

COLLECTIVE BARGAINING AGREEMENT

between

**LOCAL 3403
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO**

and the

**NATIONAL ENDOWMENT
FOR THE HUMANITIES**

**EFFECTIVE APRIL 5, 2002
WASHINGTON, D.C.**

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PREAMBLE

This Agreement is made between the National Endowment for the Humanities (“the Agency”) and the NEH bargaining unit of the American Federation of Government Employees, Local 3403 (“the Union”).

The Management of the NEH and the Union agree that a constructive and cooperative working relationship between labor and management is essential to achieving the Agency's mission and to ensuring a quality work environment for all employees. The parties recognize that this relationship must be built on a solid foundation of trust and mutual respect, and a shared interest in organizational success.

Therefore, the parties agree to work together to identify problems and craft solutions, enhance productivity, and deliver the best quality of service to our grantees, applicants, and other customers.

ARTICLE 1

RECOGNITION AND COVERAGE

The Agency recognizes the Union as the exclusive representative for all employees in the unit as defined by the Certification of Representation dated May 26, 1999.

This Agreement applies to all employees in the unit, which includes all professional and non-professional employees of the Agency as defined in the Certification of Representation. In accordance with 5 U.S.C. 7112, excluded are all:

- (a) management officials as defined in 5 U.S.C. 7103(a)(11);
- (b) supervisors as defined in 5 U.S.C. 7103(a)(10);
- (c) confidential employees as defined in 5 U.S.C. 7103(a)(13);
- (d) employees engaged in personnel work in other than a purely clerical capacity [see 5 U.S.C. 7112(b)(3)];
- (e) employees engaged in administering the provisions of 5 U.S.C. Chapter 71 [see 5 U.S.C. 7112(b)(4)]; and
- (f) employees primarily engaged in investigation or audit functions relating to the work of individuals employed by the Agency whose duties directly affect the internal security of the Agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity [see 5 U.S.C. 7112(b)(7)].

The Agency agrees to notify the Union of the bargaining unit status of any new positions established at the Agency, and to notify and to discuss with the Union any determination to change the bargaining unit status of an existing position.

The parties agree to discuss bargaining unit determinations before filing a clarification of unit (CU) petition with the FLRA.

The Labor Relations Officer (LRO) will provide the Union with a list of names of bargaining unit employees and their positions upon request.

ARTICLE 2

GOVERNING LAWS AND REGULATIONS

In the administration of all matters covered by this Agreement, the Agency, the Union and the bargaining unit employees are governed by existing and future laws and government-wide regulations.

In the administration of all matters covered by this Agreement, the Agency and all bargaining unit employees are governed by existing and future agency regulations. Where any agency regulations that do not reflect the exercise of a right reserved by 5 U.S.C. 7106(a) conflict with this Agreement, the Agreement shall govern.

ARTICLE 3

UNION RIGHTS AND OBLIGATIONS

1. The Union, as the exclusive representative of employees in the bargaining unit, is entitled to act for, and to negotiate collective bargaining agreements covering, all employees in the unit, and is responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership.

2. The Union and its designated representative have the right, and shall be protected in the exercise of the right consistent with the provisions of the law and this Agreement, to

(a) engage in collective bargaining;

(b) represent bargaining unit employees according to the grievance procedures provided for in Article 15 of this Agreement;

(c) be given the opportunity to be represented at

(1) any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or

(2) any examination of an employee in the unit by a representative of the Agency in connection with an investigation if

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

(ii) the employee requests representation.

Where disputes arise concerning the interpretation or application of this Agreement or of applicable law or regulation, or a breach thereof is alleged to have occurred, the parties will try to discuss the allegations and may attempt informal resolution before statutory recourse of any kind is invoked.

3. The Agency will make available to new bargaining unit employees

(a) a copy of this Agreement;

(b) a package of material provided by the Union. This package may contain

(1) An introductory letter from the Union;

(2) AFGE insurance plan brochures;

(3) A list of union officers and stewards with phone numbers;

(4) Informational brochures clearly identified as being prepared by the national office of the Union.

The above material provided by the Union is subject to review by the Agency. The Union agrees that the material will not violate the law; contain libelous material; jeopardize the security or reputation of the Agency, its programs, or its employees; nor appear to be an endorsement of the Union by the Agency. Failure to comply with this provision will result in immediate cessation of this privilege.

4. All new employees to the bargaining unit will be provided reasonable duty time within the first two weeks of their employment to read this Agreement.

5. The results of surveys of bargaining unit employees conducted by either party regarding conditions of employment will be shared with the other party upon request. If a third party conducts such a survey and the results are distributed to the Agency, the results will be shared with the Union. In surveys conducted by the Agency, the confidentiality of individual employees' responses will be protected to the greatest extent practicable.

6. The parties agree that employee participation in the Combined Federal Campaign, blood donor drives, bond campaigns, and other federally or agency sponsored projects will be on a

voluntary basis. This does not preclude publicizing such projects and encouraging employees to contribute in accordance with federal and agency guidelines.

ARTICLE 4

MANAGEMENT RIGHTS AND OBLIGATIONS

1. As specified in 5 U.S.C. 7106(a), and subject to section 2 of this article, nothing in this Agreement shall affect the authority of any management official of the Agency:

(a) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

(b) in accordance with applicable laws:

(1) to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

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

(3) with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or from any other appropriate source; and

(4) to take whatever actions may be necessary to carry out the agency mission during emergencies.

2. As specified in 5 U.S.C. 7106(b), nothing in this Agreement shall preclude the Agency and the Union from negotiating:

(a) at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(b) procedures which management officials will observe in exercising any authority under this section; or

(c) appropriate arrangements for employees adversely affected by the exercise of any authority under section 1 of this article by such management officials.

3. Performance of the Agency's mission will from time to time require changes in personnel policies, practices, and other matters affecting the conditions of employment of bargaining unit employees. Although the Agency has the right to make such changes in the exercise of the decision-making authorities reserved to management by 5 U.S.C. 7106(a) and (b)(1) or for any other reason associated with the accomplishment of its mission, the Agency recognizes its

obligation, consistent with law and applicable regulation, to give the Union the opportunity to request bargaining regarding the impact and/or implementation of any such proposed changes pursuant to 5 U.S.C. 7106(b)(2) and/or (3) in such circumstances.

ARTICLE 5

LABOR-MANAGEMENT COMMITTEE

The Agency and the Union recognize that open communication between management and employees can enhance the quality of service, improve morale, and avoid misunderstandings. To these ends, the parties agree to form a Labor-Management Committee that will meet to discuss issues of mutual interest.

The Committee will be composed of an equal number of Union and Agency representatives. Additional employees of the Agency may be requested to attend meetings when their areas of responsibility are to be discussed.

Meetings shall be held monthly or whenever the Committee members mutually deem necessary.

Any member of the Committee may introduce issues for discussion. Each member will attempt to notify the other members in advance of a meeting of the issues he or she wishes to be discussed.

ARTICLE 6

CHILD CARE

The parties recognize that working parents may have special child care needs during working hours. The Agency recognizes the need to be flexible when emergencies occur. Employees acknowledge their responsibility to make adequate arrangements for child care so that emergencies are infrequent and short-lived.

The Agency will continue to provide and support various activities in order to meet ongoing child care needs. These may include such things as child care and parenting information, child care resource and referral information, workshops, and counseling as available through the Employee Assistance Program.

In accordance with agency policy, employees may make brief telephone calls within the local commuting area during the day to contact family members and child care providers.

ARTICLE 7

CLASSIFICATION

Position descriptions will contain an accurate listing of the major duties assigned by the Agency to be performed by the employee. Employees new to the Agency will receive a copy of their position descriptions on their first day of duty. When an employee is assigned to a new position description, he or she will receive a copy with the printed Notification of Personnel Action (SF-50) that is generated by the payroll contractor. Any employee may request a copy of his or her position description at any time.

The Union may request copies of position descriptions at any time.

An employee who is dissatisfied with the classification of his/her position should first discuss this with the supervisor and/or the servicing personnel specialist. Upon request, the servicing personnel specialist will provide the employee with information about the appropriate appeals process. If this consultation does not resolve the matter, the employee may appeal either first to the Agency or directly to the Office of Personnel Management (OPM). An appeal to the Agency must be filed in accordance with agency policy. An appeal to OPM must be filed in accordance with OPM rules and regulations.

ARTICLE 8

COMMERCIAL ACTIVITIES

1. Inventory of Commercial Activities

In accordance with the provisions of the FAIR Act (Federal Activities Inventory Reform Act of 1998, P.L. 105-70), OMB Circular A-76 and accompanying guidance, federal agencies are required to prepare annually an inventory of their commercial activities performed by federal employees. The inventory will be made available to the Union upon request.

2. Site Visits

The Agency will notify the Union of any site visits that will be conducted for potential private contractors to perform the work of bargaining unit positions contained in the Commercial Activities Inventory. If any meetings are held with bargaining unit employees during the site visits, a union representative may attend such meetings.

3. Union Notification

When the Agency determines that bargaining unit positions will be adversely affected under the terms of this article, the Agency will notify the Union and provide the Union an opportunity to request to negotiate as appropriate.

4. Career Transition Assistance

For bargaining unit employees adversely affected under the terms of this article, the Agency shall provide placement assistance as delineated in federal regulations, including information on employment in other federal agencies and information on unemployment insurance through the appropriate state program. The Agency shall establish and maintain a reemployment priority list in accordance with applicable regulations.

ARTICLE 9

DETAILS AND TEMPORARY PROMOTIONS

1. Details

A detail is a temporary assignment of an employee to a different position for a specified period, with the employee returning to his/her duties at the end of the detail. The employee continues to be the incumbent of the position from which detailed. All details in excess of 30 days will be recorded in the employee's official personnel folder.

When an employee is detailed to another organization, the terms and conditions of this Agreement may continue to apply to that employee only to the extent that the Agency retains complete discretion over those matters. The organization to which the employee is detailed is not bound by the terms of this Agreement.

2. Temporary Promotions

Temporary promotions may be made noncompetitively if the employee concerned has not served in either a detail to a higher-graded position or on other temporary promotions during the preceding twelve months which cumulatively exceed 120 days. All temporary promotions (or combination of detail and temporary promotion) which exceed 120 days must be made competitively.

Assignment of a bargaining unit employee to a properly classified higher-level position shall be effected by a temporary promotion if the assignment exceeds two bi-weekly pay periods, provided that the employee meets the qualifications and time-in-grade requirements.

ARTICLE 10

DISCIPLINARY AND ADVERSE ACTIONS

1. General

(a) The Agency and the Union recognize that the public interest requires the maintenance of the highest standards of conduct. The parties agree the objectives of disciplinary measures are to prevent recurrence of misconduct, correct employee behavior, and maintain discipline and morale among other employees. The parties further agree emphasis will be placed on preventing situations that result in disciplinary actions. Supervisors will, when practicable, discuss any perceived problems with employees as soon as such problems arise.

(b) Bargaining unit employees will be subject to disciplinary and adverse action for such cause as will promote the efficiency of the service. Disciplinary and adverse actions shall be initiated and effected in accordance with the provisions of this Agreement, agency policies, including Administrative Directive P-100 (Personnel Policies), and applicable laws, rules, and regulations.

(c) Disciplinary actions will normally be progressive in nature consistent with the prevention of further misconduct. However, some offenses may be cause for severe action, including removal, even if no previous discipline has been taken against the employee.

(d) Employees serving trial/probationary periods and temporary employees are not covered by this article.

