

# Master Agreement

Between



National Protection and Programs Directorate  
(NPPD)

And

American Federation of Government Employees  
Local 918  
(AFGE)

Agreement 2011

**Table of Articles**

**PREAMBLE..... 1**

**ARTICLE 1 - RECOGNITION..... 1**

**ARTICLE 2 – EMPLOYEE RIGHTS..... 2**

**ARTICLE 3 – UNION RIGHTS ..... 3**

**ARTICLE 4 - MANAGEMENT RIGHTS ..... 3**

**ARTICLE 5 – UNION REPRESENTATIVES ..... 4**

**ARTICLE 6 – OFFICIAL TIME ..... 5**

**ARTICLE 7 – FACILITIES AND SERVICES..... 7**

**ARTICLE 8 – LABOR-MANAGEMENT CONSULTATIONS..... 10**

**ARTICLE 9 – IMPACT BARGAINING AND MID-TERM BARGAINING ..... 11**

**ARTICLE 10 – MERIT PROMOTION ..... 14**

**ARTICLE 11 – PROBATIONARY EMPLOYEES ..... 14**

**ARTICLE 12 – EMPLOYEE ASSISTANCE PROGRAM ..... 14**

**ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY ..... 15**

**ARTICLE 14 – PERSONNEL RECORDS ..... 18**

**ARTICLE 15 – CLASSIFICATION..... 19**

**ARTICLE 16 – DEVELOPMENT AND TRAINING..... 20**

**ARTICLE 17 – CAREER LADDER PROMOTIONS AND WITHIN GRADE  
INCREASES ..... 22**

**ARTICLE 18 – QUALITY STEP INCREASE ..... 23**

**ARTICLE 19 – RETIREMENT ..... 23**

**ARTICLE 20 – REDUCTION-IN-FORCE, TRANSFER OF FUNCTION AND  
REORGANIZATION ..... 24**

**ARTICLE 21 – CONTRACTING..... 26**

**ARTICLE 22 – SAFETY AND HEALTH..... 26**

**ARTICLE 23 – RESTRICTED DUTY ..... 30**

**ARTICLE 24 – INJURY COMPENSATION ..... 30**

**ARTICLE 25 – FITNESS FOR DUTY EXAMINATION ..... 31**

**ARTICLE 26 – WORK PLACE CONDITIONS..... 31**

**ARTICLE 27 – UNIFORMS, APPEARANCE AND EQUIPMENT..... 32**

**ARTICLE 28 – FIREARMS AND OTHER WEAPONS..... 33**  
**ARTICLE 29 – HOURS OF WORK ..... 34**  
**ARTICLE 30 – TELEWORK..... 36**  
**ARTICLE 31 – LEAVE..... 37**  
**ARTICLE 32 – OVERTIME - (OTHER THAN UNCONTROLLABLE OVERTIME  
AND LEAP)..... 44**  
**ARTICLE 33 – DETAILS AND TEMPORARY DUTY STATIONS ..... 45**  
**ARTICLE 34 – TRAVEL..... 46**  
**ARTICLE 35 – COUNSELING FOR PERFORMANCE AND CONDUCT..... 48**  
**ARTICLE 36 – PERFORMANCE MANAGEMENT..... 49**  
**ARTICLE 37 – ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE..... 53**  
**ARTICLE 38 – INVESTIGATIVE INTERVIEWS ..... 54**  
**ARTICLE 39 – DISCIPLINARY AND ADVERSE ACTIONS..... 56**  
**ARTICLE 40 – GRIEVANCE PROCEDURE..... 58**  
**ARTICLE 41 – ARBITRATION..... 62**  
**ARTICLE 42 – EFFECT OF LAWS, REGULATIONS AND OTHER PROVISIONS ..... 65**  
**ARTICLE 43 – EFFECTIVE DATE AND DURATION..... 66**  
**APPENDIX 1 – DUES WITHHOLDING..... 68**

## **PREAMBLE**

This Agreement is entered into, by and between the U.S. Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), and American Federation of Government Employees (AFGE), Local 918. Collectively they shall hereafter be referred to as "the Parties."

The Parties enter into this Agreement in the spirit of 5 U.S.C. § 7101, which states:

- (a) The Congress finds that -
    - (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them -
      - (A) safeguards the public interest;
      - (B) contributes to the effective conduct of public business; and
      - (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and
    - (2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.
- Therefore, labor organizations and collective bargaining in the civil service are in the public interest.
- (b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Pursuant to these principles, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the Agency and the Union.

## **ARTICLE 1 - RECOGNITION**

The National Protection and Programs Directorate (hereafter referred to as the "Agency," "NPPD," "Federal Protective Service (FPS)," "Inspection and Enforcement Branch (IEB)" or "management" of the DHS recognizes the AFGE (hereafter referred to as the "Union" or "AFGE") as the exclusive representative of all non-professional employees identified by the Federal Labor Relations Authority in Case No. WA-RP-10-0022 and Case No. WA-RP-10-0081.

The Agency further acknowledges the May 26, 2010, AFGE Delegation of Authority to AFGE Local 918 to deal with the Agency on all matters which are appropriate under Chapter 71 of Title 5, U.S. Code.

## **ARTICLE 2 – EMPLOYEE RIGHTS**

### **A. RIGHT TO JOIN AND PARTICIPATE.**

1. Employee Participation. Employees covered by this Agreement shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided in the Civil Service Reform Act of 1978, such rights include the right –

(a) Representation. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the government, the Congress or other appropriate authorities; and

(b) Collective Bargaining. To engage in collective bargaining with respect to conditions of employment through the Union as provided by law.

**B. ACCESS TO REGULATIONS.** Employees have the right to review regulations and directives concerning personnel policies and practices and matters affecting working conditions.

**C. RIGHT TO COMMUNICATE AND TO BE REPRESENTED.** Employees are encouraged (but not required) to initiate individual personnel matters with first-line supervisors and to follow the chain command where appropriate. An employee has the right to communicate with the appropriate member of the following offices concerning individual personnel matters:

1. Union Representatives;
2. The Agency EEO Office;
3. The Safety and Health Office;
4. DHS, Office of the Inspector General;
5. Office of Professional Responsibility (or successor);
6. NPPD, FPS, Compliance Investigation Division;
7. The Regional Mission Support or Human Capital Office;
8. Employee Assistance Program (EAP) Office;
9. Ethics Office;

**D. PERSONAL USE OF GOVERNMENT OFFICE EQUIPMENT.** Bargaining unit members, shall, to the extent permissible by law, regulation, or agency policy, be allowed to use government office equipment, i.e. telephones (desk and cellular), fax machines, computers (desk, portable, hand held), printers, office supplies (paper, pens, staples, etc.) for limited personal purposes that do not conflict with official duties or periods of duty. Agency assigned cellular telephones may be reasonably used for all periods that their carriage is authorized by the Agency.

### **ARTICLE 3 – UNION RIGHTS**

Nothing in this Article shall be construed to limit other union rights found in 5 U.S.C. § Chapter 71.

- A. **EXCLUSIVE REPRESENTATIVE.** The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of all, employees in the unit.
- B. **DATA REQUESTS.** In accordance with 5 U.S.C. § 7114 and in conformance with the Parties' obligation to bargain in good faith, the Agency will furnish to the Union or its authorized representatives upon request, and to the extent not prohibited by law, data which:
  - 1. is normally maintained by the Agency in the regular course of business;
  - 2. is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and;
  - 3. does not constitute guidance, advice, counsel, or training provided for Management officials or supervisors relating to collective bargaining.

Information necessary for the representation of employees pursuing grievances will be provided subject to the conditions stated above.

Information furnished under the above, will be provided without charge and within a reasonable time. The Agency agrees to acknowledge requests for data from the union in a timely manner, usually within fifteen (15) days of receipt. When the information requested cannot be furnished within thirty (30) days of such receipt, the Agency shall provide a good faith estimate of when the material will be provided.

- C. **RIGHT TO PRESENT VIEWS.** The Union shall have the right to present its views, either orally or in writing, to the Agency on any matters of concern regarding personnel policies and practices and matters affecting working conditions.

### **ARTICLE 4 - MANAGEMENT RIGHTS**

A. **STATUTORY RIGHTS.** The Parties acknowledge management's rights in accordance with 5 U.S.C. § 7106:

- (a) Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency -
  - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
  - (2) in accordance with applicable laws-
    - (A) to hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
    - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

(C) with respect to filling positions, to make selections, for appointments from:

- i. among properly ranked and certified candidates for promotion;  
or
- ii. any other appropriate source; and

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

(b) Nothing in this section shall preclude the Agency and the Union from negotiating:

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

## **ARTICLE 5 – UNION REPRESENTATIVES**

- A. **NO RESTRAINT.** Except as provided by law and this Agreement, the Agency shall not impose any interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, and Labor-Management Relations, or upon duly designated union representatives acting on behalf of an employee or group of employees within the bargaining unit.
- B. **RECOGNITION OF UNION REPRESENTATIVES.** The Union has a right to designate officials who are entitled to perform representational duties in accordance with this Agreement and the Statute, and that employees are entitled to file a complaint or act as a witness under this Agreement, the Act, or applicable regulations. The Union will designate an appropriate number of union representatives. The Union will furnish the Agency with a listing of the names and titles of all designated representatives within 30 days of the effective date of this Agreement and, thereafter, within 14 workdays of any change to the list of designated representatives.
- C. **REPRESENTATIONAL DUTIES.** Pursuant to Article 6, Union representatives are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms of the Civil Service Reform Act of 1978 by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. The Agency agrees that there shall be no restraint, interference, coercion, or discrimination against a Union representative because of the performance of these duties. Union representatives shall be relieved from official duties during the period they are serving as Union representatives. This does not preclude employees being called back to their official

duties when there is an immediate need for their services. Representational functions may be performed at an alternate work site unless otherwise required by the representational duties performed.

## **ARTICLE 6 – OFFICIAL TIME**

A. **OFFICIAL TIME PURPOSE.** This Article provides the process for the use of official time and recognizes that the appropriate use of official time benefits both Management and Labor. The purpose of official time is to provide bargaining unit employees time in which to perform Union representational activities during normal working hours, without loss of pay or charge to annual leave.

