exclusive representative may, upon petition by the
61 agency or labor organization, be consolidated with or without an

1 election into a single larger unit if the Authority considers the larger
2 unit to be appropriate. The Authority shall certify the labor
3 organization as the exclusive representative of the new larger unit.

4
5 Sec. 7113. National consultation rights

6
7 (a) If, in connection with any agency, no labor organization has
8 been accorded exclusive recognition on an agency basis, a labor
9 organization which is the exclusive representative of a substantial
10 number of the employees of the agency, as determined in accordance with
11 criteria prescribed by the Authority, shall be granted national
12 consultation rights by the agency. National consultation rights shall
13 terminate when the labor organization no longer meets the criteria
14 prescribed by the Authority. Any issue relating to any labor
15 organization's eligibility for, or continuation of, national
16 consultation rights shall be subject to determination by the Authority.

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

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

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

23
24 (2) If any views or recommendations are presented under paragraph
25 (1) of this subsection to an agency by any labor organization--

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

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

31
32 (c) Nothing in this section shall be construed to limit the right of
33 any agency or exclusive representative to engage in collective
34 bargaining.

35
36 Sec. 7114. Representation rights and duties

37
38 (a)(1) A labor organization which has been accorded exclusive
39 recognition is the exclusive representative of the employees in the unit
40 it represents and is entitled to act for, and negotiate collective
41 bargaining agreements covering, all employees in the unit. An exclusive
42 representative is responsible for representing the interests of all
43 employees in the unit it represents without discrimination and without
44 regard to labor organization membership.

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

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

51 (B) any examination of an employee in the unit by a
52 representative of the agency in connection with an investigation
53 if--

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

56 (ii) the employee requests representation.

57
58 (3) Each agency shall annually inform its employees of their rights
59 under paragraph (2)(B) of this subsection.

60 (4) Any agency and any exclusive representative in any appropriate
61 unit in the agency, through appropriate representatives, shall meet and

1 negotiate in good faith for the purposes of arriving at a collective
2 bargaining agreement. In addition, the agency and the exclusive
3 representative may determine appropriate techniques, consistent with the
4 provisions of section 7119 of this title, to assist in any negotiation.

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

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

10 (B) exercising grievance or appellate rights established by law,
11 rule, or regulation;

12
13 except in the case of grievance or appeal procedures negotiated under
14 this chapter.

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

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

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

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

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

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

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

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

36
37 (5) if agreement is reached, to execute on the request of any
38 party to the negotiation a written document embodying the agreed
39 terms, and to take such steps as are necessary to implement such
40 agreement.

41
42 (c)(1) An agreement between any agency and an exclusive
43 representative shall be subject to approval by the head of the agency.

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

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

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

58
59 Sec. 7115. Allotments to representatives

60
61 (a) If an agency has received from an employee in an appropriate

1 unit a written assignment which authorizes the agency to deduct from the
2 pay of the employee amounts for the payment of regular and periodic dues
3 of the exclusive representative of the unit, the agency shall honor the
4 assignment and make an appropriate allotment pursuant to the assignment.
5 Any such allotment shall be made at no cost to the exclusive
6 representative or the employee. Except as provided under subsection (b)
7 of this section, any such assignment may not be revoked for a period of
8 1 year.

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

- 11 (1) the agreement between the agency and the exclusive
12 representative involved ceases to be applicable to the employee; or
13 (2) the employee is suspended or expelled from membership in the
14 exclusive representative.

15
16 (c)(1) Subject to paragraph (2) of this subsection, if a petition
17 has been filed with the Authority by a labor organization alleging that
18 10 percent of the employees in an appropriate unit in an agency have
19 membership in the labor organization, the Authority shall investigate
20 the petition to determine its validity. Upon certification by the
21 Authority of the validity of the petition, the agency shall have a duty
22 to negotiate with the labor organization solely concerning the deduction
23 of dues of the labor organization from the pay of the members of the
24 labor organization who are employees in the unit and who make a
25 voluntary allotment for such purpose.