2. Investigations

An employee will be given the opportunity to be represented by the Union at any examination of the employee by a management official in connection with an investigation concerning misconduct if the employee reasonably believes the examination may result in disciplinary or adverse action and the employee requests union representation. If the employee requests union representation, the Agency will postpone the examination for a reasonable time to permit the employee to obtain union representation or discontinue the discussion with the employee. An employee being considered for disciplinary action may request union representation if asked to provide a written sworn statement. Other employees questioned in connection with the incident who reasonably believe they may be subject to disciplinary action have the right to union representation upon request.

3. Documentation Retention

(a) Supervisory notes are private notes that are personal to the supervisor. However, once a supervisor's notes are used as a basis for a disciplinary or adverse action, those notes become agency records. Upon request, an employee may receive a copy of agency records pertaining to the disciplinary or adverse action at issue, in accordance with applicable laws, rules, government-wide regulations, agency directives, and this Agreement.

(b) A reprimand will be removed from an employee's Official Personnel Folder (OPF) after two (2) years unless otherwise specified in the reprimand.

(c) In the event the disciplinary or adverse action is rescinded or is not sustained, any records of the action will be removed from the employee's OPF and cannot be used as a basis for any further action by the Agency.

4. Alternative Discipline

The parties agree to the concept of alternative discipline and that it may be available to utilize when determined appropriate by the Agency.

5. Last Chance Agreements

Nothing in this Agreement prevents the Agency from considering "last chance agreements." "Last chance agreements" are instruments designed to permit an employee subject to an adverse action a last opportunity to demonstrate that he/she can be successfully rehabilitated, e.g., that his/her performance or conduct can be improved to the Agency's satisfaction, and that the adverse action should not be taken. The agreements are tailored to the special circumstances involved in each case. They allow the Agency, at its discretion, to forego or delay implementation of an adverse action in order to give an employee a last chance to demonstrate successful rehabilitation.

6. Admonishments and Reprimands

Admonishments and reprimands will state the specific circumstances that led to the discipline. Employees receiving an admonishment or reprimand may grieve in accordance with Article 15 (Grievance Procedure and Arbitration).

7. Suspensions of 14 days or less

(a) An employee against whom a suspension for 14 calendar days or less is proposed is entitled to an advance written notice stating the specific reasons for the proposed action. The Agency agrees that the employee may request up to eight (8) hours of official time (if he or she is otherwise in an active duty status) to review the evidence on which the notice is based and that is being relied on to support the proposed action as well as to prepare an answer and to furnish affidavits and other documentary evidence. An employee is entitled to representation by the Union, a written decision and the specific reasons for the action at the earliest practicable date.

(b) The employee and/or representative may respond orally and in writing as soon as practical but no later than seven (7) calendar days from receipt of the proposed action notice. If the employee wishes the Agency to consider any medical condition that the employee believes may be contributing to the problem, he/she shall furnish medical documentation of the condition within the time limits allowed for an answer. The Agency will identify the management official who will receive the written and/or oral answer (usually the management official at the next higher level than the official who proposed the action).

(c) Extensions for replying to notices of proposed action may be granted when good cause is shown.

(d) In arriving at its written decision the Agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his or her representative made to the designated official. In deciding what action may be appropriate, the Agency will give due consideration to the relevance of any mitigating and/or aggravating circumstances as set forth by prevailing law. The notice of decision will include:

- (1) the specific reasons for the action taken;

(2) the evidence relied upon;

(3) the right to grieve in accordance with Article 15, Grievance Procedure and Arbitration; and

(4) two copies of the decision; one copy of which may be furnished to the Union by the employee.

8. Suspensions over 14 days, and Other Adverse Actions

(a) An employee against whom a suspension over 14 calendar days and other adverse actions are proposed is entitled to thirty (30) days advance written notice, except when 5 U.S.C. Section 7513(b)(1) (commonly referred to as the crime provision) has been invoked. The notice will state the specific reasons for the proposed action. The Agency agrees that the employee may request up to eight (8) hours of official time (if he or she is otherwise in an active duty status) to review the evidence on which the notice is based and that is being relied on to support the proposed action as well as to prepare an answer and to furnish affidavits and other documentary evidence. An employee is also entitled to representation, to a written decision and the specific reasons for the action at the earliest practicable date, and notice of appeal rights.

(b) The employee and/or representative may respond orally and in writing as soon as practical but no later than seven (7) calendar days from receipt of the proposed action notice. If the employee wishes the Agency to consider any medical condition that the employee believes may be contributing to the problem, he/she shall furnish medical documentation of the condition within the time limits allowed for an answer. The Agency will identify the management official to receive the written and/or oral answer (usually the management official at the next higher level than the official who proposed the action).

(c) Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown.

(d) In arriving at its written decision the Agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his or her representative made to the designated official. In deciding what action may be appropriate, the Agency will give due consideration to the relevance of any mitigating and/or aggravating circumstances as set forth by prevailing law. The notice of decision will include:

(1) the reason for the disciplinary action;

(2) the evidence relied upon;

(3) a statement of finding and conclusions as to each charge;

(4) a statement of the employee's grievance and appeal rights; and

(5) two copies of the decision; one copy of which may be furnished to the Union by the employee.

(e) An employee is entitled to appeal a decision to the Merit Systems Protection Board (MSPB) or to grieve the action under the Grievance Procedure set forth in Article 15, but not both. An employee shall be deemed to have exercised his or her option for one of the procedures described above at such time as he/she files under either procedure, whichever comes first in accordance with Article 15, section 3(c).

ARTICLE 11

DUES WITHHOLDING

1. Eligibility

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

2. Union Responsibilities

(a) The Union agrees to inform the Office of Human Resources (OHR), in writing, of the following:

- (1) The dues amount(s) or changes in the dues amounts;
- (2) The names of the union officials responsible for certifying each employee's authorization form;
- (3) When a member is no longer in good standing; and
- (4) The name and address of the payee to whom the remittance should be made.

(b) The Union agrees to promptly forward completed and certified forms to the OHR.

3. Agency Responsibilities

(a) The Agency will:

- (1) Process voluntary allotments of dues in accordance with this Article and in amounts certified by the Union;

(2) Withhold employee dues on a bi-weekly basis in accordance with the payroll calendar; and

(3) Request that the Agency's payroll contractor transmit remittance to the payee designated by the Union in accordance with this Article, as expeditiously as possible at the end of each pay period, together with a copy of a listing containing the following information:

- i. the name of the employee and the amount of dues withheld, and
- ii. identification of employees for whom allotments have been temporarily or permanently stopped.

4. Procedures for Withholding

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed SF-1187s to the union-designated officials. These officials will certify the form and include the amount of dues to be withheld. The certified SF-1187 will be forwarded to the OHR. Dues withholding will become effective at the beginning of the next pay period if received in the OHR at least three (3) workdays prior to the beginning of that pay period. When an employee is detailed or temporarily promoted out of the bargaining unit, dues withholding will be discontinued and restarted automatically when the employee returns to the bargaining unit.

5. Changes in Dues Amount

At any time there is a change in dues structure, the Union will send a written notification to the OHR noting the amount of the change. This notification must be received in the OHR at least three (3) workdays prior to the effective date. The new amounts will be deducted starting the first pay period following receipt by the OHR unless a later date is specified. The memorandum must be signed by one of the union officials designated to certify dues withholding forms (or originating from such an official if electronic mail is used).

6. Revocation

Employees may revoke their dues withholding after one year from the date of their original allotment by submitting an SF 1188 to the union representative designated for such purpose. The ending date of the pay period in which the anniversary date occurs will be entered in item 6 on the SF-1188. The entry will be initiated by the union official who will then deliver the form to the Office of Human Resources for processing. Revocations will be processed semi-annually. The cut-off dates for processing are June 30 and December 31. Revocations must be received by the agency or union by close of business on or before the cut-off dates to become effective the next pay-period.

The union assumes responsibility for informing and educating its members on the voluntary nature of the system for the allotment of union dues, including the conditions under which the

allotment may be revoked. Revised June 7, 2010

7. Costs

All payroll deductions and transmittals described in this Agreement will be made at no cost to the Union.

ARTICLE 12 EMPLOYEE ASSISTANCE

1. Program Purpose

In accordance with applicable laws and regulations, the Agency will continue to implement a program to provide assistance to employees with personal issues that may affect job performance. The Agency and the Union agree on the importance of this Employee Assistance Program (EAP), and will inform employees and supervisors about the program and encourage its use.

No employee will have his or her job security or promotion opportunities jeopardized by his or her request for counseling or for referral to the EAP. Employees who refuse referral to counseling by the Agency in connection with a performance deficiency or conduct problem, or who accept referral but withhold permission to release information to the Agency, will be judged solely on available medical information, documented performance, and/or conduct in connection with subsequent personnel decisions.

It is the function of a supervisor to identify poor job performance and to take corrective action. However, poor work performance may be indicative of other problems facing the employee, such as health or emotional/behavioral issues. Supervisors should contact the EAP coordinator or servicing personnel management specialist for guidance when these conditions arise. The supervisor must not, under any circumstances, attempt to diagnose the condition or draw conclusions.

2. Confidentiality

The parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, regulations, and directives. With the exception of the specific limited types of disclosures allowed by regulation, the Agency may not obtain information about an employee's involvement with a counseling program without the employee's written consent.

3. Time and Leave

(a) Counseling sessions

An employee who is referred to the EAP by the Agency will be granted an excused absence for the initial counseling session. All other counseling sessions and treatment will be charged to the appropriate leave category (sick leave, annual leave, or leave without pay). Sick leave, annual leave, or leave without pay will be granted for treatment or counseling sessions consistent with practices for other illnesses or circumstances.

(b) EAP-sponsored training programs

Employees may attend EAP-sponsored training programs with the approval of the supervisor. Such attendance will not be charged to leave.

4. Meeting with EAP Provider

Once each fiscal year the Agency, upon request by the Union, will invite representatives of the EAP provider and the Union to a meeting to discuss the Employee Assistance Program. At any such meeting, no individual cases will be discussed and full confidentiality will be maintained.

ARTICLE 13
EMPLOYEE AWARDS AND RECOGNITION

1. General

The Agency and the Union recognize their mutual interest in high morale, operational efficiency and improvements, and increased employee productivity, and agree to maintain an employee awards and recognition program. Employees should be recognized and rewarded, individually or in groups, for their suggestions, inventions, superior accomplishments, or other special personal efforts, which contribute to efficiency, economy, or other improvements in agency operations. Using the Agency's Intranet, or other mechanisms, the Agency will provide information to all employees about the program. The Agency encourages supervisors to recognize deserving employees by participating in the awards program.

2. Awards and Recognition Advisory Panel

The Agency agrees to establish an Awards and Recognition Advisory Panel with six members representing a cross-section of agency staff positions. Three of these representatives will be appointed by the Union and will serve as union representatives. The Deputy Chairman or his/her designee will appoint the other three members of the panel. Members will serve three-year terms, and members may be re-appointed. Initially, two members will serve one-year terms, two will serve two-year terms, and two will serve three-year terms in order to provide for staggered rotations of members. At least one member appointed by the Union will serve an initial, three-year term. The panel will elect a chair from its own members and will set the term of service for the chair. The Agency's Awards Officer will serve as executive secretary to the panel.