### **B. USE OF OFFICIAL TIME.**

Authorized Uses. Union representatives may use official time to conduct representational functions where such is authorized pursuant to, and consistent with, applicable statutes, regulations, and executive orders relating to complaints, grievances, appeals and other matters involving dealings with Agency officials. Official time for representational functions performed by Union representatives will be authorized for:

1. Representation. Representational duties including but not limited to grievances, arbitrations, discrimination complaints, statutory appeals, investigations, inquiries, fact finding, authorized internal or external government queries, and discipline and adverse actions.
2. Mid-Term Bargaining. Review, respond and negotiate new instructions, manuals, directives, etc, which affect personnel policies, practices or working conditions. Official time used under this subsection will not be counted against official time allocations identified in Paragraph C, but shall be counted for the President.
3. Unfair Labor Practices (ULP). The Union representative shall be authorized time to prepare a ULP charge. Prior to filing a ULP charge with the Federal Labor Relations Authority, Union Representatives may, in an effort to resolve the issue, notify Agency Representatives regarding the complaint.
4. Meetings. For representation of the Union in meetings with the Agency including Labor-Management meetings, partnership meetings, committee meetings and other meetings provided for in this Agreement. Representatives shall be authorized time for preparation prior to each meeting. Official time used for Labor-Management Consultations provided for in Article 8 and impromptu Agency-initiated meetings less than 15 minutes will not be counted against official time allocations identified in Paragraph C, but shall be counted for the President.
5. Respond to Agency. Review of and response to memoranda, letters, and requests from the Agency, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions.
6. Technical Representative. To act as a technical advisor or assistant employee representative in hearings. The technical advisor or assistant employee representative will be granted official time to prepare for the hearing. There shall be a limit of one representative so designated at a proceeding.
7. Observer. To attend hearings or meetings in the capacity of an observer where bargaining unit employees have elected to pursue a grievance without Union representation.
8. Respond to Congress. To respond to requests for information from members of Congress and/or testify before Congress.



9. Treasurer. The Union Treasurer shall be authorized four (4) hours per month to complete reports required by other federal agencies.
10. Other Functions. To perform those functions stated elsewhere in this Agreement for which official time has been expressly provided.

C. OFFICIAL TIME ALLOCATION.

1. Official time for the performance of functions, identified in paragraph B, as well as labor-management partnership activities will be granted during regular duty hours to Union representatives as follows:
  - a President .....2080
  - b Executive Vice President.....1040
  - c Other union representatives may be authorized reasonable official time deducted from a bank of official time to perform functions outlined in this Agreement. A bank of 1500 hours of official time per fiscal year will be made available to Local 918 for all representational duties. The Local 918 President (or designee) will be responsible for distribution and allocation of bank hours among union representatives.
2. The President and Executive Vice President may, at their option, delegate portions of their official time allotment to any Union representative. When delegating their official time, the President and Executive Vice President must notify NPPD E&LR Director, their supervisor, and the supervisor of the delegated Union representative.
3. The Union will provide NPPD E&LR a quarterly official time usage report. The report shall show the amount of official time used and the amount of official time delegated by the President, the amount of official time used and the amount of official time delegated by the Executive Vice President, and the amount of official time used out of the bank.
4. One year after the effective date of this CBA, the Parties will meet to assess the administration and allocation of the official time bank.

D. REQUIRED PROCEDURES.

1. Advance Notice. Union representatives will be permitted to leave their assigned work area on official time as authorized under this Agreement after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. The representative will be released unless a union representative's presence is necessary to meet mission requirements. If the representative cannot be released at the time requested, the representative and the supervisor will arrive at a mutually agreeable time for departure, normally within 24 hours of the time originally requested. The Union representative will be given time to inform many bargaining unit employees involved in the delay. If management is unable to approve a request for Official Time, the reason for denial will be provided in writing. Notwithstanding the provisions of this section the union representative may be recalled to duty if necessary.
2. Union representatives will record their official time using WebTA (or successor system).
3. Supervisory Approval. The Union officer and/or employee involved shall obtain approval of the represented employee's supervisor for any meeting during the employee's duty time.

E. RESTRICTION ON OFFICIAL TIME. This does not authorize official time during normal duty hours for the following activities:

1. Internal Union Business. Conduct of internal Union business for which Union representatives shall charge their time to annual leave or leave without pay.

2. Leave. Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union officer (e.g. annual leave for a vacation or sick leave for an illness).
- F. TRAVEL TIME. A Union official will be granted reasonable and necessary travel time for the purpose of traveling to assist in representing a grievant, or for any other meetings scheduled by management.
  - G. OTHER MEETINGS WITH MANAGEMENT. Any other meeting scheduled by Agency with the intent of meeting with the Union as general representative of the bargaining unit for the purpose of obtaining the Union's views or offering the Agency's views on the operation of a policy or program (excluding grievance representation, complaints, appeals, negotiations, etc.) will be authorized travel expenses and per diem. Necessary time for travel will be allowed.
  - H. OFFICIAL TIME FOR TRAINING. The Agency agrees that official time may be authorized for Union representatives to attend training approved by Management which is designed to advise representatives on matters within the scope of CSRA, which are of mutual concern to the Agency and the Union. The Agency agrees to a bank of 600 hours per fiscal year for Union representatives to attend labor relations training or other training related to employees' conditions of employment. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances, appeals, FLRA and other third party processes and information related to Federal personnel/labor relations laws, regulations, and procedures. All requests for official time for training under this paragraph must be accompanied by a course curriculum or description of the training. Official time granted under this section is in addition to designated official time in Paragraph C, but shall be counted for the President. The Agency will fund the training and travel costs for Union representatives to attend joint training courses, as mutually agreed by the Union President and the NPPD E&LR Director.
  - I. ARBITRATION TRAVEL AND PER DIEM. The Agency will pay travel and per diem expenses for Union representatives when they act as representatives in arbitration cases involving suspensions greater than 7 days and adverse actions. Travel and per diem expenses will be limited to the cost that would have been incurred had the respective Regional Vice-President traveled within the Region of the represented employee.
  - J. TRAVEL AND PER DIEM FOR UNION REPRESENTATIVES. Union representative official time and travel and per diem provisions of this Agreement shall normally apply only to designated Union representatives. However, it is also understood that the Union may from time to time designate other employees to represent its interests and to participate in activities including labor management meetings, partnership activities, or any other meetings called by management. Such employees shall be authorized official time, travel and per diem as necessary for participation in such activities consistent with the needs of the Agency. The Union shall make every reasonable effort to rely on employees who are locally available for participation in such activities.

## **ARTICLE 7 – FACILITIES AND SERVICES**

- A. PURPOSE. The purpose of this Article is to provide those facilities and services that are necessary and reasonable for the Union to carry out its legitimate activities as the exclusive representative of the NPPD bargaining unit. The Parties recognize that providing such facilities and services furthers their joint interest in promoting effective labor-management relations.
- B. UNION ACCESS TO AGENCY FACILITIES.

1. AFGE Local 918 representatives shall be permitted upon all Agency facilities and worksites. When visiting a location other than their assigned area of responsibility, Union representatives shall notify Agency officials of the date and time of the visit sufficiently in advance, but no less than 24 hours. If the Agency cannot accommodate the visit for valid operational reasons the Agency will make alternative arrangements for the union representative. Union representatives shall not interfere with the work of employees during duty hours. Subject to the above requirements, AFGE national representatives shall be permitted to participate in meetings between Local representatives and the Agency.
2. Meeting Space. Upon reasonable advance request by the Union, the Agency shall provide meeting space, if available, in areas occupied by the Agency. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.
  - a. During normal duty hours, confidential meeting space, if available, will be provided for representational duties (e.g. grievances, appeals, caucusing, and agreement administration).
  - b. During non-duty hours, space, if available, will be provided for internal union business (e.g. elections, solicitation of membership, and collection of dues). These activities will be conducted during break, lunch periods and non-duty hours and shall not interfere with the mission of the Agency.

#### C. BULLETIN BOARDS

1. Exclusive Use. The Agency will continue to provide bulletin boards where they currently exist. Whenever Agency facilities are redesigned, renovated or when a new facility is planned the Agency will consult with Local 918 on a predecisional basis regarding the provision of adequate bulletin board space.
2. Restrictions. Material which does not violate any law, contain libelous material or personal attacks may be posted on Union bulletin boards.
3. The Agency will provide a link on the Agency intranet site to the official website of the Union ([www.afgelocal918.org](http://www.afgelocal918.org)).

#### D. ACCESS TO EMPLOYEES.

1. AFGE Local 918 Union representatives shall have reasonable access to unit employees during duty hours as necessary to carry out collective bargaining or representation duties required by the FSLMRA (Statute), this Agreement or urgent circumstances. Work sites include offices, and field locations to include sites of special details and training institutions.
2. Agency Directories. The Agency shall provide the Union, at the National and Regional level, the appropriate Agency telephone directories and updates as printed or may be electronically available.
3. Bargaining Unit List. Upon request, but no more than semi-annually, the Agency will furnish to the Union, for its internal use only, an electronic spreadsheet which will contain the names, grades, position title and posts of duty of all employees in the bargaining unit. An electronic spreadsheet which contains new hires, promotions and separations will be provided on a monthly basis. The Parties recognize that errors may

occur from time-to-time in regard to input and coding of data, and that the listings will not be construed as action by the Agency to unilaterally deny bargaining unit status to any employee, or to confer it.

4. Employee Orientation. Each new employee, including transfers, as part of his or her orientation, will be given a presentation not to exceed thirty (30) minutes by a union representative. The presentation may cover labor law, provisions of this collective bargaining agreement, other agreements and Union representational activities. The Union representative will be invited to attend and will be on official time. No recruiting or other internal Union business may be conducted during the orientation. The Agency shall advise new unit employees or employees transferring between stations, upon entering on duty, of the name of the Union Regional Vice-President and their contact information in writing.

#### E. CONTRACT AVAILABILITY.

1. The Agreement will be posted in searchable portable document format (pdf) on both the Union and the Agency Web sites. No later than 30 days after the effective date of this Agreement, the Agency will send an email to all bargaining unit employees containing an active link to a pdf version of this Agreement. New employees will be informed of the link during orientation.
2. Printing. The Agency agrees to locally print and provide to the Union 15 copies of this Agreement, legibly printed, in booklet format using 8 ½" by 11" paper, with a blue durable stock cover including bold letters "Agreement 2011." At the conclusion of negotiations, the Agency will prepare a final document containing all agreed-upon articles to include a Table of Contents and Index and will provide the Union with the opportunity to review and approve the final agreement before it is presented for signature.