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

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

33
34 Sec. 7116. Unfair labor practices

35
36 (a) For the purpose of this chapter, it shall be an unfair labor
37 practice for an agency--

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

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

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

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

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

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

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

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

1
2 (b) For the purpose of this chapter, it shall be an unfair labor
3 practice for a labor organization--
4 (1) to interfere with, restrain, or coerce any employee in the
5 exercise by the employee of any right under this chapter;
6 (2) to cause or attempt to cause an agency to discriminate
7 against any employee in the exercise by the employee of any right
8 under this chapter;
9 (3) to coerce, discipline, fine, or attempt to coerce a member
10 of the labor organization as punishment, reprisal, or for the
11 purpose of hindering or impeding the member's work performance or
12 productivity as an employee or the discharge of the member's duties
13 as an employee;
14 (4) to discriminate against an employee with regard to the terms
15 or conditions of membership in the labor organization on the basis
16 of race, color, creed, national origin, sex, age, preferential or
17 nonpreferential civil service status, political affiliation, marital
18 status, or handicapping condition;
19 (5) to refuse to consult or negotiate in good faith with an
20 agency as required by this chapter;
21 (6) to fail or refuse to cooperate in impasse procedures and
22 impasse decisions as required by this chapter;
23 (7)(A) to call, or participate in, a strike, work stoppage, or
24 slowdown, or picketing of an agency in a labor-management dispute if
25 such picketing interferes with an agency's operations, or
26 (B) to condone any activity described in subparagraph (A) of
27 this paragraph by failing to take action to prevent or stop such
28 activity; or
29 (8) to otherwise fail or refuse to comply with any provision of
30 this chapter.
31

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

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

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

41 (2) to tender dues uniformly required as a condition of
42 acquiring and retaining membership.
43

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

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

55 (e) The expression of any personal view, argument, opinion or the
56 making of any statement which--

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

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

1 (3) informs employees of the Government's policy relating to
2 labor-management relations and representation,

3
4 shall not, if the expression contains no threat of reprisal or force or
5 promise of benefit or was not made under coercive conditions, (A)
6 constitute an unfair labor practice under any provision of this chapter,
7 or (B) constitute grounds for the setting aside of any election
8 conducted under any provisions of this chapter.

9
10 Sec. 7117. Duty to bargain in good faith; compelling need; duty
11 to consult

12
13 (a)(1) Subject to paragraph (2) of this subsection, the duty to
14 bargain in good faith shall, to the extent not inconsistent with any
15 Federal law or any Government-wide rule or regulation, extend to matters
16 which are the subject of any rule or regulation only if the rule or
17 regulation is not a Government-wide rule or regulation.

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

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

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

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

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

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

46
47 (3) A hearing may be held, in the discretion of the Authority,
48 before a determination is made under this subsection. If a hearing is
49 held, it shall be expedited to the extent practicable and shall not
50 include the General Counsel as a party.

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

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

60 (2) The exclusive representative may, on or before the 15th day
61 after the date on which the agency first makes the allegation referred

1 to in paragraph (1) of this subsection, institute an appeal under this
2 subsection by--

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

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

5
6 (3) On or before the 30th day after the date of the receipt by the
7 head of the agency of the copy of the petition under paragraph (2)(B) of
8 this subsection, the agency shall--

9 (A) file with the Authority a statement--

10 (i) withdrawing the allegation; or

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

13
14 (B) furnish a copy of such statement to the exclusive
15 representative.

16
17 (4) On or before the 15th day after the date of the receipt by the
18 exclusive representative of a copy of a statement under paragraph (3)(B)
19 of this subsection, the exclusive representative shall file with the
20 Authority its response to the statement.