The panel will be responsible for reviewing agency policies on employee awards and recognition in order to evaluate current practices, utilization and effectiveness of the awards program and to offer suggestions for improvement. The panel will place special emphasis on recommending ideas for new, non-monetary categories of awards. The panel will recommend ways to help publicize the awards program throughout the Agency, and it will recommend appropriate forms of public recognition for award recipients.

The parties agree that the Awards and Recognition Advisory Panel is not eligible to receive a group award for performing this service.

ARTICLE 14

EQUAL OPPORTUNITY

1. The Agency affirms its commitment to the policy of providing equal employment opportunities to all qualified employees and to prohibiting discrimination in employment because of race, color, religion, sex, national origin, physical or mental disability, or age in accordance with federal laws, rules and regulations, and agency directives.
2. The Union will not deny membership or representation to any employee in the bargaining unit because of race, color, religion, sex, national origin, physical or mental disability, or age.
3. The names, room numbers, and phone numbers of the Agency's Equal Employment Opportunity Counselors will be printed in the Agency's telephone directory, and included on its Intranet site.
4. An employee has the right to request union representation in any formal EEO proceeding conducted by the Agency in which the employee is the complainant. Complainants have the right to be accompanied, represented, and advised at any stage in the complaint procedure by a representative.

ARTICLE 15

GRIEVANCE PROCEDURE AND ARBITRATION

1. General

The purpose of this article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The Union and the Agency share a mutual interest in resolving grievances at the lowest supervisory level possible and in a timely manner. To promote conflict resolution, supervisors, stewards and employees should endeavor to resolve disputes informally prior to filing a formal grievance. The parties encourage the use of interest-based problem-solving techniques as much as possible to resolve disputes.

2. Coverage

(a) A grievance under these procedures shall mean a complaint by any employee concerning any matter relating to the employment of the employee; by the Union concerning any matter relating to the employment of any employee; or by any employee, the Union, or the Agency concerning the effect or interpretation or a claim of breach of this Agreement; and/or any claimed violation, misinterpretation or misapplication of any federal law, rule or regulation affecting conditions of employment

This procedure applies to bargaining unit employees, the Union, and the Agency and shall, except as provided by 5 U.S.C. 7121(d) and (e), be the exclusive procedure for resolving grievances that fall within its coverage.

(b) This procedure shall not apply to any grievance concerning:

- (1) a reduction-in-force, or any personnel action resulting from a reduction-in-force;
- (2) separation of probationary employees, or termination or expiration of any time-limited appointment;
- (3) any matter or issue excluded by any provision of this Agreement, or by any federal law, rule, or regulation, or agency directive;

3. Choice of Venue

(a) For grievances as defined in section 2(a) above, the negotiated grievance procedure of this Article will be the only procedure available to bargaining unit employees; however,

(b) For complaints concerning matters excluded under Section 2(b) above, the applicable regulatory or statutory appeal procedure will be the only procedure available.

(c) Further, for certain complaints, as expressly provided in 5 U.S.C. 7116 (unfair labor practices) and 5 U.S.C. 7121 (adverse actions and performance-based removal or reduction in grade), and a complaint of discrimination or of a prohibited personnel practice under 5 U.S.C. 2302, unit employees may choose to use either this negotiated grievance procedure or the appropriate statutory procedure, but not both. An employee shall be deemed to have made this choice when he or she either files a timely written grievance under the negotiated procedure, or initiates a timely appeal under the applicable statutory procedure, whichever he or she does first.

4. Right to File Grievance

(a) The Union may file a grievance on its own behalf or on behalf of any employee or employees in the bargaining unit. An employee may present a grievance without being represented by the Union; however, the Union shall be notified in writing by the LRO and be given the opportunity to attend any grievance proceedings. The resolution of a grievance shall be consistent with the terms of this Agreement.

(b) Any bargaining unit employee who files a grievance may seek representation by the Union at any step of the grievance process.

(c) The parties recognize that it is an unfair labor practice to interfere with or take reprisals against any employee in the exercise of the right to file a grievance under this Article. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's or a supervisor's good standing, performance, loyalty, or desirability to the organization.

5. Grievance Procedure

The parties recognize that many grievances arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis at the immediate supervisory level. The Agency and the Union agree that every effort will be made to settle grievances at the lowest possible level. Therefore all parties are encouraged to discuss the matter promptly prior to initiating the grievance process. These efforts notwithstanding, it is the grieving party's responsibility to file the grievance in a timely manner. All parties are also encouraged to make use of mediation as described in section 6 of this Article.

Steps of the Grievance Procedure

Informal Step

A unit employee, or group of employees with the same supervisor, shall take up a misunderstanding, dispute, or complaint with the immediate supervisor. A group of employees with different supervisors, or the Union concerning a union grievance, shall take up the issue first with the LRO. The Agency shall take up its grievance with the highest ranking NEH union representative.

The grievant must clearly indicate that the issue is being raised under provisions of the informal step of the grievance procedure. The grievant must raise the issue within 20 calendar days of the date that he or she became aware or reasonably should have become aware of the matter out of which the grievance arises.

The supervisor or the LRO should remind the grieving employee(s) of the opportunity to have union representation. The employee may choose to be represented by the Union, but the employee must be present at any discussion with the supervisor. If the matter is taken up first in writing, the employee must sign the memo or send the e-mail.

The deciding official shall attempt to resolve the issue, providing a written determination within 14 calendar days of receipt of the grievance.

If a satisfactory settlement is not reached at the informal step, the grievant and/or the grievant's representative may proceed to Step 1 of the formal grievance procedure.

Formal Steps

Step 1:

(a) The grievance must be submitted, in writing, to the LRO within 14 calendar days of receipt of the decision at the informal step. The grievant should indicate that a grievance is being filed, describe the issue or occurrence giving rise to the grievance, the personal relief sought, any relevant information, and refer to the provision(s) or regulation(s) allegedly misapplied. A copy of the decision provided at the informal step must be included.

(b) The LRO and other appropriate management officials shall conduct whatever inquiry is necessary, including, if appropriate, discussion with the grieving employee and his or her union representative. If the employee has not chosen to be represented by the Union, the Union shall be given the opportunity to be present at any meetings between Management and the grieving employee(s).

(c) The LRO or designated deciding official shall convey a written decision to the grievant within 20 calendar days of receiving the grievance. A copy of the decision shall be sent to the Union.

Step 2:

(a) If the grievance is not satisfactorily resolved through a Step 1 decision the grievant may submit the grievance in writing to the Deputy Chairman or his/her designee within 14 calendar days of receipt of the Step 1 decision.

(b) The Deputy Chairman or his/her designee shall review the record and conduct whatever inquiries are deemed necessary, and render a written decision to the grievant within 20 calendar days of receipt of the grievance. This time limit shall be extended for up to 30 days if additional fact-finding is necessary.

A copy of this decision shall be sent to the LRO and to the Union.

Step 3:

If the grievance is not satisfactorily resolved at Step 2, the Union may, within 20 calendar days from the employee's receipt of the Step 2 decision, invoke arbitration.

6. Alternate Dispute Resolution: Mediation Program

(a) Mediation is an informal, confidential, problem-solving process in which all interested parties meet with a mediator (a neutral third party) who will assist them in resolving conflicts. The goal of mediation is to help individuals work together to explore options to resolve their differences and reach an agreement that addresses their concerns. The parties agree that mediation should be at no cost.

(b) At any stage of the grievance procedure prior to the rendering of a decision in Step 2, any party to the grievance may request mediation using the Agency's mediation services provider. To request mediation, either party should submit a request in writing to the LRO, who will contact all parties and provide information on mediation. Participation in mediation is by mutual consent. The parties to the grievance agree to consult on the selection of mediators.

(c) The next required time limit in the grievance procedure is automatically suspended for 30 calendar days from the date a written request for mediation is received by the LRO. This time may be extended by mutual agreement.

(d) The parties do not waive any rights by participating in mediation. If a dispute cannot be resolved through mediation, the grievance process resumes.

(e) If a settlement is reached through mediation, the mediator or the parties will draft a written agreement. Any written agreement must comply with relevant laws. Any settlement reached through mediation shall result in dismissal of the grievance.

7. Expedited Grievance Procedure

(a) Grievances deriving from suspensions, removals, or reductions in grade or pay under Article 10 (Disciplinary and Adverse Action) of this Agreement begin at Step 3 of the grievance procedure described in section 5 of this Article.

(b) Grievances of performance ratings begin at Step 2 of the grievance procedure described in section 5 of this Article.

(c) In the case of a grievance by the Agency, the Agency may take the grievance directly to arbitration after following the Informal Step described in section 5.

8. Time Limits

The time limits specified in this Article may be extended by mutual agreement.

Failure of the grieving party to meet the deadlines described in this Article will result in the grievance being dismissed. Failure of the responding party to respond in a timely manner will result in the grievance being advanced to the next step.

All days referred to in this procedure are calendar days. The first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day in a time period falls on a Saturday, Sunday, federal holiday, or day the Agency is officially closed, the time period will include the first workday after that date.

9. Arbitration

(a) If the Agency and the Union fail to settle any grievance arising under this Article, such grievance shall, upon written notice by the party requesting arbitration to the other party, be

referred to arbitration. Arbitration of a grievance may be invoked only by the Agency or the Union and does not require the approval of the employee or employees involved. The written request for arbitration must be served within 20 calendar days following the conclusion of the last step of the grievance procedure.

(b) Within 10 calendar days after notification, the party requesting arbitration shall ask the Federal Mediation and Conciliation Service (FMCS) to submit a list of seven arbitrators from the metropolitan Washington, D.C. area with federal sector experience. Any costs associated with obtaining the list from FMCS shall be shared equally by the Agency and the Union. The parties shall contact each other within 10 calendar days after the receipt of such list to select an arbitrator. The arbitrator shall be selected by mutual agreement, or, if the parties do not agree, then the Agency and the Union shall take turns striking one arbitrator's name from the list until only one name remains. The party requesting arbitration strikes first. The remaining name shall be the duly selected arbitrator.

(c) Either party sending advance information to the arbitrator will furnish the other party a copy at the same time.

(d) If for any reason the Agency or the Union refuses to participate in the selection of an arbitrator, it is agreed that FMCS shall be empowered to make a direct designation of an arbitrator to hear the case.

(e) The arbitrator's fee and the expenses of the arbitration shall be borne equally by the Agency and the Union.

(f) By mutual consent, arbitration may be conducted with no verbatim transcript and no filing of briefs. In the event only one of the parties desires a transcript of the proceedings, that party shall be responsible for the full cost of the transcript. If the other party later wishes a copy of the transcript, that party shall pay for half of the original cost. Cost of additional copies of the transcript shall be borne by the party requesting the copy.

(g) The arbitrator's award shall be binding on the parties. However, either party may file exceptions to the arbitrator's award with the Federal Labor Relations Authority pursuant to the Authority's regulations. The arbitrator shall have no power to disregard or modify any of the express terms of this Agreement or any Memorandum of Understanding (MOU) between the parties. Additionally, the arbitrator will have no authority to make any decision inconsistent with law, rule or regulation, or the terms of this Agreement.

(h) Time limitations in the arbitration section can be extended by mutual agreement of both parties.

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

(j) Arbitration hearings shall be held on the premises of the Agency. Such hearings shall be held within the Agency's regular workweek. During the time that employees would otherwise be in a

duty status, the grievant(s), union representative(s), and witnesses will be granted official time, without loss of pay or charge to leave, for the purpose of presenting their case during the arbitration hearing. The arbitrator shall have sole discretion to determine who may testify.