#### F. OFFICE SPACE & EQUIPMENT. The Parties agree that providing Local Union office space and access to government equipment is in the best interest of the Parties and of their partnership endeavors. The Agency will provide office space on a permanent basis and standard government office equipment as follows:

1. One private office to the Union President at his duty station and one in the Washington, DC metro area.
2. Continue to provide Union office space where it currently exists.
3. Where National Officers and Regional Vice Presidents are not currently provided dedicated private office space at their duty location, the Union, in coordination with NPPD E&LR, may identify available space within existing inventory. The Agency shall confirm the availability of office space and explore the feasibility of providing dedicated office space to these National Officers and Regional Vice Presidents. Whenever Agency facilities are redesigned, renovated or when a new facility is planned in locations where National Officers and Regional Vice Presidents have not been provided office space at their duty location, the Agency will consult with Local 918 on a pre-decisional basis regarding the provision of adequate union office space. Regardless of the availability of dedicated office space, union representatives will be provided confidential meeting space as provided in Paragraph B(2).

- G. **ELECTRONIC MAIL.** The Agency will provide Internet access to the Union for representational purposes, consistent with the Agency's IT policies at both work stations and authorized Union office spaces provided by the Agency. The Union representatives who are Agency employees may use the Agency e-mail system to communicate with employees and Agency officials. Upon request, the Agency will assist the Union in developing bargaining unit email groups at national and regional levels. The Parties agree that internal union business is prohibited when using government-provided access to the Internet and the Agency e-mail system. The Parties should be mindful of the fact that electronic mail messages on the Agency e-mail system are generally considered government records which may be accessed in accordance with applicable law and policies whenever a legitimate governmental purpose exists for doing so. Correspondence submitted through the e-mail system satisfies the official notice requirements under this Agreement.
- H. **COPY MACHINES.** Union representatives will be allowed to use Agency copy machines for representational purposes.
- I. **FAX MACHINES.** Union representatives will be provided Agency fax machines and corresponding phone lines at each Union office. Union representatives, who do not have a Union office at their location, will be given access to Agency fax machines.

## **ARTICLE 8 – LABOR-MANAGEMENT CONSULTATIONS**

### **A. PURPOSE AND SCOPE**

1. The Parties recognize the importance of working closely together for the purpose of promoting and improving a cooperative relationship by developing meaningful solutions to workplace issues. The national and regional consultation is an opportunity for the Union to review, discuss, consider, and make recommendations to the Agency on matters relating to or affecting working conditions, employee morale, and efficiency of the Agency's operations. Therefore, the Agency shall provide the Union with briefings and the opportunity to ask questions about matters of interest and concern at the national and regional levels.
2. The consultations identified in this Article may constitute pre-decisional involvement identified in Article 9.
3. Separate from the consultations identified in this Article, the Union and Agency will continue to participate in the Labor-Management Forums in accordance with Executive Order 13522 and DHS initiatives until such time as those authorities may be rescinded.

### **B. NATIONAL CONSULTATIONS.**

1. Representatives of the Agency and the Union shall meet at the national level semi-annually or at such other times as may be mutually agreed. These meetings shall be conducted in Washington, D.C. The purpose of these meetings shall be to provide information to Union representatives and to permit Union representatives an opportunity to ask questions about matters of concern. An agenda covering the items to be discussed must be forwarded, in writing, to the NPPD E&LR Director at least 30 calendar days prior to the scheduled meeting. Up to two (2) additional relevant agenda items may be submitted up to fourteen (14) days before the meeting.

2. Union representatives, not to exceed 3, will be in official time status while attending such meetings. The cost of travel, including per diem, will be borne by the Agency. These national consultations shall not exceed two (2) days in length, with travel being accomplished on official time. Any additional representatives the Union feels are required (not to exceed two (2)) for the meetings may attend on official time at Union expense.

C. REGIONAL CONSULTATIONS. Regional Agency officials and Union representatives will continue to meet quarterly or at such other times as may be mutually agreed and the representatives will be in official status while attending such meetings. Union officials attending such meetings will be on official time to include travel time. The cost of travel and per diem shall be paid by the Agency. If National Union Officers are requested to attend by the Agency, official time and the cost of travel and per diem for one official will be borne by the Agency. Agenda's will be submitted by both Parties at least 15 days prior to the meetings. Meeting dates and times will be mutually agreed upon. Additional agenda items may be submitted on the first (1<sup>st</sup>) day of the meetings. The Union and the Agency will meet in like numbers.

D. JOINT AGREEMENT TRAINING. The Parties will jointly provide Agreement training for each region and Agency office. The Agency will pay the cost of the Agreement joint training. Any training material for the training will be prepared jointly. Training will be done jointly; however, this does not preclude additional or independent training by each party nor does it prohibit either party from developing training material for its own training programs.

## **ARTICLE 9 – IMPACT BARGAINING AND MID-TERM BARGAINING**

A. NOTICE OF PROPOSED CHANGE. The Parties recognize that from time-to-time during the life of the Agreement, the need will arise for either party to propose changes to Agency personnel policies, practices, and/or working conditions not covered by this Agreement. The Agency will, to the extent practicable, engage in pre-decisional involvement regarding changes in personal protective equipment (PPE) affecting officer safety. The Parties are encouraged to engage in pre-decisional involvement prior to the Agency's formal presentation of proposals for all other changes in working conditions under this Article. Pre-decisional involvement may include the Union's continued participation in the Agency Policy Review Committee, Agency/Union Working Groups and direct discussion with Union representatives.

1. Notice of Proposed Change. If the Parties are unable to reach an agreement through pre-decisional involvement or if pre-decisional involvement is not used, the Proposing Party shall serve its notice of the proposed change upon the Receiving Party at least 30 calendar days in advance of the proposed implementation date. The written notice of the proposed change shall include a brief description of the change and the proposed implementation date. All notices provided for under this Article shall be served upon the Union President or NPPD L&ER Director or their designee.

2. Demand to Bargain. If the Receiving Party desires to negotiate the change, it must submit a request to bargain within 14 (fourteen) calendar days after the notice of the

proposed change is served. The demand to bargain must include a request for a briefing and an information request if a briefing or additional information is desired. If the Union submits an information request, the Agency agrees to provide the Union with requested data as required by 5 U.S.C. 7114(b)(4). If the Agency submits an information request, the Union agrees to provide the Agency with information that is relevant and necessary for the Agency to understand the Union's proposed change.

3. **Proposals.** The Receiving Party must submit written bargaining proposals within 14 (fourteen) calendar days after its demand to bargain, receiving a briefing, or receiving additional information, whichever is later. The Receiving Party's written bargaining proposals shall designate the Chief Spokesperson.
  4. **Negotiations.** If, after following the steps outlined in A (1), (2) and (3) above, the Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date and site. Absent mutual agreement on a date and site for bargaining, such negotiations shall commence at NPPD Headquarters at 9:00 a.m. on the fifteenth (15<sup>th</sup>) workday following the date the Proposing party received the Receiving Party's proposals. Once negotiations have commenced, the Parties recognize the obligation exists to bargain in good faith and will therefore avoid unnecessary delays. If a break in negotiations is necessary the Parties will agree on a time and date to resume bargaining prior to any recess, whenever practicable.
- B. TIME LIMITS.** All time limits stated above may be extended by mutual consent of the parties involved. Failure to make a timely demand to bargain, timely provide written proposals, or timely meet for negotiations shall be deemed to constitute acceptance of the changes by the Receiving Party and the Proposing Party may proceed to implement the proposed change.
- C. GOOD FAITH.** In accordance with 5 U.S.C. § 7114(b)(1-3) any Mid-Term, Impact, Post Implementation or other Agreements negotiated under the provisions of this Article shall be conducted and negotiated in good faith and shall include the obligation:
1. To approach the negotiations with sincere resolve to reach agreement
  2. To be represented by duly authorized representatives prepared to discuss and negotiate on the subjects authorized by this Article
  3. To meet at reasonable times as frequently as may be necessary, and to avoid unnecessary delays.
- D. POST-IMPLEMENTATION BARGAINING.** The Parties agree that effective management of the Agency and its resources is a mutual concern. The Parties also agree that on certain limited occasions, there may be a need for expedited implementation of new policies or practices affecting conditions of employment. The provisions of this Article apply to such situations. It is understood, however, that nothing in this Article precludes the Agency and the Union from engaging in post implementation bargaining if mutually agreeable.
- E. GROUND RULES FOR MID-TERM, IMPACT, POST IMPLEMENTATION OR OTHER TYPE OF BARGAINING.** The following ground rules apply to all bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 U.S.C. Chapter 71. These ground rules are intended to

supplement the procedure set forth in this Agreement, and may only be changed by mutual consent.

1. Arrangements. Subject to Section A(4) of this Article, negotiations will be held in a suitable meeting room provided by the Agency. In the event either Party desires to caucus, the Agency will caucus in a different room and will leave the negotiating room to accommodate caucuses by the Union. Upon request, the Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet access, telephone(s), desks or tables and chairs, office supplies, and access to at least one printer and one photocopier.
2. Subject to Section A(4) of this Article, the starting date and the daily schedule for negotiations will be established by the Chief Negotiators.
3. During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.
4. It is agreed that either team may request a caucus. There is no limit on the number of caucuses which may be held, but either Party shall not caucus more than 4 hours on any given day of negotiations.
5. Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
6. The Union will be authorized the same number of Union representatives, but not less than two (2), on official time as the Agency has representatives at the negotiations table. The designated Union negotiators will be on official time in accordance with Article 6.B.2. for all time spent during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals.
7. If any proposal is claimed to be nonnegotiable by either Party and subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within 15 calendar days from when the proposal is declared to be negotiable or the claim that the proposal is nonnegotiable is withdrawn. Nothing in this section will preclude the right to appeal to the FLRA.
8. This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.
9. All time frames in these ground rules may be modified by mutual consent.
10. The Agency will pay travel and per diem expenses for Union negotiators for Agency initiated changes.
11. Absent mutual agreement, the alternate work schedules and flexiplace schedules of the Parties' representatives will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed upon hours of negotiations.



12. No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the sessions.
13. Observers shall be permitted in negotiating sessions only by the mutual consent of the Parties.
14. During any bargaining, when either Party has determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the Parties shall once more attempt to resolve any existing impasse items.
15. If such consideration does not resolve impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either party.
16. The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner compliant with 5 U.S.C. Chapter 71 and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

#### **ARTICLE 10 – MERIT PROMOTION**

The subject of merit promotion will be addressed in subsequent bargaining. Any agreement reached by the Parties shall be incorporated into this Agreement as an Appendix.