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

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

28 (d)(1) A labor organization which is the exclusive representative of
29 a substantial number of employees, determined in accordance with
30 criteria prescribed by the Authority, shall be granted consultation
31 rights by any agency with respect to any Government-wide rule or
32 regulation issued by the agency effecting any substantive change in any
33 condition of employment. Such consultation rights shall terminate when
34 the labor organization no longer meets the criteria prescribed by the
35 Authority. Any issue relating to a labor organization's eligibility for,
36 or continuation of, such consultation rights shall be subject to
37 determination by the Authority.

38 (2) A labor organization having consultation rights under paragraph
39 (1) of this subsection shall--

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

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

44
45 (3) If any views or recommendations are presented under paragraph
46 (2) of this subsection to an agency by any labor organization--

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

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

52
53 Sec. 7118. Prevention of unfair labor practices

54
55 (a)(1) If any agency or labor organization is charged by any person
56 with having engaged in or engaging in an unfair labor practice, the
57 General Counsel shall investigate the charge and may issue and cause to
58 be served upon the agency or labor organization a complaint. In any case
59 in which the General Counsel does not issue a complaint because the
60 charge fails to state an unfair labor practice, the General Counsel
61 shall provide the person making the charge a written statement of the

1 reasons for not issuing a complaint.

2 (2) Any complaint under paragraph (1) of this subsection shall
3 contain a notice--

4 (A) of the charge;

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

8 (C) of the time and place fixed for the hearing.
9

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

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

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

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

23 (ii) any concealment which prevented discovery of the alleged
24 unfair labor practice during the 6-month period,
25

26 the General Counsel may issue a complaint based on the charge if the
27 charge was filed during the 6-month period beginning on the day of the
28 discovery by the person of the alleged unfair labor practice.

29 (5) The General Counsel may prescribe regulations providing for
30 informal methods by which the alleged unfair labor practice may be
31 resolved prior to the issuance of a complaint.

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

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

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

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

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

61 (D) including any combination of the actions described in

1 subparagraphs (A) through (C) of this paragraph or such other action
2 as will carry out the purpose of this chapter.

3
4 If any such order requires reinstatement of an employee with backpay,
5 backpay may be required of the agency (as provided in section 5596 of
6 this title) or of the labor organization, as the case may be, which is
7 found to have engaged in the unfair labor practice involved.

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

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

20
21 Sec. 7119. Negotiation impasses; Federal Service Impasses Panel

22
23 (a) The Federal Mediation and Conciliation Service shall provide
24 services and assistance to agencies and exclusive representatives in the
25 resolution of negotiation impasses. The Service shall determine under
26 what circumstances and in what manner it shall provide services and
27 assistance.

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

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

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

36
37 (c)(1) The Federal Service Impasses Panel is an entity within the
38 Authority, the function of which is to provide assistance in resolving
39 negotiation impasses between agencies and exclusive representatives.

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

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

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

61 (5)(A) The Panel or its designee shall promptly investigate any

1 impasse presented to it under subsection (b) of this section. The Panel
2 shall consider the impasse and shall either--

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

5 (ii) assist the parties in resolving the impasse through
6 whatever methods and procedures, including factfinding and
7 recommendations, it may consider appropriate to accomplish the
8 purpose of this section.
9

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

12 (i) hold hearings;

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

16 (iii) take whatever action is necessary and not inconsistent
17 with this chapter to resolve the impasse.
18

19 (C) Notice of any final action of the Panel under this section shall
20 be promptly served upon the parties, and the action shall be binding on
21 such parties during the term of the agreement, unless the parties agree
22 otherwise.
23

24 Sec. 7120. Standards of conduct for labor organizations 25

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

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

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

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

48 (4) the maintenance of fiscal integrity in the conduct of the
49 affairs of the organization, including provisions for accounting and
50 financial controls and regular financial reports or summaries to be
51 made available to members.
52