(k) In the event either party declares a matter non-arbitrable, the arbitrator shall hear arguments regarding both the arbitrability and the merits of the case at the same hearing.

ARTICLE 16

HEALTH AND SAFETY

1. General Provisions

The parties agree that a safe and healthful working environment is important for all employees and for accomplishing the Agency's mission. The Agency will follow all applicable laws, rules, and regulations concerning occupational safety and health, including those regarding workplace inspections and the prevention and abatement of unsafe or unhealthful working conditions.

2. Union Participation

To facilitate communication between the Agency and the Union on matters related to health and safety, the Union will designate one of its officers or stewards to serve as the Union's point-of-contact (POC) with the Agency's Occupational Safety and Health Manager (OSHM).

The functions of the union-designated POC include

- (a) informing the OSHM of bargaining unit employees' ideas and concerns about health and safety matters;
- (b) receiving information provided by the OSHM about health and safety matters;
- (c) participating, when appropriate as determined by the OSHM, in workplace inspections. When practicable, reasonable notice of an inspection will be given to the POC. If the POC, or an alternate, is not available, the inspection will proceed as scheduled.

The functions of the union-designated POC shall be considered representational functions under section 2(a) of Article 22 (Official Time) of this Agreement.

The Union is encouraged to report the existence of unsafe or unhealthful working conditions to the OSHM.

3. Workers' Compensation

Employees shall immediately report job-related injuries or illness to their supervisor, then to the OHR. The employee will be provided the necessary forms to file a claim.

The OHR is available to inform and assist all employees concerning their entitlements and obligations under the Federal Employees' Compensation Act and related regulations, as applicable, including the employee's right to file for benefits, the benefits available, the procedure for filing claims, and leave and pay options.

ARTICLE 17

HOURS OF WORK AND OVERTIME

1. General Information

The official public hours for the Agency are 8:30 a.m. to 5:00 p.m., Monday through Friday. Core hours, which must be included within the employee's tour of duty, are between 9:30 a.m. and **2:30 p.m.** (revised 7/15/2005). No employee may be scheduled to work more than five continuous hours without a lunch break.

Although offering alternative work schedules (AWS) is a management option rather than an employee right, the Agency recognizes that alternative work schedule options enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities. These options also provide family-friendly work arrangements that enable employees to schedule their work while meeting the needs of their families.

AWS is a voluntary program for both the employee and the Agency. When a decision is made to deny participation in or remove an employee from the AWS program, the employee shall be given written notice indicating the reason(s) for denial/removal. Once an employee receives written notice of denial/removal from this program, the employee may seek redress through provisions of the grievance procedure as provided for in Article 15 of this Agreement.

2. Work Schedule Options

Work schedule options will be administered in accordance with agency policy, Administrative Directive P-600 (Hours of Duty), and federal laws and regulations, including 5 C.F.R. 610.

The Agency offers a "traditional" work schedule and two alternative work schedules:

(a) Traditional Work Schedule

Under this option, an employee works the official public hours of 8:30 a.m. to 5:00 p.m. Monday through Friday. Features such as credit hours and flex-in/flex-out are not available under this option. This option is the agency's default tour of duty -- the employee or supervisor need not take any action for this option.

With supervisory approval, an employee may select a traditional eight-hour tour of duty other than 8:30 a.m. to 5:00 p.m. Monday through Friday. Tours of duty under this option shall begin no earlier than **6:00 a.m.** (revised 7/15/2005) and end no later than 6:00 p.m.

(b) AWS Option 1: 5-4/9 Compressed Work Schedule

Under this option, an employee may request and a supervisor may approve a schedule where the employee works nine hours on eight days each pay period and eight hours on one day each pay period with one day off every pay period. A scheduled day off and tour of duty must be established and agreed upon by the employee and his/her supervisor. Features such as credit hours and flex-in/out are not available under this option.

Tours of duty under this option shall begin no earlier than 6:00 a.m. and end no later than **6:30 p.m.** (revised 7/15/2005).

(c) AWS Option 2: Flexitour

Under this option, an employee may request and a supervisor may approve a schedule where the employee works a fixed tour of duty for eight hours a day, five days a week, including but not necessarily the official hours of 8:30 a.m. to 5:00 p.m. Tours of duty under this option shall begin no earlier than **6:00 a.m.** (revised 7/15/2005) and end no later than **6:30 p.m.** (revised 7/15/2005).

Unlike the traditional or the compressed work schedule, the flexitour option provides two methods for variance from the fixed eight-hour tour of duty:

(1) Flex-in/Flex-out

Subject to prior supervisory approval in each instance, employees under a flexitour schedule may flex in and out for a single period of one hour during the workday, provided the employee works his or her full number of duty hours that day, or is placed in the appropriate leave category.

(2) Credit Hours

Credit hours are hours in excess of 8 hours a day and 40 hours a week that an employee under the flexitour option elects to work, subject to prior supervisory approval in each instance. Use of accrued credit hours is also subject to supervisory consent, and may be used to vary the length of a succeeding workday or the workweek, or used as a substitute for annual or sick leave. For full-time employees, up to three credit hours per day (up to a maximum of 24 hours per pay period) may be earned, provided that there is work available and it can be performed at the requested time. The maximum number of credit hours that a full-time employee may carry over from pay period to pay period is 24 hours. Part-time employees may carry over 1/4 of the hours in their biweekly work requirement (e.g., if the basic biweekly work requirement is 64 hours, they may carry over 16 credit hours). In every case, credit hours must be earned before they can be used.

Requests to work credit hours should be made to the supervisor no later than the workday preceding the day the employee wishes to work. This does not preclude the working of same-day credit hours upon mutual agreement of the supervisor and the employee.

The flex-in/flex-out and credit hour options are only available under the flexitour option, and are not available to employees on traditional or compressed work schedules. An employee working a fixed eight-hour-a-day tour of duty, but wishing to use the flex-in/flex-out and/or credit hour options, must work under a flexitour work schedule. Each division and office will maintain a time accounting system to track the accumulation and use of credit hours and flex-in/flex-out time. **The union and management will meet at least once a year to assess these options** (revised 7/15/2005).

3. Start/End Time

Subject to supervisory approval, employees may occasionally but not routinely report for work up to 30 minutes before or after the employee's fixed starting time, provided the employee works his or her full number of duty hours that day, or is placed in the appropriate leave category. This option may be requested by an employee under any of the three work schedule options.

4. Holidays

On federal holidays, employees will be paid for the number of hours they would regularly be scheduled to work on that day.

5. Procedures

An employee who desires to work an AWS tour of duty or change an existing AWS tour of duty shall submit a written request to his/her supervisor for a decision. The supervisor will act upon these requests within fifteen working days after the request is made. Changes to an employee's tour of duty will take effect at the beginning of a pay period.

For any of the options or features in this Article that are subject to supervisory approval, the supervisor and the employee will work together to evaluate whether the employee's request is appropriate, according to the following factors:

- the employee's work history;
- the nature and sufficiency of the work to be performed before or after the official public hours for the Agency;
- outcomes that can be evaluated by the supervisor; and
- the effect of the arrangement on the work of other employees.

The employee or the supervisor may occasionally find it necessary to make adjustments to an alternative work schedule. These adjustments may be necessary, for example, when an employee is required to travel, participate in a training course, take military or court leave, or work different hours in order to meet mission-related requirements or deadlines. In these situations, the supervisor will decide on a case-by-case basis what adjustment is necessary to satisfy the work requirement and will notify the employee of the revised work schedule.

6. Overtime and Compensatory Time

All overtime and compensatory time off will be administered in accordance with Administrative Directive P-550 (Pay Administration) and federal laws and regulations.

7. Review

The parties agree to review, periodically but not less than annually, the utilization and effectiveness of the AWS program across the Agency.

ARTICLE 18

LEAVE

1. General

Employees will accrue and use leave in accordance with applicable statutes, regulations, agency directives, and this Agreement. Information about specific procedures for leave approval is contained in the agency directive on leave (P-630).

2. Annual Leave

Annual leave is to be used for personal and emergency purposes as well as for rest and relaxation. Whenever operations permit, the convenience of the employee should be considered in determining whether leave may be granted. Leave should be scheduled so as to prevent a concentration of annual leave usage at the end of the leave year and to avoid possible forfeiture of annual leave.

Except in unusual circumstances, annual leave should be applied for and approved in advance.

At the discretion of the supervisor, tardiness or absence from duty of less than one hour may be excused, charged to annual leave, or charged to leave without pay if no annual leave is available. Each such absence or tardiness must be considered individually and the charge to leave made on the calendar day on which the absence occurred.

Where the reasons for tardiness or absence are not acceptable, the time will be charged as unpaid absence without leave (AWOL). Unauthorized absence may be the basis for disciplinary action.

3. Restoration of Forfeited Annual Leave

Annual leave forfeited because of accumulation in excess of the maximum carry-over (240 hours) may be restored if the loss occurred because of administrative error, exigencies of the public business, or illness. The Deputy Chairman or his/her designee is the approving authority for all restoration of annual leave requests. Annual leave must have been scheduled and approved in writing before the start of the third pay period prior to the end of the leave year before it may be considered for restoration.

4. Sick Leave

Sick leave is leave with pay granted for absence of an employee who is incapacitated for the performance of his/her duties because of sickness, injury, pregnancy, adoption, medical, dental, and optical examination or treatment. This includes an employee who depends on an aid or assistive device and needs to repair, replace, or receive training on the use of the aid or device. Except in an emergency, sick leave for medical, dental, or optical examination and other routine appointments must be approved in advance.

Sick leave may also be granted when a member of the immediate family of the employee is quarantined or isolated due to affliction with a contagious disease that requires the attention of the employee or when through exposure to a contagious disease the presence of the employee on duty would jeopardize the health of others. "Contagious" disease means a disease subject to quarantine or requiring isolation of the patient as determined by appropriate health authorities having jurisdiction.

5. Family Friendly Leave Act

Limited amounts of sick leave may also be taken in order to care for a member of the family who is ill, or in order to arrange for or attend the funeral of a family member. All full-time employees may take up to 40 hours of sick leave per calendar year in order to care for a family member, which includes accompanying family members to appointments and treatments as well as for bereavement purposes (arranging for and attending funerals). In addition, full-time employees who maintain a sick leave balance of at least 80 hours may take an additional 64 hours of sick leave for family care in a calendar year, for a total of 104 hours for the same purposes as above. Part-time employees may take sick leave in an amount equal to half of the average number of hours of work in the employee's scheduled tour of duty. Part-time employees who maintain a leave balance equal to at least the average number of hours in their scheduled bi-weekly tour of duty may use an amount equal to the number of hours of sick leave they will accrue during a leave year.

All eligible employees may take up to 12 weeks of sick leave to care for a family member who has a serious health condition. However, the employee must maintain a minimum of 80 hours sick leave balance at all times.

6. Medical Certificates

Before approving sick leave, supervisors may also require an employee to submit a medical certificate, signed by a physician or medical practitioner, no later than the end of the first full pay period following the employee's return to duty. In a case where a physician or medical practitioner was not in attendance, an employee may submit a signed statement in lieu of the medical certificate. Such personal statement must indicate the nature of the illness and the reason a medical certificate is not being furnished. The supervisor will indicate his/her acceptance of the employee's statement in lieu of a medical certificate or, if he/she does not consider the personal statement acceptable, he/she will send the statement, accompanied by a memorandum of explanation, to the Director of Human Resources for final determination as to its acceptability.