#### **ARTICLE 11 – PROBATIONARY EMPLOYEES**

- A. **PERFORMANCE STANDARDS AND REVIEW.** Within 30 days of entry on duty, probationary employees will be advised of the Performance Work Plan, Code of Professional Responsibility, Table of Penalties and applicable regulations governing probationary employees. The supervisor will explain the requirements of each probationer's position and answer any questions the employee may have. Subject to applicable regulations, management retains discretion to retain or terminate probationary employees.
- B. **NON-RETENTION AND NOTICE.** Although termination of a probationary or a temporary employee is not an adverse action, the Agency agrees that when it deems advance notice of termination to be in the best interests of the operations of the Agency, the affected employee will be given two (2) weeks advance notice prior to the effective date of such action. Prior federal service may qualify toward the probationary period to the extent consistent with applicable law and regulation.

#### **ARTICLE 12 – EMPLOYEE ASSISTANCE PROGRAM**

- A. **ASSIST EMPLOYEES.** Under the Employee Assistance Program (EAP) the Agency agrees to continue efforts to identify, counsel and assist in rehabilitating employees with alcohol, drug related, or personal problems which may adversely affect job performance. The union

agrees to cooperate fully with the Agency in this program, while complying with the provisions for confidentiality in safeguarding client information.

- B. **REHABILITATION.** The Agency recognizes its responsibility to identify and make reasonable effort at rehabilitation of employees with alcohol or drug problems at an early stage. Employees undergoing a prescribed program of treatment will be granted sick leave for this purpose on the same basis as any other illness which requires absence from work.
- C. **DISCIPLINE.** The Agency and the Union jointly agree that employees entering the EAP are not immune from disciplinary action. However, the fact that an employee is actively pursuing, or indicates a commitment to enter, an established program of rehabilitation will be given weight in considering appropriate disciplinary action.
- D. **CHILD CARE / ELDER CARE.** The Agency will continue to provide and or support various activities in order to meet the ongoing child and elder care needs of employees. These may include, but are not limited to, such things as child/elder care and parenting information, child/elder care resource and referral information, workshops, and counseling as available through the Employees Assistance Program.

### **ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY**

- A. **STATEMENT OF POLICY.** The Agency will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race, color, religion, sex, national origin, age, reprisal for prior protected EEO activity, disability, status as a parent, genetic information, and sexual orientation, except where required by statute or pursuant to bona fide occupational qualifications. The Agency will also provide religious and disability accommodations in accordance with the law and the Agency's reasonable accommodation procedures.
- B. **EEO RESPONSIBILITIES.**
  - 1. **Managers And Supervisors.** With respect to conduct between officials, supervisors, managers and employees, Agency officials, supervisors and managers have a responsibility to maintain a discrimination-free environment to the extent required by law.
  - 2. **Fellow Employees.** With respect to conduct between fellow employees, employees have a responsibility to maintain a discrimination-free environment to the extent required by law.
  - 3. **Sexual Harassment.**
    - (a) The Agency agrees to provide all bargaining unit employees a work atmosphere free from sexual harassment.
    - (b) In accordance with Agency policy, any employee who believes he or she has been the victim of sexual harassment or has knowledge of sexual harassment must promptly report it to the Joint Intake Center (or successor).
    - (c) Where an allegation of sexual harassment is brought to the attention of the Agency, the Agency will take appropriate action.

4. Annual Training. The Agency will provide and all employees must comply with annual EEO training requirements, including sexual harassment.

#### C. DISCRIMINATION CLAIM AVENUES.

1. Claims. Any employee who believes that he or she has been discriminated against on the grounds set forth in this Article, may file any one of the following:
  - (a) Grievance. A grievance pursuant to the provisions of the Grievance Procedures Article of this Agreement,
  - (b) EEO Complaint. A complaint of discrimination with the Agency's EEO Office; or
  - (c) MSPB. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by race, color, religion, sex, national origin, age, reprisal or disability.
2. Elected Procedure. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely files either a formal complaint of discrimination, an MSPB appeal, or a grievance in writing in accordance with the provisions of this Agreement.
3. Grievance Appeal. The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

#### D. USE OF EEO COUNSELORS.

1. EEO Contact Information. The Agency shall make available contact information for employees to contact an EEO Counselor.
2. Consultation. Employees are encouraged but not required to consult with an EEO Counselor prior to filing a grievance under this Article. Such consultation shall take place within forty-five (45) days of the alleged discriminatory incident.
3. EEO Counselor Duties. The EEO Counselor shall:
  - (a) COUNSEL. Counsel the aggrieved employee concerning the issues in the matter;
  - (b) INQUIRE. Make whatever inquiry into the matter that he or she believes necessary;
  - (c) RESOLVE. Seek a solution of the matter on an informal basis;
  - (d) WRITTEN REPORT. Submit a written report to the EEO Director, with a copy to the aggrieved employee, as outlined in applicable EEOC regulations or related statutes.

(e) INFORM OF RIGHT TO REPRESENTATIVE. Advise the aggrieved employee that he or she has the right to have a union representative or other representative of their own choosing present, throughout all stages of the EEO complaint process.

4. Final Interview. The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within thirty (30) calendar days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee, unless the aggrieved employee authorizes an extension.
5. Right to File Complaint. If the final interview is not concluded within thirty (30) calendar days (or agreed upon extension) and the matter has not been previously resolved to the satisfaction of the employee, the EEO Counselor shall at that time provide the aggrieved employee a Notice of Right to File his or her formal complaint of discrimination.
6. Neutrality of EEO Counselor. The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.
7. Confidentiality. The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.
8. Independence of EEO Counselor. EEO Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

#### E. UNION RIGHTS.

1. Notification of Change. If at any stage of the complaint process under procedures covered by this Article, the Agency determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification.
2. Conflict with Contract.
  - (a) Notice and Opportunity to Bargain. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with or appear to conflict with, the provisions of this Agreement, the Agency shall afford the Union reasonable notification and opportunity to negotiate the impact of the Agency's action effectuating the decision.
  - (b) Priority of Appellant Decisions. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (of, i.e., the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts) where the provisions:
    - (i) Violate applicable law, order, or regulations in effect at the time this Agreement was approved; or
    - (ii) Are themselves discriminatory in their impact on employees; or
    - (iii) Leave no reasonable alternative for taking required action.

3. Union Right to be Present. If the employee elects to pursue the complaint under the grievance procedures of this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between the Agency and the employee concerning the grievance.
- F. EEO Statistics. The Agency agrees to furnish semiannually to the Local 918 President a copy of an annual report of bargaining unit EEO complaint activity.

## **ARTICLE 14 – PERSONNEL RECORDS**

- A. OFFICIAL PERSONNEL FOLDERS. Official Personnel Folders (OPF) (to include eOPF) and Employee Medical Files (EMF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF and EMF.
1. The Union recognizes the Agency has converted to an electronic OPF (eOPF) system, and electronic folders have replaced paper-based folders covering employees' personnel records. Under the eOPF system, employees may access their personnel records at any time through a secure internet site. Agency will provide access to eOPF for each employee.
  2. An employee may request, through their servicing Human Resources Office, that a record contained in his/her eOPF be corrected or amended. Such requests must be accompanied with supporting documentation.
  3. The employee shall have the right to prepare and file in the eOPF a concise statement of disagreement with any reprimand within two weeks of the effective date of the action. When the document for which the employee files a statement of disagreement is removed from the eOPF, the statement of disagreement will also be removed. Nothing in this Article shall negate the employee's right to grieve any matter. The filing of a statement of disagreement does not stop or extend the time frame for filing a grievance or other complaint.
- B. EMPLOYEE PERFORMANCE FOLDER.
1. Copy of Documents. Each employee or his or her personal representative designated in writing will, upon request, and in accordance with the provisions of the Freedom of Information Act and/or the Privacy Act, be given a copy of any document contained in his or her Employee Performance Folder (EPF) with the exception of records restricted by law or regulation.
  2. Procedures to Review. Requests for access to the EPF shall be made through an employee's supervisor. The review of the EPF will normally take place at the requesting employee's place of assignment.
- C. UNAUTHORIZED DISCLOSURE. No record, file or document filed in the eOPF, EMF or EPF or other systems of records will be made available to any unauthorized person for inspection or photocopy. Such information will be made available to any authorized person only for official use, in accordance with the provisions of 5 U.S.C. § 552a.

- D. **RETENTION OF RECORDS.** All records shall be maintained and/or purged in accordance with 5 C.F.R. Part 293 and any other applicable record retention regulations.
- E. **DEROGATORY MATERIAL.** No derogatory material of any nature which might reflect adversely upon the employee's character or Agency career will be placed in his or her OPF without his or her knowledge.
- F. **SUPERVISORY NOTES AND FILES.** Supervisory notes and files that are kept on employees and not placed in official files are for the sole use of that supervisor. They are intended to serve as memory joggers and not to be shared with anyone unless being used as part of an official action.

## **ARTICLE 15 – CLASSIFICATION**

- A. **UNION PARTICIPATION.** The Agency encourages the Union to make known to the Agency its views on the adequacy or inadequacy of occupational classification standards. The Agency agrees to consider the Union's oral or written views concerning the occupational classification standards when making recommendations to the Office of Personnel Management and will notify the Union, in like manner, of any action taken.
- B. **NEW CLASSIFICATIONS.** Classification decisions rendered by the Agency or the Office of Personnel Management having the effect of establishing a grade level within an occupation hitherto nonexistent in that occupation, will be forwarded by the region in which the action is taken to the Headquarters Office for circulation of that decision and the basis for that decision to all regions. This information will be considered where appropriate in the subsequent classification or reclassification of similar positions within the occupation throughout the Agency.
- C. **UNION REPRESENTATION.** When the employee designates the Union as the employee's representative in a classification appeal, the representative may discuss the classification appeal with the classifier prior to the beginning of a desk audit. Sufficient time shall be allowed prior to the beginning of the desk audit for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will summarize his or her findings for the appellant and the Union representative.
- D. **DESK AUDITS.** Agency classification specialists shall make visits or telephone calls to field position locations to conduct desk audits of the different Agency positions. The Agency shall post notice of the visit of the classification specialist as far in advance as possible on the bulletin board of the facility he or she intends to visit and the purpose of the visit.
- E. **POSITION DESCRIPTIONS.** In recognition of the importance of having employees perform in accordance with their position and grade, the Agency will provide every employee, upon request, with an accurate description of his or her duties which may govern his or her grade. The employee may discuss any changes or inaccuracies with the supervisor who will also maintain a continuing review of duties. Employees may request a desk audit or file a grievance when significant discrepancies continue to exist between position description and actual duties, after management has been notified of such discrepancies and a reasonable amount of time has passed.