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

58 (1) the organization has been suspended or expelled from, or is
59 subject to other sanction, by a parent labor organization, or
60 federation of organizations with which it had been affiliated,
61 because it has demonstrated an unwillingness or inability to comply

1 with governing requirements comparable in purpose to those required
2 by subsection (a) of this section; or

3 (2) the organization is in fact subject to influences that would
4 preclude recognition under this chapter.
5

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

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

20 (e) This chapter does not authorize participation in the management
21 of a labor organization or acting as a representative of a labor
22 organization by a management official, a supervisor, or a confidential
23 employee, except as specifically provided in this chapter, or by an
24 employee if the participation or activity would result in a conflict or
25 apparent conflict of interest or would otherwise be incompatible with
26 law or with the official duties of the employee.

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

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

35 (2) take any other appropriate disciplinary action.
36
37
38

39 SUBCHAPTER III--GRIEVANCES, APPEALS, AND REVIEW

40 41 Sec. 7121. Grievance procedures 42

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

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

52 (b)(1) Any negotiated grievance procedure referred to in subsection
53 (a) of this section shall--

54 (A) be fair and simple,

55 (B) provide for expeditious processing, and

56 (C) include procedures that--

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

60 (ii) assure such an employee the right to present a
61 grievance on the employee's own behalf, and assure the exclusive

1 representative the right to be present during the grievance
2 proceeding; and

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

7
8 (2)(A) The provisions of a negotiated grievance procedure providing
9 for binding arbitration in accordance with paragraph (1)(C)(iii) shall,
10 if or to the extent that an alleged prohibited personnel practice is
11 involved, allow the arbitrator to order--

12 (i) a stay of any personnel action in a manner similar to the
13 manner described in section 1221(c) with respect to the Merit
14 Systems Protection Board; and

15 (ii) the taking, by an agency, of any disciplinary action
16 identified under section 1215(a)(3) that is otherwise within the
17 authority of such agency to take.

18
19 (B) Any employee who is the subject of any disciplinary action
20 ordered under subparagraph (A)(ii) may appeal such action to the same
21 extent and in the same manner as if the agency had taken the
22 disciplinary action absent arbitration.

23 (c) The preceding subsections of this section shall not apply with
24 respect to any grievance concerning--

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

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

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

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

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

32
33 (d) An aggrieved employee affected by a prohibited personnel
34 practice under section 2302(b)(1) of this title which also falls under
35 the coverage of the negotiated grievance procedure may raise the matter
36 under a statutory procedure or the negotiated procedure, but not both.
37 An employee shall be deemed to have exercised his option under this
38 subsection to raise the matter under either a statutory procedure or the
39 negotiated procedure at such time as the employee timely initiates an
40 action under the applicable statutory procedure or timely files a
41 grievance in writing, in accordance with the provisions of the parties'
42 negotiated procedure, whichever event occurs first. Selection of the
43 negotiated procedure in no manner prejudices the right of an aggrieved
44 employee to request the Merit Systems Protection Board to review the
45 final decision pursuant to section 7702 of this title in the case of any
46 personnel action that could have been appealed to the Board, or, where
47 applicable, to request the Equal Employment Opportunity Commission to
48 review a final decision in any other matter involving a complaint of
49 discrimination of the type prohibited by any law administered by the
50 Equal Employment Opportunity Commission.

51 (e)(1) Matters covered under sections 4303 and 7512 of this title
52 which also fall within the coverage of the negotiated grievance
53 procedure may, in the discretion of the aggrieved employee, be raised
54 either under the appellate procedures of section 7701 of this title or
55 under the negotiated grievance procedure, but not both. Similar matters
56 which arise under other personnel systems applicable to employees
57 covered by this chapter may, in the discretion of the aggrieved
58 employee, be raised either under the appellate procedures, if any,
59 applicable to those matters, or under the negotiated grievance
60 procedure, but not both. An employee shall be deemed to have exercised
61 his option under this subsection to raise a matter either under the

1 applicable appellate procedures or under the negotiated grievance
2 procedure at such time as the employee timely files a notice of appeal
3 under the applicable appellate procedures or timely files a grievance in
4 writing in accordance with the provisions of the parties' negotiated
5 grievance procedure, whichever event occurs first.