7. Advancing Annual and Sick Leave

Permanent employees with more than one year of federal service are eligible for advanced annual leave only up to the number of hours of annual leave they will earn by the end of the current leave year.

Sick leave may be advanced up to a total of 240 hours in cases of serious disability or illness. A doctor's certificate is required for all periods of advanced sick leave. Except in unusual circumstances, sick leave will not be advanced to employees with less than one year of federal service.

Normally, leave will not be advanced to employees who are currently on, or who have recently been on, leave restriction.

8. Leave Without Pay

Leave without pay (LWOP) is a temporary nonpay and nonduty status granted at the employee's request. While approval of LWOP is at the discretion of the Agency, an employee's request for LWOP must be granted:

- for medical treatment of a disabled veteran;
- for military service, if the employee (either a member of a Reserve component or the National Guard) either has exhausted his/her military leave, or is on a temporary appointment and therefore not eligible for military leave;
- when requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation; or
- when an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program. (See section 9 for LWOP which is taken under the Family and Medical Leave Act.)

As a basic condition for approval of LWOP, there should be a reasonable expectation that the employee will return to federal service at the end of the LWOP period.

Some of the factors to be considered in acting on requests for leave without pay are:

- the value to the Agency through possible increase of the employee's skills and abilities (when applicable);
- the duration of the absence, the effect on the remainder of the organization, and the requirement for filling the employee's position during his/her absence;
- the nature of illness (when applicable); and
- the possibility of conflict with the interests of the Agency.

9. Family And Medical Leave (FMLA)

The Family and Medical Leave Act of 1993 established entitlements and responsibilities of employees and agencies for granting unpaid leave for certain family and medical reasons. Under this act, eligible employees are entitled to a total of 12 administrative workweeks of unpaid leave (LWOP) during a 12-month period for the birth of a child, or the placement of a child with the employee for adoption or foster care; because the employee has a serious health condition that makes it impossible to perform one or more of the essential functions of his/her position; or in order to care for certain family members who have a serious health condition. Employees are guaranteed that, at the end of this period of LWOP, they will be restored either to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment (unless the expiration date of a temporary appointment occurs during the LWOP period).

(a) Leave Provisions

An employee is entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

- (1) because of the birth of a son or daughter and in order to care for the newborn;
- (2) because of the placement with the employee of a son or daughter for adoption or foster care;
- (3) in order to care for a family member, if such family member has a serious health condition; or
- (4) because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position.

The 12 administrative workweeks will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. For a full-time employee, this is 480 hours. For a part-time employee, the number of hours available will be calculated according to the

number of hours the employee is scheduled to work the bi-weekly pay period that the leave begins. If an employee's regularly scheduled administrative workweek is changed during the 12-month period of FMLA, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek. FMLA leave may be charged only on days in which the employee is scheduled to be in a duty status.

Whenever the need for leave under this program is foreseeable, the employee shall provide his/her supervisor with advance written notice of the intention to invoke this leave. Whenever possible, the notice should be submitted at least 30 days before the date the leave is to begin. The notice must include enough information so as to clearly establish the employee's right to leave under FMLA. If the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the Agency may deny the taking of leave under this part until at least 30 days after the date the employee provides notice of his or her need for family and medical leave. Under these circumstances, the employee may be carried in an absent without leave (AWOL) status for the 30 days.

An employee may not retroactively invoke his/her entitlement to FMLA.

When the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied. The employee must provide the required medical certification within 15 calendar days after the Agency requests it and the employee may be carried in an AWOL status after this 15-day period until the required certification is received. If it is not practicable under the particular circumstances to provide the certification during this time frame despite the employee's diligent, good faith efforts, the certification must be submitted no later than 30 calendar days after the Agency requests it.

An employee may elect, but cannot be required, to substitute any accrued or accumulated annual or sick leave for any part of the 12-week period of LWOP. Such substituted leave must be taken in accordance with federal leave regulations. The employee must notify his/her supervisor of the intent to substitute paid leave for the LWOP. If the LWOP is expected to last more than 30 days, the supervisor must submit an SF-52, "Request for Personnel Action," to the OHR, in order to document the LWOP taken. In addition, when an employee's leave without pay under this program will be 80 hours or more, the OHR must be notified so as to assure that the employee will receive all necessary information regarding the effects of LWOP on his/her benefits.

An employee cannot take leave under section (a)(1) or (a)(2) on an intermittent or reduced leave schedule basis unless the employee and the Agency agree to do so. Entitlement to leave under these sections expires 12 months after the date of birth or placement of the son or daughter.

When an employee takes leave under section (a)(3) or (a)(4), the employee shall make a reasonable effort, subject to the approval of the health care provider, to schedule the treatment so as not to disrupt unduly the operations of the Agency. Leave under these sections may be taken intermittently or on a reduced leave schedule when medically necessary. Any hours of leave so

taken shall be subtracted, on an hour-for-hour basis, from the total amount of leave available to the employee under this program.

The Agency may require an employee taking leave on an intermittent or reduced leave schedule to transfer temporarily to an available alternative position for which the employee is qualified that has equivalent pay and benefits and better accommodates recurring periods of leave.

(b) Certification

A request for leave under section (a)(3) or (a)(4) must be supported by certification issued by the health care provider of either the employee or the family member, as appropriate. The medical certification must comply with federal regulations. The employee must provide the required medical certification within 15 calendar days after the Agency requests it and the employee may be carried in an AWOL status after this 15-day period until the required certification is received. If it is not practicable under the particular circumstances to provide the certification during this time frame despite the employee's diligent, good faith efforts, the certification must be submitted no later than 30 calendar days after the Agency requests it. The employee may be carried in a "provisional" FMLA status until the certification is received.

If the Agency has reason to doubt the validity of any certification provided, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the Agency concerning any information certified for such leave. The employee will not be eligible for leave under FMLA if he/she or a family member refuse medical examination.

If the second opinion described above differs from the original certification, the Agency may require, at the Agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Agency and the employee. The opinion of the third health care provider shall be considered to be final and shall be binding on the Agency and the employee.

The Agency may require, at the Agency's expense, that the employee obtain subsequent recertification. The Agency may also require that the employee obtain written medical certification that the employee is able to perform the essential functions of his/her position before the employee may return to work.

(c) Employment and Benefits Protection

Any employee who takes leave under this section shall be entitled upon return from the leave to be restored: 1) to the position held when the leave began; or 2) to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave began.

Except as otherwise provided by or under law, nothing in this section shall entitle any restored employee to 1) the accrual of any employment benefits during any period of leave; or 2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had he/she not taken the leave.

Nothing in this section shall be construed to prohibit the Agency from requiring an employee on leave under this section to report periodically to the Agency on the status and intention of the employee to return to work.

10. Excused Absences

Annual leave will not be charged for blood donations or blood platelet donations for the American Red Cross or other locally sponsored institutions recognized as contributing to the general well-being of the community. Employees may be excused for a reasonable amount of time not to exceed four hours for this purpose providing they do not receive pay for the donation.

Employees will not be charged for absences of up to seven (7) days in a calendar year to serve as a bone marrow donor, or for absences up to thirty (30) days in a calendar year to serve as an organ donor.

11. Emergency Dismissals

The Agency operates under Emergency Dismissal or Closure Procedures governed by the Office of Personnel Management. The Procedures apply to adverse weather conditions (snow emergencies, severe icing conditions, floods, earthquakes, hurricanes), air pollution, disruption of power and/or water, interruption of public transportation, and other emergency situations.

These procedures apply to all agency employees except those occupying positions designated as "emergency." The Chairman or his/her designee will designate "emergency employees" on an ad hoc basis, and notify such employees in writing. They will be expected to report for work on time and remain at work regardless of weather conditions unless notified otherwise.

12. Court Leave

(a) General

Court leave is the authorized absence of an employee for jury duty, or for attending judicial proceedings in a nonofficial capacity as a witness on behalf of a federal, state, or local government. The term "judicial proceeding" contemplates any action, suit, or other proceeding of a judicial nature, but does not include an administrative proceeding. An employee who is appearing in court in a private capacity, or on behalf of a private party, is not entitled to court leave, but may request annual leave or leave without pay. Also, intermittent employees and employees on leave without pay may not use court leave. An OPM Form 71, "Request for Leave or Approved Absence," with a copy of the summons or other official court document attached, will be submitted in advance to the employee's supervisor for approval and forwarded to the

timekeeper. If an employee is on annual leave when called for jury service, court leave should be substituted for the annual leave.

(b) Jury Service

If an employee receives payment from the court for his/her services, the money received for meals and transportation may be kept by the employee. Where the court makes no distinction in the payment as a fee or as an amount for meals and transportation, the entire amount received must be turned in to the Agency's Accounting Office for deposit. The employee must submit a signed statement furnishing the rate and purpose for which the payment was made, unless such information is contained in the court certificate. The Accounting Office will refund to the employee any fees paid which the employee is entitled to retain.

An employee on court leave for jury service may be required to return to duty when he/she is excused from jury duty for any full workday, unless a hardship would result because of the distant location of the court.

13. Absence Without Leave

When an employee is absent without leave, i.e., fails to report to duty without prior approval, does not give proper notification or does not have an acceptable excuse for absence, he/she may be charged with absence without official leave (AWOL), which is a non-pay status. Repeated unauthorized absences may be the basis for disciplinary action. AWOL will be charged in increments of quarters of an hour.

14. Leave For Voting and Registration

An employee who desires to register for or vote in any election or referendum on civic matters in his/her community may be granted time off without charge to annual leave as described below.

Where the polls are not open at least three hours either before or after an employee's regular hours of work, he/she may be granted an amount of excused absence which will permit him/her to report for work not later than three hours after the polls open or depart from work not more than three hours before the polls close, whichever requires the lesser amount of time off.

If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted up to one day excused absence in order to make the trip to the voting place to cast his/her ballot. Where more than one day is required to make the trip to the voting place, a liberal policy in granting the necessary leave will be observed. Time off in excess of one day will be charged to annual leave in such cases.

An employee who votes in a jurisdiction which requires registration in person may be granted time off to register on substantially the same basis as for voting. However, no such time will be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable, one-day round trip travel distance of the employee's place of residence.

15. Voluntary Leave Transfer Program

The Voluntary Leave Transfer Program (VLTP) is designed to provide income protection through voluntary donations of annual leave to employees who may otherwise suffer a substantial pay loss due to absence necessitated by medical emergencies. All full-time and part-time employees may participate in this program to the extent that they satisfy the eligibility requirements stated in federal regulations.

Agency employees with unused accrued annual leave, including restored leave, may transfer a portion of that leave to another federal employee who has exhausted all of his or her available leave because of a medical emergency. No agency employee may directly or indirectly attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this program.

16. Compensatory Time Off for Religious Observances

An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off when the employee's religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

The employee may work such overtime before or after the grant of compensatory time off. Advanced compensatory time should be repaid in a reasonable amount of time.

ARTICLE 19 MERIT PROMOTION

Bargaining unit positions will be filled using merit policies and procedures found in the Agency's directive on merit staffing (P-310). This directive is available on the Agency's Intranet. Copies will be furnished upon request. Grievances related to the filling of bargaining unit positions shall be filed under the grievance procedure in Article 15.

ARTICLE 20 USE OF OFFICIAL FACILITIES

1. Union Office Space

The Agency agrees to provide an office to the Union in the Old Post Office Building. The master key for the floor will not open the lock to the office door. However, the Agency is responsible for maintaining keys and making them available to GSA in accordance with GSA policy for managing the Old Post Office Building.