- F. **REQUEST FOR DESK AUDIT.** If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. Upon request of the employee, a Union representative may be present during this discussion. If the employee wishes to further pursue the question, he or she may forward a written request to the servicing Human Resources Office. The servicing Human Resources Office will either answer or acknowledge receipt of the request in writing within thirty (30) days, providing an estimate of the additional time needed to reply.
- G. **EFFECT OF LOWER GRADED DUTIES.** The Parties agree that where lower graded duties not addressed in the employee's position description are assigned to an employee on a continuing basis to meet the needs of the Agency, this will not adversely affect the employee's salary or classification and the devotion of time to such duties will be recognized through an appropriate adjustment in assigned performance standards.
- H. **EFFECT OF HIGHER GRADED DUTIES.** The Parties agree that where higher graded duties not addressed in the employee's position description are assigned to an employee on a continuing basis to meet the needs of the Agency, these activities, and the duration and quality of their performance, may be regarded, if evidenced by a desk audit, as participation in on the job requisite training when such employee applies to the actual position at the higher grade. The devotion of time to such duties will be recognized through an appropriate adjustment in assigned performance standards.

## **ARTICLE 16 – DEVELOPMENT AND TRAINING**

- A. **EMPLOYEE DEVELOPMENT.** The Agency and the Union agree that the training and development of employees within the unit is a matter of primary importance to the Parties. The Agency agrees to develop and maintain effective policies and programs designed to achieve this purpose, consistent with its needs and available funding.
- B. **EMPLOYEE INITIATIVE.** The Agency and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative in increasing his or her potential value to the Agency through self-development and training. Employees are encouraged to take advantage of training and educational opportunities which will add to the skills and qualifications needed to increase their efficiency in the performance of their duties and for possible advancement in the Agency.
- C. **FAIR AND EQUITABLE / AGENCY NEEDS.** The nomination of employees to participate in training and career development programs and courses shall be based on Agency needs and will be fair and equitable. Merit system principles shall be applied to the process where applicable. When two or more employees compete for the same training opportunity, seniority will be the tie breaker between two equally eligible employees after management takes into consideration factors including duty assignment, previous training opportunities, work requirements, length of service, and other relevant considerations when making selections. When training requests are denied, Management will provide a written explanation for the basis of their decision.
- D. **SCHEDULE VARIATIONS.** Employees may be granted variations within the normal workweek, including leave without pay, for educational purposes consistent with Agency

needs. The use of alternative work schedules, work at home or telework programs will be considered to support educational advancement, where such accommodations do not impede or conflict with Agency mission fulfillment.

- E. **INDIVIDUAL DEVELOPMENT PLAN.** The Agency shall encourage meaningful participation by the individual employee in the creation of a personal plan for career self-development. In developing this plan, the employees may seek counseling and advice from the supervisor. The Agency will ensure that training opportunities are appropriately communicated via posting to the Professional Development and Training website, NPPD newsletter, direct email to personnel or other communication vehicles. The Agency will assign training for trainee level positions consistent with applicable policy and the needs of the Agency.
- F. **ELIMINATED POSITIONS.** The Agency agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Agency will be given to the employee to enable him or her to perform the duties of the new position.
- G. **OUTSIDE (NON-AGENCY) TRAINING.** Employees must be aware that there may be service and training performance requirements, which if not met, may result in financial obligations for the employee. The Agency shall pay authorized expenses for outside training at a facility, approved by the Agency when the following conditions have been met:
  - 1. Merit system principles are applied to the process where applicable;
  - 2. The training has been applied for and approved in advance;
  - 3. Such training will enable the employee to increase his or her proficiency in the current position (i.e., the training is job-related);
  - 4. Existing training programs within the Agency will not adequately meet the training need;
  - 5. It is not feasible to establish a new training program to meet the need effectively;
  - 6. Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in government;
  - 7. Funds are available to pay for the training program;
  - 8. A Continuing Service Agreement (CSA) is used where applicable ;
  - 9. The employee receives a passing grade when applicable in accordance with established policy;
  - 10. The course is not being taken solely for the purpose of obtaining a degree; and
  - 11. The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.
- H. **TRAINING RECORDS.** The Agency shall maintain records for all employees who receive training.
- I. **UNION RECOMMENDATIONS.** The Agency encourages the Union to submit recommendations to the Regional Directors concerning employee training needs and programs. When establishing or modifying the content or structure of its training courses or



programs, the Agency will give careful and due consideration to any recommendations received from the Union.

**J. JURISDICTION AND AUTHORITY TRAINING FOR LAW ENFORCEMENT PERSONNEL.**

1. The Agency will continue to provide guidance on federal and state laws and Agency policies governing or affecting jurisdiction and law enforcement authorities on a regular basis or upon their awareness of significant changes in law or its interpretation. This can be done through classroom or online training, through legal update notices or via direct supervisory instruction.
2. The Agency will continue to be responsive to Local 918's questions pertinent to laws and policies governing law enforcement authority.

**K. MANDATORY ANNUAL TRAINING.** The Agency will provide and employees will complete all mandatory annual training requirements, to include ethics or standards of conduct training.

**ARTICLE 17 – CAREER LADDER PROMOTIONS AND WITHIN GRADE INCREASES**

- A. PROMOTIONS.** Career ladder promotions shall be processed in a timely manner once an employee has met the time-in-grade and qualification requirements and the supervisor has determined the employee has acquired the knowledge, skills and abilities to work at the next higher level. Once these criteria are met, the promotions will be made effective at the beginning of the following pay period. If the determination is delayed, and that determination is that the employee possessed the necessary knowledge, skills and abilities on the date of eligibility, the promotion will be retroactive. Promotions will be processed retroactively if a delay occurs after the supervisor's determination.
- B. WITHIN-GRADE INCREASES.** A within-grade increase shall be effective on the first day of the first pay period following the completion of the required waiting period. There are two exceptions:
1. Not Acceptable Level of Competence. When there has been a determination that the employee is not performing at an acceptable level of competence (ALOC); or
  2. Delayed Determination. When the employee's ALOC is delayed because the employee
    - (a) 90 Day Review. Has not served 90 days under performance standards; or
    - (b) New Position. The employee was reduced in grade because of poor performance and has not served 90 days under performance standards in the new position.

However, an employee's within-grade-increase will not be delayed under (2) (a) solely because the Agency has made changes to an employee's performance standard. If a within grade is delayed under (2) and the employee is subsequently found to be performing at an ALOC, the increase will be granted retroactively to the beginning of the pay period following the completion of the waiting period.

## **ARTICLE 18 – QUALITY STEP INCREASE**

- A. **DEFINITION.** “Quality Step Increase” means an increase in an employee’s rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with 5 U.S.C. § 5336.
- B. **PURPOSE.** The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.
- C. **CONSIDERATION.** To be considered for a quality step increase, an employee’s current rating of record must be achieved excellence and the employee must not have received a quality step increase within the preceding 52 consecutive calendar weeks.
- D. **DETERMINATION.** A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved.
- E. **EFFECTIVE DATE.** A quality step increase shall be effective on the first (1st) day of the first (1st) pay period following the approval date.
- F. **NOTICE.** The Agency shall notify the Union, upon request, of the number of Quality Step Increases that were awarded to bargaining unit employees during a rating period.

## **ARTICLE 19 – RETIREMENT**

- A. **RETIREMENT COUNSELING.** The Agency shall provide a retirement counseling program describing benefits and eligibility, to be made available on an as-needed basis, in which all employees in the unit nearing eligibility for retirement may voluntarily participate. Employees nearing eligibility for retirement who have questions concerning retirement benefits will, upon request, receive an oral or written response as appropriate. The Agency shall make retirement seminars available online to employees. Subject to available funding, the Agency shall pay travel, per diem and all associated seminar costs for employees who are within five (5) years of retirement to attend one federal employee retirement seminar of two days or less. Travel and per diem will only be paid if seminars are not offered within the local commuting area and travel costs will be limited to attendance of seminars at the closest proximity to the employee’s duty station. Agency officials will treat an employee’s retirement planning information in a confidential manner mindful of its private and personal nature.
- B. **DISABILITY / DEFERRED ANNUITY.** The Agency shall inform each employee who separates voluntarily or involuntarily (except by retirement) of the possibility of applying for a discontinued service annuity and eligibility for deferred annuity at sixty-two (62), provided he or she has at least five (5) years of civilian service and leaves his or her money on deposit with the Office of Personnel Management. Upon request, the Agency shall inform an employee of his or her right to file an application for disability retirement provided the employee meets the length of service required for disability retirement (5 years for those under the CSRS and 18 months for those under the FERS system).
- C. **WITHDRAWAL.** An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with prevailing government-wide regulations. An employee may withdraw a retirement application at any time prior to its effective date unless a commitment has been made to fill the vacancy created by the

retirement or the position is scheduled to be abolished. However, if a vacancy exists within the duty station at the same grade and series, management will allow the employee to withdraw his/her retirement application.

- D. LEO RETIREMENT. The Agency agrees that employees who have questions concerning their eligibility for the special retirement benefits available to law enforcement officers, will, upon request, receive any and all Agency, Department of Homeland Security and Office of Personnel Management regulations relating thereto. Such requests may be made annually within five (5) years of retirement eligibility.

## **ARTICLE 20 – REDUCTION-IN-FORCE, TRANSFER OF FUNCTION AND REORGANIZATION**

- A. WORKFORCE ADJUSTMENTS. The Parties recognize that occasions may arise where adjustments of the work force may be necessary either by reduction-in-force, transfer of function, or reorganization.
- B. DEFINITIONS.
1. Reduction-in-Force. A reduction-in-force means the release of employees from their competitive level by separation, demotion, furlough for more than thirty (30) days, or reassignment requiring displacement; when lack of work, shortage of funds, reorganization, insufficient personnel ceiling, reclassification due to change in duties, or the need to replace a person exercising reemployment or restoration rights requires the Agency to release the employee.
  2. Transfer of Function. Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function is virtually identical to functions already being performed in the other competitive areas affected; or the movement of the competitive area in which the function is performed to another commuting area.
  3. Reorganization. For the purpose of this Proposal, “Reorganization” means the planned elimination, addition, or redistribution of functions or duties in an organization that result in an employee’s release from a competitive level by separation, furlough for more than thirty (30) days, demotion or reassignment.
- C. UNION NOTIFICATION. Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Agency, prior to official notification of employees, the Union will receive fourteen (14) calendar days advance notice of any pending reduction-in-force or transfer of function or reorganization. This notice, in writing, will include the reasons for the reduction-in-force, transfer of function or reorganization, the approximate number and types of positions affected, the approximate date of the action, and an invitation to the Union to a meeting conducted by the Agency to explain the reduction-in-force, transfer of function or reorganization procedures, and answer relevant questions.
- D. MINIMIZE ADVERSE IMPACT. The Agency will attempt to minimize actions that adversely affect employees which often follow reduction-in-force by using, to the extent feasible, attrition to accomplish reductions.