6 (2) In matters covered under sections 4303 and 7512 of this title
7 which have been raised under the negotiated grievance procedure in
8 accordance with this section, an arbitrator shall be governed by section
9 7701(c)(1) of this title, as applicable.

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

21 (g)(1) This subsection applies with respect to a prohibited
22 personnel practice other than a prohibited personnel practice to which
23 subsection (d) applies.

24 (2) An aggrieved employee affected by a prohibited personnel
25 practice described in paragraph (1) may elect not more than one of the
26 remedies described in paragraph (3) with respect thereto. For purposes
27 of the preceding sentence, a determination as to whether a particular
28 remedy has been elected shall be made as set forth under paragraph (4).

29 (3) The remedies described in this paragraph are as follows:

30 (A) An appeal to the Merit Systems Protection Board under
31 section 7701.

32 (B) A negotiated grievance procedure under this section.

33 (C) Procedures for seeking corrective action under subchapters
34 II and III of chapter 12.

35
36 (4) For the purpose of this subsection, a person shall be considered
37 to have elected--

38 (A) the remedy described in paragraph (3)(A) if such person has
39 timely filed a notice of appeal under the applicable appellate
40 procedures;

41 (B) the remedy described in paragraph (3)(B) if such person has
42 timely filed a grievance in writing, in accordance with the
43 provisions of the parties' negotiated procedure; or

44 (C) the remedy described in paragraph (3)(C) if such person has
45 sought corrective action from the Office of Special Counsel by
46 making an allegation under section 1214(a)(1).

47
48 (h) Settlements and awards under this chapter shall be subject to
49 the limitations in section 5596(b)(4) of this title.

50
51 Sec. 7122. Exceptions to arbitral awards

52
53 (a) Either party to arbitration under this chapter may file with the
54 Authority an exception to any arbitrator's award pursuant to the
55 arbitration (other than an award relating to a matter described in
56 section 7121(f) of this title). If upon review the Authority finds that
57 the award is deficient--

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

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

61

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

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

10
11 Sec. 7123. Judicial review; enforcement

12
13 (a) Any person aggrieved by any final order of the Authority other
14 than an order under--

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

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

20
21 may, during the 60-day period beginning on the date on which the order
22 was issued, institute an action for judicial review of the Authority's
23 order in the United States court of appeals in the circuit in which the
24 person resides or transacts business or in the United States Court of
25 Appeals for the District of Columbia.

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

29 (c) Upon the filing of a petition under subsection (a) of this
30 section for judicial review or under subsection (b) of this section for
31 enforcement, the Authority shall file in the court the record in the
32 proceedings, as provided in section 2112 of title 28. Upon the filing of
33 the petition, the court shall cause notice thereof to be served to the
34 parties involved, and thereupon shall have jurisdiction of the
35 proceeding and of the question determined therein and may grant any
36 temporary relief (including a temporary restraining order) it considers
37 just and proper, and may make and enter a decree affirming and
38 enforcing, modifying and enforcing as so modified, or setting aside in
39 whole or in part the order of the Authority. The filing of a petition
40 under subsection (a) or (b) of this section shall not operate as a stay
41 of the Authority's order unless the court specifically orders the stay.
42 Review of the Authority's order shall be on the record in accordance
43 with section 706 of this title. No objection that has not been urged
44 before the Authority, or its designee, shall be considered by the court,
45 unless the failure or neglect to urge the objection is excused because
46 of extraordinary circumstances. The findings of the Authority with
47 respect to questions of fact, if supported by substantial evidence on
48 the record considered as a whole, shall be conclusive. If any person
49 applies to the court for leave to adduce additional evidence and shows
50 to the satisfaction of the court that the additional evidence is
51 material and that there were reasonable grounds for the failure to
52 adduce the evidence in the hearing before the Authority, or its
53 designee, the court may order the additional evidence to be taken before
54 the Authority, or its designee, and to be made a part of the record. The
55 Authority may modify its findings as to the facts, or make new findings
56 by reason of additional evidence so taken and filed. The Authority shall
57 file its modified or new findings, which, with respect to questions of
58 fact, if supported by substantial evidence on the record considered as a
59 whole, shall be conclusive. The Authority shall file its
60 recommendations, if any, for the modification or setting aside of its
61 original order. Upon the filing of the record with the court, the