2. Equipment

The Agency will provide the following items:

- (a) Systems furniture for one workstation similar to workstations in the Agency's offices;
- (b) File Cabinet;
- (c) One telephone instrument and one telephone line with access to internal telephone lines and long-distance suitable for the Union to conduct representational duties. The Union will use long distance in a reasonable, prudent, and cost-conscious manner. In no instance will long distance be used for internal union business, such as solicitation of members, collection of dues, or election of union officials. All use of the telephone will be in accordance with Administrative Directive M-107, Telecommunications Systems and Services;
- (d) Printer;
- (e) Access to a fax machine and a copy machine to be used for representational purposes; and
- (f) One personal computer with the Agency's standard software, appropriate wiring, programs, and capabilities compatible with the Agency's technology, and access to e-mail and the Internet. The Union will use the computer or the Agency's automated systems and services described above to conduct representational duties. In no instance will the computer or other agency automated systems and services described above be used for internal union business. All use of the personal computer and automated systems and services will be in accordance with Administrative Directive M-109, Automated Systems and Services.

3. Meeting Space

Agency meeting rooms may be used for union activities based on availability and on non-duty hours only. The Union agrees to exercise reasonable care in use of such space and to follow established agency procedures for scheduling use of meeting rooms.

4. Interoffice Mail System

The Union may use the interoffice mail system for representational communications. The Union will not use the interoffice mail system to conduct internal union business.

5. Agency Directives

Upon request, the Agency will furnish the Union one copy of all directives that are not available electronically on its Intranet.

ARTICLE 21

OFFICIAL RECORDS

1. Official Records and Files

No personnel record may be collected, maintained, or retained except in accordance with laws, rules, government-wide regulations, agency directives, and this Agreement. All personnel records are confidential and shall be viewed only by officials with a legitimate need to know for the performance of their duties; they must be retained in a secure location. Employees shall periodically be advised of the nature and purpose of their Official Personnel Folder (OPF) and its location.

2. Access to Records

(a) During normal duty hours, employees and/or their representative(s) designated in writing shall have the right to examine records personally identified to the employee, subject to regulation and agency directive. Employees and/or their representatives shall be accompanied by the Agency's records custodian at all times. Employees, or their representative(s) designated in writing, may receive at no cost copies of personally identified records that have not been previously furnished. Additional copies will be provided; however, there may be a charge in accordance with the agency fee schedules in effect at the time of request.

(b) Employees' access to their own medical records maintained by the Agency may be refused only if, in the sole judgment of a health care professional, their disclosure would be harmful to the mental or physical health of the individual. In such cases, the medical record(s) may be released only to a health care professional designated by the employee.

(c) The employee has the right to prepare and enter a concise statement of disagreement with any document filed on the left (temporary) side of the OPF.

(d) Access to personnel records of the employee by the employee and/or the designated representative will be granted when requested if such records are maintained in the Agency's offices. If the records are stored at another facility, the Agency will initiate action, normally within three days of the request, to obtain the records from their location and make them available to the employee and/or designated representative.

3. Outdated Records

(a) All official personnel records shall be purged and information disposed of in accordance with appropriate records control schedules.

(b) When OPFs are purged, personal materials provided by the employee shall be returned to the employee (e.g., transcripts, certificates).

(c) The OHR will maintain a system of follow-up to assure that any written counseling, disciplinary, or similar action with a time limit on it is removed from the OPF on the proper date and returned to the employee. If any outdated or unauthorized material is accidentally left in the OPF, it may not be used to support any personnel action detrimental to the employee.

4. Supervisory Notes

Supervisory notes are private notes that are personal to the supervisor. However, once a supervisor's notes are used as a basis for a disciplinary or adverse action, those notes become agency records. Upon request, an employee may receive a copy of agency records pertaining to the disciplinary or adverse action at issue, in accordance with applicable laws, rules, government-wide regulations, agency directives, and this Agreement.

ARTICLE 22

OFFICIAL TIME

1. Purpose

The parties recognize that good communications are vital to positive and constructive relationships between the Union and the Agency. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management concerning conditions of employment and should contribute to the effective and efficient conduct of public business.

Union representatives have a responsibility to advise, where possible, their supervisors in advance when they seek to be released from their duties to perform representational functions. Management, in turn, recognizes that assignment of work to a union representative shall take into consideration the need of the union representative to perform representational functions on official time, and the necessity to accommodate the official time requirements of the union representative, consistent with the need to carry out the Agency's work effectively and efficiently.

Thus, official time will be granted in the amounts specified by this Agreement for the purpose of handling grievances and other representational functions.

2. Allotment of Official Time

(a) For the Local 3403 Vice President, Chief Steward, and up to three (3) Shop Stewards, a total pool of 1,248 hours per leave year is authorized. The Union shall make every effort to distribute representational functions proportionately among all five designated union officers and stewards.

(b) Official time from the pool of hours designated in section 2(a) may be used for attendance at union-sponsored training or conferences, not to exceed 40 hours for any one individual. Such training or conference will be concerning representational activities but will not include training or policy associated with recruitment of members, solicitation of dues, union management, and other internal union business. The Agency will not be responsible for paying any training costs or travel related to such training. Requests for training will be cleared by the Labor Relations Officer.

(c) In addition to the above limits, official time will also be granted to union representatives to attend labor-management negotiations and related third-party proceedings, participation in proceedings before the FLRA as determined by the FLRA, labor-management committee meetings, and attendance at other meetings requested by management officials.

3. Accrual of Official Time

Official time as authorized above may be used as needed, subject to supervisory approval. Any time that is not used as needed by the end of the leave year will not be carried over to the next leave year.

4. Reports to Management

The Union will provide the Labor Relations Officer with a listing of the name and office held of each union representative. The Union will also provide a timely notice of any change in these union representatives.

Every pay period, each union representative will submit a completed form, "Report of Union Representational Activities" to his/her supervisor for signature, who will then forward it to the office timekeeper for entry into the timekeeping system. A sample of this form may be found in Appendix A.

5. Leaving the Work Site

Once official time is approved by the supervisor, union representatives will be permitted to leave the work site to discharge their functions as described above.

6. Performance Evaluation

The use of official time in accordance with this Agreement will not adversely affect a union representative's performance evaluation.

7. Allegations of Abuse

Abuses of official time are subject to disciplinary action. Alleged abuses shall be brought to the attention of the Labor Relations Officer on a timely basis by a supervisor or management official. The Labor Relations Officer will then discuss the matter with the local vice president or president as appropriate.

Similarly, the affected union representative shall bring alleged noncompliance by Management with the official time provisions contained herein to the attention of the Labor Relations Officer. The Labor Relations Officer will then discuss the matter with the appropriate management official.

ARTICLE 23

OFFICIAL TRAVEL

1. The mission of the Agency will occasionally require that bargaining unit employees travel. Employees required to travel will follow all applicable rules and procedures established by statute, regulations, and agency directives. Information on procedures for arranging travel and obtaining reimbursement for allowable travel expenses is available from the Accounting Office.
2. To the extent possible, the Agency will try to schedule travel during official work hours. Circumstances may necessitate, however, that employees travel on personal time, weekends, or a holiday.
3. It is the responsibility of each employee to minimize the cost to the government of official travel. Employees should schedule travel so as to minimize unproductive time and the need for overnight accommodations. Supervisors have discretion to authorize administrative leave on the day following travel if the traveler took an overnight flight that saved travel funds by avoiding the cost of a hotel room.

ARTICLE 24

PART-TIME EMPLOYMENT, JOB SHARING, USE OF TEMPORARY EMPLOYEES

1. Part-time Employment

Part-time employees are those who are employed in permanent positions with a pre-scheduled tour of duty of 16 to 32 hours a week. The Agency will consider requests from employees interested in part-time career employment opportunities.

An employee may, at any time, make a written request to work part-time. It is the responsibility of interested employees to avail themselves of information and counsel from the OHR prior to submitting such a request. Part-time employment may have an impact on such things as health benefits, leave, holidays, pay, experience credit, and retirement. Employees converted to part-time employment also need to know that they have no right to return to full-time work.

If the employee's request to be converted to a part-time schedule is rejected, the reasons will be explained to the employee.

2. Job Sharing

An employee may request to participate in a part-time job-sharing arrangement. Job sharing entails two employees combining to share the duties and responsibilities of one full-time position. Each participant must be fully qualified to perform all of the duties of the position. Final approval of the job-sharing arrangement is contingent on the Agency's approval of both job-sharing partners.

3. Use of Temporary Employees

Before deciding to hire a temporary employee or request the use of a temporary services firm, agency supervisors will consider whether or not the duties needed to be performed may be assigned to an agency employee as a temporary promotion opportunity.

ARTICLE 25

PERFORMANCE APPRAISAL SYSTEM

1. General

The Agency and the Union agree to strive for continuous improvement in the performance of employees to fulfill the Agency's commitment to providing quality customer service and to accomplish its mission.

Bargaining unit employees' performance will be evaluated in accordance with the Agency's directive on Performance Appraisal Plan (P-430), and applicable laws, rules, and regulations.

Employees are encouraged to provide comments and suggestions in the development of their performance plans. If requested by the employee, the Union may also provide comments and suggestions in the development of plans.

Supervisors should communicate with employees regarding their achievement of goals and objectives throughout the rating period. Supervisors are to discuss performance problems with employees and provide assistance to employees in improving performance. There shall be at least one progress review during the rating period, generally near mid-year.

In an effort to ensure that employees are evaluated on the basis of all work performed, supervisors should provide employees with the opportunity to submit a listing of actual accomplishments prior to preparing a final performance evaluation.

Grievances related to performance appraisals shall be filed under the grievance procedure in Article 15.

2. Actions Based on Unacceptable Performance

Performance that is below the minimally satisfactory level on one or more critical elements is unacceptable. In such instances, the Agency may take appropriate action including reassignment, reduction in grade, or removal because of unacceptable performance. Reduction in grade and removal are taken under the authority of 5 U.S.C. 4303 and 5 C.F.R. Part 432 or 5 U.S.C. Chapter 75 and 5 C.F.R. Part 752.

An employee may grieve a decision to remove or reduce in grade under the negotiated grievance procedure, or may appeal to the Merit Systems Protection Board (MSPB), but not both. An employee shall be deemed to have exercised his or her option for one of the procedures described above at such time as he/she files under either procedure, whichever comes first in accordance with Article 15, section 3(c). The notice of decision will specify the requirements for filing the grievance or appealing to the MSPB, including pertinent time limits for each option.

ARTICLE 26

REDUCTION IN FORCE

1. Any Reduction in Force (RIF) will be accomplished in accordance with applicable laws, rules, and regulations.
2. A RIF occurs when the Agency releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an Agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.
3. The Agency shall notify the Union in writing of a pending RIF prior to providing specific written notification to employees. The notice to the Union shall include the reasons for the RIF, the anticipated numbers and types of positions affected, and the proposed date of the action.

The Agency shall provide a specific written notice to each employee selected for release from a competitive level 60 full days before the effective date of release, except as provided in 5 C.F.R. §351.801(b).

The notice shall include

- (a) the action to be taken, the reasons for the action, and its effective date;
- (b) the employee's competitive area, competitive level, subgroup, service date, and ratings of record received during the last four years;
- (c) the place where the employees may inspect the regulations and records pertinent to the case;

(d) if applicable, the reasons why a lower standing employee is being retained in his or her competitive level for more than 30 calendar days after the date a higher standing employee is released from the same retention register;

(e) information on reemployment rights;

(f) the employee's right, as applicable, to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations;

(g) if applicable, notification that the employee is being separated under liquidation procedures without regard to standing within the subgroup and the date the liquidation will be completed; and

(h) if applicable, information on the Reemployment Priority List and on assistance for displaced employees.