- E. **ADVANCE NOTICE.** Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Agency, the Agency agrees to provide affected employees as much advance notice of reduction-in-force as is administratively possible but in no case will such notice be less than sixty (60) calendar days. All such notices shall contain the information required by Office of Personnel Management regulations.
- F. **APPLICABLE LAWS.** All reductions-in-force, transfer of function and reorganizations will be carried out in compliance with applicable laws, and any alleged failure to comply with such laws and regulations will be processed in accordance with the grievance procedure set forth in this Agreement, or for cases appealable to the MSPB, in accordance with their rules.
- G. **RETENTION REGISTERS.** Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected employees shall have the right to the assistance of the Union when reviewing such lists of records.
- H. **OFFERS OF EMPLOYMENT.** Affected employees shall have a minimum of five (5) calendar days in which to accept or reject, in writing, an offer of another position. Failure of employees to respond, in writing, to the offer within the time limits will be considered a rejection of the offer.
- I. **MANAGEMENT RESPONSIBILITIES.** The Agency will:
1. **Placement Assistance.** Assist and counsel affected employees in seeking placement opportunities with other Federal agencies or elsewhere in the community; and,
  2. **Retirement and Severance.** Counsel employees on individual rights relating to such matters as retirement and severance pay.
  3. In the event career or career-conditional employees are separated by reduction-in-force, refer these names to the Department of Homeland Security for inclusion on the appropriate reemployment priority list in accordance with governing regulations. Employees will be given preference for reemployment consistent with governing regulations.
- J. **AUTOMATION AND TECHNOLOGY CHANGES.** The Parties agree that technological changes such as automation and re-engineering are desirable for the efficient operation of the Agency however, decisions and actions concerning the impact of these changes should be made with a full awareness of employee morale. In light of this, when changes affect the classification or status of positions covered by this Agreement, the Agency will meet with the Union to discuss these changes. The Agency will attempt to minimize the adverse impact of these changes by using attrition and reassignment.
- K. **TRANSFER OF FUNCTION TO OTHER AGENCY.** In the event of a transfer of function of Agency activity to another government entity, the Agency will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.
- L. **ELIMINATED POSITIONS.** The Agency agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by

the Agency will be given to the employee to enable him or her to perform the duties of the new position.

## **ARTICLE 21 – CONTRACTING**

- A. BRIEFINGS. Management will brief Local 918 representatives concerning any decisions to contract out work currently performed by bargaining unit employees of the Agency. The briefings are to provide information about contracting out studies under OMB Circular A-76.
- B. SITE VISITS. The Agency will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by bargaining unit employees. A Union representative may attend such a site visit.
- C. UNION NOTIFICATION. When the Agency determines that unit work will be contracted out, the Agency will notify the Union to provide them an opportunity to request to negotiate as appropriate.

## **ARTICLE 22 – SAFETY AND HEALTH**

- A. SAFE AND HEALTHFUL WORKING CONDITIONS. The Agency agrees to provide safe and healthful working conditions, taking into account the mission of the Agency and the inherent hazards of the job performed. The Parties shall be governed by the Safety and Health Regulations contained in government wide, departmental and/or Agency regulations and policies and this Agreement. Employees shall observe all applicable health and safety regulations and policies, use issued equipment safely and use personal protective equipment when provided.
- B. SAFETY AND HEALTH COMMITTEES. Safety and health committees are an important part of the Agency Safety and Health Program as they form a chain of communication between employees and Management. They are in an excellent position to give program advice to appropriate levels of Management. Safety and Health Committees consisting of Union and Agency representatives will meet at the National and Regional levels. Where the term Regional Director is used in this Article it is understood that certain facilities are under the control of officials other than Regional Directors. At those facilities the appropriate official shall be responsible for matters under this Article.
  - 1. Membership. Each Regional Safety and Health Committee shall be composed of at least one representative of the Agency, at least one representative of the Union within a region and the Collateral Duty Safety Officer (CDSO) (or designee). Both Parties agree that to the extent possible, committee members will be appointed from the local commuting area. The NPPD Safety and Health Committee shall be composed of at least two representatives of the Agency, at least two representatives of the Union and the NPPD Safety and Health Program Coordinator (or designee).
  - 2. Training. Consistent with 29 C.F.R. § 1960.58-59, the committee members, including Union representatives, shall be provided training commensurate within the scope of their assigned responsibilities. Training may be provided through agreed upon available sources. When such training is off-site, the Agency will pay training, travel and per diem expenses as appropriate.

3. Meetings. The Safety and Health Committees will meet upon mutual agreement of both Parties, but at a minimum, the committee will meet once every year. If members of the committee are not from the local commuting area, they may participate via teleconference. Minutes of the meetings should be taken by the committee secretary. A copy of the Regional committee minutes shall be furnished in a timely fashion to all committee members and shall be forwarded to the Regional Director (or appropriate local office senior manager), National Program Managers and other appropriate management officials. A copy of the NPPD committee minutes shall be furnished in a timely fashion to all committee members and the appropriate component heads.
  4. Purpose of Meeting. Committees will meet to discuss methods for protecting the safety and health of employees, promoting safety and health education, promoting and implementing Agency safety and health programs, the development and implementation of a safety and health program as it applies to the Region, and the recommendation of deserving employees for safety awards. The committee shall identify, define and assess safety and health problem areas, and recommend corrective measures for policy discrepancies where such discrepancies may exist.
- C. UNION PARTICIPATION. The Union agrees to participate on the Committee and will endeavor to have its members observe all safety rules and use all equipment and safeguards provided. Members of the Committee, upon request and with the approval of the employee's first-line supervisor, shall be allowed to leave their work, for the purpose of performing their duties as outlined in this Article, without loss of pay or charge to leave.
- D. DUTY TO REPORT UNSAFE CONDITIONS.
1. In the course of performing their normally assigned work, employees should be alert to observe unsafe practices and conditions. If an unsafe condition is observed, the employee should report it, in writing, to his or her supervisor and the CDSO.
  2. Review and Report Unsafe Conditions. The CDSO (or designee) shall conduct inspections in accordance with the DHS Safety and Health Manual, report any findings and recommendations to the Regional Director, and report any findings at the next Committee meeting. Additionally, reports will be forwarded to the Component safety and health office.
  3. Regional Director Report. The Regional Director shall report, in writing, whether or not corrective action is required to the Committee and reporting employee within fifteen (15) workdays after receipt of the Committee's recommendations or CDSO's report unless there is a compelling reason for a delay.
  4. Injury Logs. Copies of the OSHA 300 log maintained by each office will be provided to the Regional Safety and Health Committee for investigation of related unsafe conditions. The Parties agree that any confidential or private information contained in the OSHA 300 Log may be redacted prior to submission to the committee.
- E. THREATS TO EMPLOYEES. The Parties recognize that employee safety is a matter of critical importance. If an employee, as a result of the performance of official duties, has been subjected to threats, harassment or other conduct leading to a reasonable fear on the part of the employee for the safety of the employee and/or his or her family, the employee will provide the Agency with a written statement outlining the threat, which will be used by the

Agency as the basis for conducting a review. After receiving an employee's written statement, a review will be initiated within 24 hours. After review the Agency will determine appropriate steps to mitigate the threat to the employee and/or his or her family.

F. **VEHICLE SAFETY.** Agency policy prohibits the use of vehicles not in safe operating condition. The Agency will continue to require periodic inspection of all vehicles in order to insure a safe operating condition at all times. Vehicle operators are required to report, in writing, all vehicle malfunctions or deficiencies to their supervisor no later than the end of the tour of duty; who, in turn, will be responsible to take immediate action to see that needed repairs are made.

G. **SPECIAL HAZARDS / IMMINENT RISK.**

1. When an employee or the Union believes that the employee is being required to work under conditions which are unsafe or unhealthy beyond normal hazards inherent in the operation in question, the employee shall refer the matter to his or her supervisor. This may include situations where staffing levels are not in keeping with the demonstrated levels of risk. The supervisor will make an evaluation of the working conditions and direct that the work either be continued or stopped. If the supervisor directs that the work continue, the employee (or Union official) may, if time permits, immediately escalate the request for review of the matter to the second line supervisor. However, if time does not permit such an escalation, the employee must obey the order of the supervisor unless the employee reasonably believes that obeying the order would expose the employee to a health or safety hazard presenting an imminent risk of death or serious bodily harm. Any employee assertion of imminent danger or refusal to work because of such danger should be immediately reported by the employee to their immediate supervisor.

2. **Officer Safety.** The Parties recognize that law enforcement work presents inherently dangerous situations. Specifically, FPS employees operate marked police cars throughout numerous jurisdictions where outside police assistance may not be readily available. Manpower needs and other safety and security needs will be discussed within the forum or appropriate committees. The Agency shall take all reasonable steps to protect law enforcement personnel during working hours in the performance of their duties.

3. **Chemical Security Inspectors.** The Parties recognize that chemical security inspector work presents inherently dangerous situations. Specifically, IEB employees enter high risk chemical facilities to conduct inspections. Safety and security needs will be discussed within the forum or appropriate committees. The Agency shall take all reasonable steps to protect such personnel during working hours in the performance of their duties.

H. **WEATHER SHELTER.** Where it does not adversely affect their assigned responsibilities or mission accomplishment, employees shall not be prohibited from using available shelter during inclement weather conditions.

I. **MEAL BREAKS / LUNCH ROOMS.** Employees assigned to administrative, mission support or other positions in which lunch periods are customarily taken should be accorded an uninterrupted lunch period between the third (3<sup>rd</sup>) and fifth (5<sup>th</sup>) hours of duty to the maximum extent possible. Lunch periods may fall outside the 3<sup>rd</sup> and 5<sup>th</sup> hours of duties in

offices where alternative work schedule arrangements are in place. The Agency shall provide clean and healthy lunch rooms for the consumption of food, to the maximum extent possible, for all Agency employees.