1 jurisdiction of the court shall be exclusive and its judgment and decree
2 shall be final, except that the judgment and decree shall be subject to
3 review by the Supreme Court of the United States upon writ of certiorari
4 or certification as provided in section 1254 of title 28.

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

19
20 SUBCHAPTER IV--ADMINISTRATIVE AND OTHER PROVISIONS

21
22 Sec. 7131. Official time

23
24 (a) Any employee representing an exclusive representative in the
25 negotiation of a collective bargaining agreement under this chapter
26 shall be authorized official time for such purposes, including
27 attendance at impasse proceeding, during the time the employee otherwise
28 would be in a duty status. The number of employees for whom official
29 time is authorized under this subsection shall not exceed the number of
30 individuals designated as representing the agency for such purposes.

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

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

41 (d) Except as provided in the preceding subsections of this
42 section--

- 43 (1) any employee representing an exclusive representative, or
44 (2) in connection with any other matter covered by this chapter,
45 any employee in an appropriate unit represented by an exclusive
46 representative,

47
48 shall be granted official time in any amount the agency and the
49 exclusive representative involved agree to be reasonable, necessary, and
50 in the public interest.

51
52 Sec. 7132. Subpenas

53
54 (a) Any member of the Authority, the General Counsel, or the Panel,
55 any administrative law judge appointed by the Authority under section
56 3105 of this title, and any employee of the Authority designated by the
57 Authority may--

- 58 (1) issue subpenas requiring the attendance and testimony of
59 witnesses and the production of documentary or other evidence from
60 any place in the United States; and

- 61 (2) administer oaths, take or order the taking of depositions,

1 order responses to written interrogatories, examine witnesses, and
2 receive evidence.

3
4 No subpoena shall be issued under this section which requires the
5 disclosure of intramanagement guidance, advice, counsel, or training
6 within an agency or between an agency and the Office of Personnel
7 Management.

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

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

18
19 Sec. 7133. Compilation and publication of data

20
21 (a) The Authority shall maintain a file of its proceedings and
22 copies of all available agreements and arbitration decisions, and shall
23 publish the texts of its decisions and the actions taken by the Panel
24 under section 7119 of this title.

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

28
29 Sec. 7134. Regulations

30
31 The Authority, the General Counsel, the Federal Mediation and
32 Conciliation Service, the Assistant Secretary of Labor for Labor
33 Management Relations, and the Panel shall each prescribe rules and
34 regulations to carry out the provisions of this chapter applicable to
35 each of them, respectively. Provisions of subchapter II of chapter 5 of
36 this title shall be applicable to the issuance, revision, or repeal of
37 any such rule or regulation.

38
39 Sec. 7135. Continuation of existing laws, recognitions,
40 agreements, and procedures

41
42 (a) Nothing contained in this chapter shall preclude--

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

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

54
55 (b) Policies, regulations, and procedures established under and
56 decisions issued under Executive Orders 11491, 11616, 11636, 11787, and
57 11838, or under any other Executive order, as in effect on the effective
58 date of this chapter, shall remain in full force and effect until
59 revised or revoked by the President, or unless superseded by specific
60 provisions of this chapter or by regulations or decisions issued
61 pursuant to this chapter.