At the same time notices are issued to employees, the Agency shall provide a copy or suitable summary of such notices to the Union.

4. An employee receiving a specific RIF notice may review the retention register for his or her competitive level and related records as well as the retention registers for other positions that could affect the composition of the employee's competitive level and/or the determination of the employee's assignment rights. The Agency agrees to provide, upon request, individual counseling to an employee concerning the basis for determining the competitive level and assignment rights for his or her position.

The Agency shall preserve all registers and records relating to a RIF for at least 2 years.

5. When a competitive service employee in tenure group I or II with a current annual performance rating of record of minimally successful, or equivalent, or higher, is released from a competitive level, the Agency will offer assignment in accordance with federal regulations. Employees in the excepted service will compete within competitive levels in order of retention standing as specified in federal regulations. Assignment rights are not provided for excepted service employees, in accord with federal regulations.

Employees who receive assignment offers shall have a minimum of 14 calendar days to accept or reject an offer of assignment.

Any employee affected by reduction-in-force may request an assignment to a vacant position. The Agency agrees to consider such requests. In considering such requests, the Agency will also consider waiver of OPM standards and requirements for a vacant position, provided the employee meets any minimum education requirement for the position and the Agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position without undue interruption to the mission of the Agency.

If an employee is placed in a lower grade, he or she shall retain grade and pay in accordance with applicable regulations.

6. The Agency shall establish and maintain a reemployment priority list in accordance with applicable regulations. An employee's name shall be added to the list when the employee is released from his or her competitive level.

7. The Agency shall provide placement assistance as delineated in federal regulations, including information on employment in other federal agencies and information on unemployment insurance through the appropriate state program.

ARTICLE 27

TELECOMMUTING

1. General

Telecommuting is a program that allows employees to work at home or at other alternate duty stations under pre-approved arrangements. The Agency and the Union jointly recognize the advantages of a flexible workplace program to the Agency and its employees. Balancing work and family responsibilities and meeting environmental, financial, and commuting concerns are among its advantages. In recognizing these benefits, both parties also acknowledge the needs of the Agency to accomplish its mission.

Telecommuting is a voluntary program for both the employee and the Agency. When a decision is made to deny participation in or remove an employee from the Telecommuting program, the employee shall be given written notice indicating the reason(s) for denial/removal. Once an employee receives written notice of denial/removal from this program, the employee may seek redress through provisions of the grievance procedure as provided for in Article 15 of this Agreement.

In addition to mission-related concerns, the Union recognizes that Management may wish to remove an employee from the Telecommuting program based on the employee's failure to adhere to the requirements specified in the Telecommuting Agreement and/or a decline in overall performance below the fully successful level. The Agency recognizes that employees will not be removed from participation for single, one-time minor infractions of Telecommuting program requirements. Supervisors shall counsel employees about specific problems before effecting removal. Once removed from the Telecommuting program, the employee may reapply for participation provided that his or her performance is at least fully successful.

Employees on Telecommuting assignment will follow all applicable agency and federal policies and procedures.

2. Participation

Telecommuting arrangements can be occasional and temporary or part of an employee's regular tour of duty.

The supervisor and the employee will work together to evaluate whether the employee's job is appropriate for telecommuting, according to the following factors:

- (a) the employee's work history;
- (b) the nature and sufficiency of the work to be performed off-site; and
- (c) coordination with the Office of Information Resources Management (for any work involving remote access to any agency information system other than telephones or e-mail).

To participate in the program, employees must sign the Telecommuting Agreement (found in Appendix B).

3. Alternate Duty Station

- (a) The employee must provide a safe and adequate place to work, free from interruption and suitable for performing the duties assigned. Employees must not use duty time for any purposes other than official duties.
- (b) While working at the alternate duty station the employee must be accessible to his or her office and supervisor by telephone or e-mail.
- (c) The Agency will not be responsible for operating costs, technical assistance, or equipment associated with using the alternate station, but may assume such costs or provide such assistance at its discretion.
- (d) The employee must notify the supervisor if any change occurs at the alternate duty station that would affect the safety of the employee or the ability of the employee to perform the assigned work.

4. Telecommuting Work Arrangements

- (a) Requests for telecommuting work arrangements must be approved by the employee's supervisor. Telecommuting work arrangements based on medical necessity should be approved in consultation with the OHR.
- (b) Requests for telecommuting work arrangements should describe the work to be accomplished in the specified time. Supervisors will approve/disapprove specific telecommuting arrangements according to the following factors
 - (1) the nature and sufficiency of the work to be performed off-site;
 - (2) outcomes that can be evaluated by the supervisor; and

(3) effect of the arrangement on the work of other employees.

(c) Requests for occasional telecommuting assignments should be submitted for supervisory approval at least one work day before the assignment is to be undertaken. Requests for telecommuting arrangements as part of the employee's tour of duty should be prepared in consultation with the supervisor and submitted in writing for approval at least one pay period before the proposed new tour of duty is to begin. Requests for telecommuting arrangements based on medical necessity should be submitted as far in advance as feasible to allow for approval by the supervisor and the OHR.

5. Emergencies

(a) If the Agency is closed, managers and supervisors shall not require employees on telecommuting to perform work at the alternate duty station during the closure.

(b) When an employee is scheduled to work at the alternate duty station and his/her official duty station facility opens late, the employee is entitled to the exact amount of excused absence the employee would have received if scheduled to work at the official duty station.

(c) If an emergency occurs at the alternate duty station that affects the employee's ability to perform official duties, he or she must immediately notify the supervisor and make appropriate arrangements.

6. Tour of Duty, Overtime

(a) An employee working on a telecommuting arrangement will work his or her regular hours of duty unless other scheduling is approved by the supervisor.

(b) Overtime must be approved by the supervisor in advance.

7. Review

The parties agree to review, periodically but not less than annually, the utilization and effectiveness of the telecommuting program across the Agency, and to discuss the feasibility of using telecommuting centers as alternate duty stations.

ARTICLE 28

TIMELY AND PROPER COMPENSATION

1. Timely Receipt

Employees are entitled to timely receipt of all wages earned for the applicable pay period. The leave and earnings statements shall be mailed by the Agency's payroll provider to the employee's home address and normally received the same week as pay is received.

2. Errors in Payment

Employees will review their leave and earnings statements within a reasonable time and notify the appropriate person of any unexplained changes. If the change involves leave, the employee will first notify his/her timekeeper. If the change involves earnings, the employee will notify the OHR and request an explanation.

When there has been an erroneous overpayment, collection will be made by the payroll office from future salary in one withholding or a series of withholdings, depending on the size of the overpayment, and in accordance with federal regulation. Federal regulation may allow for a waiver of the overpayment in rare cases. The OHR will provide the necessary information regarding a request for waiver of overpayment of pay and allowances to the employee.

3. Emergency Payment

Whenever an agency error results in the failure of an employee to receive a salary payment by payday, the Agency will, following standard operating procedures required by the payroll provider, make an emergency request for payment as soon as possible. The amount of the payment will be the employee's net salary as determined by the certified Time and Attendance Record for that pay period.

ARTICLE 29

TRAINING, CAREER DEVELOPMENT, UPWARD MOBILITY

The Agency and the Union agree that the training of employees is of critical importance in carrying out the mission of the Agency. The Agency will pay all expenses, including tuition and travel, in connection with training assigned by the Agency and related to the employee's current position.

The Agency will maintain a variety of training information on the OHR page of its Intranet, which is accessible to all employees. Upon request, the Agency will advise individual employees of training opportunities that meet identified educational or career objectives.

Employees will be notified of approval or disapproval of training requests as soon as possible. Should an employee's request for training be disapproved solely for lack of funds, the employee may resubmit the request as funds become available.

Employees are encouraged to apply for the Agency's career development programs when they are announced (e.g., the Independent Study, Research and Development Program, and the Educational Opportunities for Career Development Program).

The goal of upward mobility is to provide opportunities for employees to advance so as to perform at their highest potential consistent with the needs of the Agency. Subject to these needs

and available resources, the Agency agrees to evaluate situations where vacancies can be filled at the lowest level possible.

ARTICLE 30

TRANSPORTATION SUBSIDY

In order to reduce federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives, the Agency agrees to follow the mandatory provisions of Executive Order 13150, until rescinded or expired, and all federal laws, rules, and regulations regarding transportation subsidies.

ARTICLE 31

WITHIN-GRADE INCREASES

1. General

Pursuant to 5 U.S.C. § 5335 and 5 C.F.R. 531 Subpart D and agency policy, an employee shall receive a within-grade increase subject to the following: (a) completion of the appropriate waiting period; (b) a determination that the employee's work is of an acceptable level of competence; (c) the employee has not received an equivalent increase during the waiting period.

For within-grade increase purposes, "acceptable level of competence" means job performance at or above the "fully successful" level.

Employees shall be informed of the specific performance requirements that constitute an acceptable level of competence. The method of providing this information shall be the employee's performance plan.

2. Basis of Determination

(a) The basis for a determination of acceptable level of competence shall be the employee's rating of record that was assigned no earlier than the most recently completed appraisal period.

(b) If the rating of record assigned no earlier than the most recently completed appraisal period is not consistent with the employee's current performance, a new rating of record shall be prepared for this purpose.

3. Delay in Determination

An acceptable level of competence determination must be delayed and the within-grade increase postponed when either of the following applies:

(a) The employee has not had 90 days to demonstrate acceptable performance because the employee has not served under his/her performance plan for at least 90 calendar days and has not

received a performance rating in any position within 90 calendar days before the end of the waiting period; or

(b) The employee has been reduced in grade because of unacceptable performance to a position in which he/she is eligible for a within-grade increase or will become eligible for a within-grade increase within 90 calendar days of the effective date of the reduction-in-grade.

When a within-grade increase is postponed under this section, the employee shall be informed that the determination is delayed, that the rating period is extended and what the requirements are for "fully successful" performance. If at the end of the extended rating period, the employee's performance is determined to be at an acceptable level, the within-grade increase must be granted retroactively.

4. Waiver of Requirement for Determination

An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for at least 90 calendar days during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(a) because of absences that are creditable service in the computation of a waiting period under 5 C.F.R. 531.406;

(b) because of paid leave;

(c) because the employee received credit under the back pay provisions at 5 C.F.R. Part 550;

(d) because of details to another agency or employer for which no rating has been prepared;

(e) because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the Agency; or

(f) because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his/her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

5. Notice of Positive Determination

An employee whose performance has been determined to be at an acceptable level of competence shall be notified of this determination by means of a Standard Form 50, "Notification of Personnel Action," as soon as possible after completion of the requisite waiting period.

6. Notice of Negative Determination

When the supervisor determines that the employee's work is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing as soon as possible after completion of the waiting period, and shall contain, at minimum, the following:

- (a) the reasons for the negative determination;
- (b) the steps the employee must take to improve performance in order to be granted a within-grade increase; and
- (c) a statement that the employee may request reconsideration of the negative determination by the Deputy Chairman or his/her designee within 15 calendar days after receiving the notice of negative determination by filing, in writing, a request that sets forth the reasons the Agency should reconsider the determination;
- (d) a statement that the employee may have a union representative assist in presenting the reconsideration request;
- (e) a statement that the employee will be allowed a reasonable amount of duty time to prepare the request; and
- (f) a statement that the employee and his/her representative may examine and, upon request, obtain a copy of the negative determination file.