J. IMMUNIZATIONS.

1. Subject to the availability of funds, the Agency will provide appropriate immunizations, including but not limited to flu shots, post-exposure hepatitis B, and post-exposure tetanus, in accordance with established procedures for employees at no expense to the employee.
2. If an employee, while carrying out his or her duties, is, or the Agency reasonably suspects they have been, exposed to a contagious disease, the Agency will provide inoculation and immunization for members of the employee's family in accordance with CDC guidelines and subject to availability of funds. "Family" is defined as an employee's spouse (including domestic partner) and children (including step-children and adopted children, or other dependant children who are under legal guardianship of the employee or employee's spouse) and who are members of the subject employee's household at the time the subject employee was exposed to the contagious disease. The extent of the medical services provided by the Agency to an employee's family members is limited to inoculation and immunization.

K. UNSAFE CONDITION MOVE. In the event of a relocation of employees due to unsafe or unhealthy conditions, the Union will be notified as soon as practicable.

L. EVACUATION OF DISABLED EMPLOYEES. The Agency agrees to develop procedures to assure that all disabled employees are provided appropriate assistance to evacuate buildings in case of emergencies.

M. FEDERAL EMPLOYEE HEALTH BENEFITS (FEHB). The Agency agrees to furnish information regarding the FEHB program electronically.

N. TB SCREENING. Subject to fund availability, the Agency will conduct a voluntary screening program for Tuberculosis.

O. EQUIPMENT SAFETY

1. No employee shall be required to perform duties using unsafe or inoperable equipment. In the event that an employee believes his or her assigned equipment is unsafe or inoperable, the employee will immediately report the defect to his or her supervisor. The Agency will determine if the equipment is unsafe or inoperable and replace as necessary.
2. If the Agency is not able to immediately fix the defect, or replace the equipment in question, the employee will not be made to suffer.

P. EMPLOYEE WELLNESS

1. Promotion of Physical and Mental Fitness. The Parties recognize that physical and mental well-being of the workforce is important. In that regard, the Agency may establish and administer voluntary participation physical and mental fitness programs after pre-decisional and implementation bargaining with the Union. In addition, the Agency will continue to publicize the Employee Assistance Program which may provide assistance to employees in need of mental health services or counseling.



2. Voluntary duty-hour fitness programs. Until such time as the Agency adopts a nationwide program, the current practices in each region shall continue.

### **ARTICLE 23 – RESTRICTED DUTY**

If the treating physician of a temporarily incapacitated or injured employee (or a physician of the Agency) certifies that the employee is capable of performing restricted duty work, the employee may submit a written request to his or her supervisor to perform restricted duties. If the request is denied, the employee may submit a written proposal to perform restricted duty through his or her chain of command to the Regional Director. The proposal shall identify what restricted duties the employee believes are available and documentation from a treating physician indicating the employee is capable of performing such restricted duties. The Parties understand that this provision does not obligate Management to create restricted duty work or restricted duty overtime work but only to temporarily assign it to qualified employees to the extent that it is available and necessary. Approved restricted duty assignments will be reviewed every 30 days.

### **ARTICLE 24 – INJURY COMPENSATION**

- A. **WORKPLACE ILLNESS / INJURY.** When employees or their representatives report an illness or injury has occurred in the performance of official duties, the employees at their request will be promptly informed of their right to file for compensation benefits and the benefits payable. The employees also shall be advised by the Agency as soon as possible that compensation benefits can be used in lieu of sick or annual leave. The Agency shall give appropriate assistance to the employee in filing a compensation claim. The Agency shall ensure all properly completed Office of Workers' Compensation Programs (OWCP) forms will be timely filed with the Department of Labor.
- B. **CONTINUATION OF PAY / LEAVE.** The Parties understand that injury compensation cannot be paid for any period when an employee is on paid leave. If at the time disability begins the injured employee has sick or annual leave to his or her credit, he or she may decide whether to use all or part of it before applying for injury compensation benefits. An employee who suffers a traumatic injury may obtain continuation of pay for absences caused by the traumatic injury in accordance with 5 U.S.C. § 8118. If the employee should be charged for sick or annual leave (or if an employee is so charged because he or she was not informed of the possibility of injury compensation benefits) the employee may apply to repay, in a lump sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave. This repayment would permit the employee to qualify for injury compensation provided all other conditions are met.
- C. **PAMPHLETS AND FORMS.**
  1. "When Injured at Work". The Agency agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one year.
  2. "Authorization for Examination and/or Treatment" (CA-16). If the employee requires medical treatment because of a work-related traumatic injury, the employee's supervisor

shall complete the front of Form CA-16 “Authorization for Examination and/or Treatment” within 4 hours of the request, whenever possible. In an emergency, where there is not time to complete the form, the Agency may authorize medical treatment by telephone and then forward Form CA-16 to the medical facility within 48 hours. Form CA-16 may not be used to authorize treatment for occupational disease or illness except if OWCP authorizes such use in an individual case.

- D. DOCUMENT REVIEW. Employees will be permitted to review documents relating to their claim which the OWCP has authorized the appropriate Human Resources Office to make available. Employees may be accompanied by their designated representative if they so desire.
- E. RESTORED TO DUTY. An employee who suffers a compensable illness or injury and later, within one year after commencement of benefits, recovers from such injury or illness and meets the physical requirements of the position to which he or she is being assigned, will be restored to duty in the former or an equivalent position in accordance with 5 U.S.C. § 8151 and 5 C.F.R. § 353.307 et. seq.

#### **ARTICLE 25 – FITNESS FOR DUTY EXAMINATION**

- A. FITNESS FOR DUTY EXAMINATION. In directing employees to undergo a fitness for duty examination, the Agency shall observe applicable rules and regulations.
- B. MEDICAL PROGRAMS, POLICIES AND PROCEDURES.
  - 1. Agency formal inquiries or demands for private medical information will be issued by or at the direction of the Agency’s medical program office and will be limited to specific diagnosis, prognosis, course of treatment and anticipated date of return to full duty – taking into consideration the employee’s actual job duties and if possible, the employee’s Performance Work Plan. Employees will ensure physician’s reports are delivered sealed to the Agency’s medical program office. Private medical information will only be available to Agency officials who have need to know.
  - 2. The Agency will ensure medical records are protected in accordance with Privacy Act requirements. The Agency agrees to investigate any and all claims of Privacy Act violations stemming from the handling of medical documentation.

#### **ARTICLE 26 – WORK PLACE CONDITIONS**

- A. PRIVACY, SECURITY AND SAFETY OF SPACE. Privacy, security and safety should be considered in designing workspace, mission support tools, equipment and furniture.
  - 1. All work space will be assigned and designed in accordance with Agency facility standards.
  - 2. The nature of the work conducted by DHS has a strong impact on the safety and security of the Nation, and as a result, the Department is a major target of those seeking to disrupt the normal activities of the country. Accordingly, security is a significant element in all facilities projects undertaken by NPPD and the Agency will comply with Article 9 in making changes which affect privacy security and safety.

- B. **ERGONOMICS.** Ergonomics and user friendliness will be considered in purchasing or designing mission support tools, equipment and furniture.
- C. **WORKSTATION.**
  - 1. Each workstation will have high speed internet access or digital subscriber line (DSL) access where available and in accordance with applicable Agency IT policies.
  - 2. Each employee and each work station shall be provided – at Agency expense – with all tools, equipment, software, hardware and other materials required or recommended by the Agency as being essential to performing the requirements of position.
- D. **PARKING SPACES.** The Agency will provide parking to all law enforcement and civilian bargaining unit personnel for their privately owned vehicles in accordance with Agency policy. Disabled employees will be accommodated with a parking space that meets ADA location and configuration specifications.
- E. **LOCKERS and LOCKER ROOMS.** The Agency will continue to provide storage lockers, locker rooms and shower facilities where such facilities currently exist. The Union may identify locations where no lockers currently exist for law enforcement employees. The Parties will attempt to resolve the situation in a cooperative manner, contingent upon the availability of space and funding. Whenever Agency facilities are redesigned, renovated or when a new facility is planned the Agency will consult with Local 918 on a predecisional basis regarding the provision of adequate locker space and shower facilities.

## **ARTICLE 27 – UNIFORMS, APPEARANCE AND EQUIPMENT**

- A. **EMPLOYEE AND UNION INPUT.**
  - 1. The Agency agrees to notify the Uniforms and Equipment Advisory Committee within twenty-two (22) calendar days of receipt of all employees’ suggestions regarding uniforms.
  - 2. A FPS Uniforms and Equipment Advisory Committee will be chaired by the Chief, Uniformed Services Branch (or designee) and consist of two (2) union representatives and designated Agency representatives. The purpose of this committee will be to advise the Agency on uniform and equipment related issues.
- B. **UNIFORM ALLOWANCE.** Uniformed employees covered by this Agreement shall receive a uniform allowance up to the current maximum allowed in accordance with applicable regulations.
- C. **UNIFORMS AND ATTIRE.**
  - 1. All uniforms and attire shall be worn in accordance with the Agency’s uniform policy and manual.
  - 2. **Leather / Nylon / Synthetic Equipment.** In all cases, the style and design of equipment will meet the specifications contained in Agency policy and manual.
- D. **UNIFORM INSPECTION.** Management reserves the right to inspect uniform items to ensure that employees have the required items in the event of deployments, temporary duty assignments and for daily assignments. If deficiencies or missing equipment is identified, the

employee will be given up to one pay period to initiate action to correct any deficiencies. Essential officer safety equipment deficiencies require immediate attention.

## **ARTICLE 28 – FIREARMS AND OTHER WEAPONS**

### **A. AUTHORIZATION TO CARRY.**

1. **Agency Right.** Determinations as to when, where, under what circumstances, and which employees shall be authorized or required to carry firearms and/or other weapons are reserved to the Agency. The Agency shall make determinations concerning firearms consistent with the requirements of the firearms policy.
2. **Specific Authorization.** Those employees not specifically authorized by the Agency to carry firearms or other weapons are prohibited from carrying weapons in connection with their employment.

**B. EMPLOYEE RESPONSIBILITY. Laws, Regulations and Policy.** All employees authorized to carry firearms and/or other weapons shall adhere to established laws, regulations, and policies governing the use and control of such weapons.

**C. QUARTERLY QUALIFYING.** Employees who are required and/or authorized to carry firearms must qualify quarterly and shall be provided ammunition, duty time, and supervision/instruction consistent with outstanding policy of the Agency.