7. Reconsideration File

When an employee files a request for reconsideration, the Agency shall establish an employee reconsideration file that shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

- (a) the written negative determination and the basis therefore;
- (b) the employee's written request for reconsideration;
- (c) the report of any investigation, if an investigation was conducted;
- (d) when appropriate, the written summary or transcript of any personal presentation made; and
- (e) the Agency's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his/her representative with an opportunity to submit a written exception to any summary of the employee's personal presentation. Copies of any materials added to the file will be provided to the employee or his/her representative.

8. Reconsideration Decision

Upon receipt of the request for reconsideration, the Deputy Chairman may designate an adjudicating official who took no part in the original decision. The decision whether a negative determination will be sustained or set aside will be made by the Deputy Chairman or his/her designee promptly after receipt of the request for reconsideration.

- (a) Upon receipt of the employee's request for reconsideration, the Deputy Chairman or his/her designee may request the complete file of the case from the OHR.
 - (b) On the basis of the file, any evidence presented by the employee and/or representative and information gathered from any inquiry or investigation, the Deputy Chairman or his/her designee shall sustain or set aside the negative determination.
 - (c) The Deputy Chairman or his/her designee shall promptly notify the employee in writing of the decision.
- (1) The written decision shall contain a statement that the earlier negative determination is either sustained or set aside with a summary of the reasons for the decision.
 - (2) If the negative decision is sustained, the written decision shall contain a statement that the employee has a right to appeal this determination under the provisions of Article 15 of this Agreement.

If an employee has been previously notified of performance deficiencies and is currently performing under a Performance Improvement Plan (PIP), the employee's within-grade increase must be denied until the supervisor determines that the employee has achieved an acceptable level of competence.

9. Continuing Evaluation

When a within-grade increase has been withheld, a new determination may be made at any time thereafter when the supervisor determines that the employee has demonstrated sustained performance at an acceptable level of competence for at least 90 days. A new determination must be made no more than 52 calendar weeks following the original eligibility date for the within-grade increase, and for as long as the within-grade increase continues to be denied, determinations shall be made no longer than every 52 calendar weeks.

10. Effective Date of a Within-Grade Increase

- (a) Except as provided in (b) below, a within-grade increase shall be effective on the first day of the first pay period after the completion of the required waiting period and a determination has been made that the employee is performing at an acceptable level of competence.

(b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable level of competence determination has been made.

ARTICLE 32

MANDATED CHANGES AND MID-TERM BARGAINING

1. Any agreements reached under the provisions of this Article shall be deemed to be supplemental and subject to approval by the agency head as set forth in Article 33 (Execution and Approval of the Agreement).
2. If a future statute, Executive Order, government-wide regulation or judicial decision requires the parties to change this Agreement, Management and/or the Union will notify the other, in writing, of proposed contract language to implement the change required. If either party desires to negotiate to the extent permitted by law, it shall notify the other within fourteen (14) calendar days of the receipt of the invitation to negotiate. If the Union does not respond within fourteen (14) calendar days to Management's notice, the Union waives any right to negotiate on the proposed required change, and the proposed formal contract language will become part of this Agreement subject to approval by the agency head as set forth in Article 33. During these negotiations, neither party will be permitted to propose changes unrelated to the change specifically required by the law, Executive Order, government-wide regulation or judicial decision.
3. Except as provided elsewhere in this Article and in Article 4, section 3 (which discusses impact and implementation negotiations), negotiations initiated by either party during the term to add to, amend, or modify this Agreement may be conducted only by mutual consent of the parties. A request to renegotiate must be accompanied by the revised proposals for the article(s) the party wishes to renegotiate. The parties will meet for the purpose of negotiating the amendments or modifications within thirty (30) days of receipt of the proposals from the moving party.
4. Except as provided elsewhere in this Article and in Article 4, section 3 (which discusses impact and implementation negotiations), this Agreement constitutes the entire agreement between the parties concerning the subject matters addressed in its Articles, and those subject matters are not appropriate, absent mutual consent, for further negotiations during the life of this Agreement, and any subject matters not addressed in this Agreement, absent mutual consent, are also not appropriate for negotiations until the expiration of this Agreement. The parties agree, in this regard, that they have bargained fully with respect to all proper subjects of negotiation, and have settled all such matters as set forth in this Agreement.

ARTICLE 33

EXECUTION AND APPROVAL OF THE AGREEMENT

In accordance with 5 U.S.C. 7114(c), the head of the Agency will approve the Agreement within thirty calendar days from the date the Agreement is executed by the parties if the Agreement is in accordance with applicable laws, rules, and regulations. The Agreement will become contractually binding when approved by the agency head or on the thirty-first day after execution, whichever comes first. In the event the agency head disapproves any provisions of the Agreement, the parties will resume negotiations on the subject addressed by those provisions unless appealed by the Union pursuant to 5 U.S.C. 7117(c). All items that are renegotiated shall be submitted to the agency head for review for approval within thirty calendar days upon completion of the resumed negotiations.

ARTICLE 34

DURATION OF AGREEMENT

1. Effective Date

This Agreement will become effective when executed and approved in accordance with Article 33 (Execution and Approval of the Agreement).

2. Duration of Agreement and Renegotiation

This Agreement shall remain in full force and effect for a period of three (3) years after its effective date. Except for permissive provisions, it shall be automatically renewed for successive three-year periods unless either party gives written notice of its intention to terminate, modify or amend this Agreement not less than one hundred and twenty (120) nor more than one hundred and eighty (180) days prior to the expiration of the original contract period, or prior to the expiration of any renewal. Once such notice is given, the moving party shall submit its proposal(s) to the other party within fifteen (15) days. Negotiations shall begin no later than thirty (30) days after receipt of the proposals. If renegotiation of this Agreement is in progress but not completed upon the terminal date of this Agreement or any renewal, this Agreement, except for those involving permissive subjects, will be automatically extended until a new Agreement is effective.

3. Amendments and Modifications

This Agreement may only be terminated, modified or amended in accordance with the provisions of this Agreement.

APPENDIX A

Report of Union Representational Activities

Pay Period #_____

Pay Period _____ through _____

(date)

(date)

Union representative: Enter the number of hours shown for each activity and submit to your supervisor for signature.

Supervisor: Review and sign the report, and submit it to the timekeeper.

Timekeeper: Enter the hours shown under the appropriate transaction code.

Code 35 Contract Negotiations:

Time spent on union contract related activities
including negotiations/renegotiations of the CBA,
and meetings with FMCS and/or FSIP.

_____ (wk 1) _____ (wk 2)
(Code 35) (Code 35)

Code 36 Midterm Negotiation:

Time spent on union midterm negotiation/renegotiation.

_____ (wk 1) _____ (wk 2)
(Code 36) (Code 36)

Code 37 Ongoing Labor Management:

Time spent on union ongoing Labor Management Relations
Including labor-management committees, labor relations
Training for union representatives, consultations, formal
Weingarten-type meetings and consultations.

_____ (wk 1) _____ (wk 2)
(Code 37) (Code 37)

Code 38 Grievance/Appeal:

Time spent on union grievances and appeal related activities
Including grievances, arbitrations, adverse actions, EEO
And other complaints.

_____ (wk 1) _____ (wk 2)
(Code 38) (Code 38)

Employee (name)

x _____
Employee (signature)

x _____
Supervisor (signature)

APPENDIX B

Telecommuting Agreement

Name _____ Office _____

This is an agreement between the National Endowment for the Humanities and [employee name]. Telecommuting is a program that was negotiated for bargaining unit employees with Local 3403, American Federation of

Government Employees. The Telecommuting Program is a voluntary program for both the employee and the Endowment and is an additional method of work the agency may approve to accomplish its mission.

Voluntary Participation

The employee voluntarily agrees to work at the agency-approved alternate duty station indicated below and to follow all applicable policies and procedures.

Duty Station and Alternate Duty Station

The agency and the employee agree that the employee's official duty station is NEH, 1100 Pennsylvania Avenue, NW, Washington, DC, and that the employee's approved alternate duty station is: [enter address]_____.

All pay, leave, and travel entitlements are based on the official duty station.

Official Duties

While in official duty status, the employee on telecommuting agrees to perform only official duties at the agency-approved alternate duty station. While working at the alternate duty station the employee must be accessible to his or her office and supervisor by telephone or e-mail. Employees working at the alternate duty station are to be available for recall as soon as feasible to their regular Endowment duty stations.

Time and Attendance

The employee agrees to follow established office procedures for reporting time worked, and for requesting and obtaining approval of leave. The employee agrees to work overtime only when approved by the supervisor in advance.

Miscellaneous Expenses

Costs of business-related long distance and toll phone charges on the employee's personal phone will be paid by the agency either through issuance of a phone card or other appropriate means in accordance with Administrative Directive M-107 "Telephone Systems and Services." Costs associated with the copying of work-related materials, fax charges, express mail, etc., will not be reimbursed without the prior approval of the agency. The agency will provide all necessary office supplies (such as paper, pens, diskettes, envelopes, tape, staples, etc.).

Equipment

If the agency chooses to provide equipment, the employee agrees to protect such Government-owned equipment and to use it only for official purposes. Government-owned equipment is subject to inspection.

Security

If the agency provides computer equipment for the alternate duty station, the employee agrees to the following security provisions:

No additional software will be loaded onto the PC unless it has been approved for installation by the Office of Information Resources Management.

Computer equipment and software will be used in accordance with Administrative Directive M-109, "Automated Systems and Services."

The agency is not responsible for providing technical assistance. An employee who provides his or her own equipment is responsible for installing, servicing, and maintaining it. Any telecommuting work arrangement that involves remote access to any agency information system other than telephones or e-mail must be coordinated with the Office of Information Resources Management.

Work Area

The employee agrees to provide a work area adequate for performance of official duties. In signing this agreement the employee certifies that the alternate duty station provides a safe working environment. Employees should review and sign the Safety Guidance available from the Human Resources Office.

Injury Compensation

The employee understands he or she is covered under the Federal Employees' Compensation Act if injured in the course of actually performing official duties at the alternate duty station. The employee agrees to notify the supervisor as soon as possible of any accident or injury that occurs at the alternate workplace and to complete any required forms. The supervisor agrees to investigate such a report immediately.

Liability

The employee understands that the Government will not be liable for damages to an employee's personal or real property while the employee is working at the approved alternate workplace, except to the extent the Government is held liable by the Federal Tort Claims Act.

Work Assignments/Performance

The employee agrees to complete all assigned work according to procedures mutually agreed upon by the employee and the supervisor and according to guidelines and standards in the employee's performance plan. The employee agrees to provide reports as required by the supervisor to help evaluate performance. The employee understands that a decline in performance may be grounds for removal from the telecommuting program.

Disclosure

The employee agrees to protect Government/agency records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974, 5 U.S.C. 552a.

Standards of Conduct

The employee agrees he or she is bound by agency and government-wide standards of conduct while working at the alternate duty station.

Employee's signature and date

Supervisor's signature and date

Office Head/Division Director's signature and date

Collective Bargaining Agreement Signature Page

Stephen M. Ross
Chief Negotiator
National Endowment for the
Humanities

Joseph B. Herring
Chief Negotiator
Vice President
Local 3403, American Federation of
Government Employees, AFL-CIO

Timothy Connelly
National Endowment for the
Humanities

Talana Morton-Smith
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