### **D. WEAPONS.**

1. The Agency will issue each law enforcement employee his or her own individual duty weapon. The employee is responsible for his or her duty weapon while it is in their possession. The Agency may recall or inspect government issued firearms or weapons, as necessary. Absent exigent circumstances, the Agency will make reasonable efforts to conduct inspections or recall of weapons at Agency offices. If a weapon is to be collected at an employee's residence, the union will be notified and may be present if readily available.
2. FPS Law enforcement personnel are responsible for general cleaning and upkeep of Agency issued firearms or weapons. However, the Agency will repair any firearms or weapons deemed unsafe or non-serviceable. The Agency will immediately issue a replacement firearm or weapon while it is repaired or replaced. The employee will be allowed to qualify with the temporary or new weapon before returning to duty.
3. Employees shall be allowed to bring personal weapons carried pursuant to 18 U.S.C. § 926(B) into FPS offices, and shall secure said personal firearms in gun lockers supplied by the Agency if available.
4. FPS law enforcement employees' official credentials will be authorized for use in establishing officers' law enforcement employment status for purposes of demonstrating conformity with 18 U.S.C. § 926(b). Officers may display their agency credential for this purpose. The Agency will not impede, interfere with or discourage use of FPS law enforcement credentials for purposes of establishing bona fide law enforcement

employment status under 18 U.S.C. § 926(B), nor interfere with the authority to carry personal weapons under that statute.

5. Employees who are going to retire and wish to carry a concealed weapon under 18 U.S.C. § 926(c) after they retire must meet all requirements of current Agency policies regarding this practice.
  6. All FPS law enforcement personnel will be issued expandable batons and pepper spray as specified in national policy. Agency training and certification requirements will be observed.
  7. The Agency will provide less-than-lethal weapons or munitions to properly trained and qualified FPS law enforcement employees, and will provide appropriate training on the use of such weapons.
  8. The Agency shall provide agency-approved storage cabinets, lockers, locking devices or other protective measures to assure that assigned weapons are safely stored when not in duty use carry.
  9. Law enforcement employees may purchase at his or her own expense, and carry on duty, an Agency approved firearm as a back-up (reserve) weapon. Such firearms would be carried only in compliance with agency policies governing such approved weapons.
- E. FIREARMS TRAINING AND PRACTICE. The Agency recognizes that proficiency in the use of a firearm and instruction in the use of deadly force is of the highest priority. Therefore, the Agency encourages officers to use police range facilities on a continuing basis so that proficiency may be maintained. The Agency agrees to continue the practice of providing up to 150 rounds per quarter per law enforcement employee.

## **ARTICLE 29 – HOURS OF WORK**

- A. DETERMINATION OF WORK HOURS. Except in cases of emergency, or where otherwise authorized by law or applicable government-wide rule or regulation, or where the Agency determines that it would be seriously handicapped in carrying out its functions or that the cost would be substantially increased, the Agency will provide the following, consistent with 5 C.F.R. § 610.121:
1. Basic Workweek. The administrative workweek shall be seven (7) consecutive days, Sunday through Saturday. The basic workweek shall be scheduled on five (5) days, Monday through Friday where possible, and the two (2) days outside the basic workweek shall be consecutive.
  2. Basic Workday. Except for employees working an alternative work schedule, the basic non-overtime workdays shall not exceed eight (8) hours, excluding any non-paid meal period.
  3. Effect of Holidays. The occurrence of holidays shall not affect the designation of the basic workweek.
  4. Posted Schedules / Individual Changes. Assignments to tours of duty for law enforcement personnel shall be posted electronically on a monthly basis five (5) workdays in advance of the beginning of the month. All employees shall be notified of individual changes in

their tours of duty schedule or assigned shifts no less than five (5) workdays prior to the beginning of the workday affected. Upon request, individuals involved in a change of tour shall be notified of the reasons for the change. Exceptions to this provision may be made where there is mutual agreement between an employee and their supervisor.

5. Voluntary Schedule Adjustments. Employees who have been required to work greater than sixteen (16) consecutive hours may request a schedule adjustment to allow for rest and recuperation. Consistent with operational requirements, Management shall make every effort to accommodate such requests.
6. Break in Work Hours. Breaks in working hours of more than one (1) hour shall not be scheduled in any basic workday.
7. Shift Trades. Equally qualified employees may request supervisory approval to trade shifts. Upon request, individuals denied a shift trade shall be notified of the reasons for the denial.
8. Meal Breaks / Lunch Rooms. With the exception of employees with law enforcement patrol responsibility, employees assigned to Regional or Headquarters Office should be accorded an uninterrupted lunch period between the third (3rd) and fifth (5th) hours of duty where lunch periods are customarily taken to the maximum extent possible. Lunch periods may fall outside the 3rd and 5th hours of duty in offices where alternative work schedule arrangements are in place. The Agency shall provide access to space for the consumption of food, to the maximum extent possible, for all Agency employees. FPS Law Enforcement personnel are considered continuous service personnel. Law enforcement personnel performing in continuous service positions shall be permitted to take meals on an availability basis, subject to calls, assignments and other duties that may arise. Reasonable efforts will be made by management to avoid unnecessarily interrupting these periods.

B. DEFINITIONS. For the purposes of this Proposal, the Parties understand that:

1. Alternative Work Schedule (AWS) means both flexible work schedules and compressed work schedules.
2. Compressed Work Schedule means a schedule in which a full-time employee completes the 80-hour bi-weekly basic work requirement in less than ten workdays or a part-time employee completes a basic bi-weekly work requirement of less than 80 hours in less than ten workdays. For purposes of this contract, the compressed work schedule is commonly one in which full-time employees are scheduled to work four ten hour workdays each week, scheduled on four of the workdays, or a part-time employee with a fixed schedule is scheduled to complete that schedule over four of the workdays, or the commonly practiced 5-4-9 system, or other compressed work schedules.
3. Flexible Work Schedule means a schedule in which employees are allowed to determine their starting and ending time within the limits set by the Agency.
4. Tours of Duty. Tours of duty refers to an employee's basic workweek, i.e., the days and hours within which the employee is expected to be on duty, e.g., day shift Monday through Friday.

5. Shifts. Shifts refer to the particular hours which define an employee's daily work schedule, e.g., a day shift which starts at 8 a.m. and ends at 4 p.m.

#### C. ALTERNATIVE WORK SCHEDULES

1. Establishment of Alternative Work Schedules. In accordance with 5 U.S.C. § 6120, the Agency may establish an alternative work schedule (AWS) program, proposed by either the Agency or Union, identified in this Article for any organizational unit within individual Regions or HQ Programs. The determination to establish or discontinue AWS shall be made on a case-by-case basis within each Region or HQ Program.
2. Legal Restrictions. The Parties recognize that the law provides that the Agency may not establish such a schedule or continue such a schedule if the schedule would result in adverse agency impact as defined in 5 U.S.C. § 6131:
  - (a) A reduction in the productivity of the agency;
  - (b) A diminished level of services furnished to the public by the agency; or
  - (c) An increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing an alternative work schedule).
3. If an agency approved AWS program is proposed to be terminated, the Agency will provide Union with appropriate written notice citing adverse agency impact, see C2, above, as the reason for this proposed change in working conditions
4. Employee Participation.
  - (a) After a Region or HQ Program has established an AWS program for an organizational unit or category of employees, those employees may request participation in an agency approved AWS program or continue to work a regular schedule. An employee who wishes to participate in AWS must submit a completed DHS Form 3080-1 (6/05), Request for Alternate Work Schedule, to his or her supervisor. The proposed effective date will not normally be sooner than two full pay periods after the submission of the form. The effective date must coincide with the beginning of a scheduled pay period.
  - (b) All work schedules must be approved or disapproved by the immediate first-line supervisor (or designee) and reviewed by the designated program manager. The completed form must be retained by the immediate supervisor for one year from the date the schedule is terminated or the request is disapproved.
  - (c) An employee will be provided written notice of the reasons a request is disapproved or a schedule is terminated.
5. Overtime. It is understood by the Parties that, under law, none of the hours that constitute an alternative work schedule may be compensated with, or be credited for purposes of premium pay.

#### **ARTICLE 30 – TELEWORK**

The subject of telework will be addressed in subsequent bargaining. Any agreement reached by the Parties shall be incorporated into this Agreement as an Appendix.

## **ARTICLE 31 – LEAVE**

A. POLICY. The following shall apply to all types of leave in this Article.

1. Employees are entitled to accrue and use leave in accordance with applicable laws, regulations and this Agreement.
2. Leave requests shall be made and recorded through WebTA (or successor time accounting system). In the event WebTA is temporarily unavailable to an employee or in emergency situations, leave may be initially requested in person or via email, telephone, text message or voicemail and later recorded in WebTA. In the event law enforcement personnel do not receive a response from their supervisor within 1 hour in emergency situations, they must also notify the MegaCenter.
3. Employees will apply in advance for approval of all anticipated leave. Employees are encouraged to maintain adequate balances of leave to cover their anticipated and unanticipated leave needs.
4. All leave shall be charged in increments of a quarter (1/4) hour.

B. ANNUAL LEAVE.

1. Right to Use. Use of accrued annual leave is a right of the employee and not a privilege, but its use is subject to approval by management.
2. Request Procedures. All requests for annual leave will be requested in advance through WebTA, where possible.
3. Timely Leave Approval. Consistent with the needs of the Agency, annual leave which is requested in advance will be approved in a timely manner.
4. Procedure to Schedule Projected Leave. Each employee shall be responsible for planning and making timely requests for his or her annual leave in accordance with his or her personal desires. Leave preferences shall be submitted in order that leave schedules can be established no later than April 30 of each calendar year. Employees who do not request projected leave by April 30 will be allowed to request and take leave at a later date, provided it does not interfere with scheduled annual leave, consistent with articulable and legitimate needs of the Agency.
5. Priority Approval. When all requests for annual leave for a given period cannot be granted, the supervisor shall consider the following factors in the order listed below:
  - (a) Seniority: Seniority is defined as the length of service commencing with the first (1st) day of continuous employment with FPS for FPS employees and with IEB for IEB employees.
  - (b) Service Computation Date.
  - (c) Previous Requests. Whether employees were able to take leave at desired time during a previous scheduling period.
6. Three Consecutive Weeks. If allowed by operational requirements, the Agency agrees to grant annual leave in a manner which permits each employee, if he or she wishes, to take at least three (3) consecutive weeks of annual leave each year.



7. In the event the Agency establishes a leave blackout period in which no employees in a work unit are allowed to take leave, upon request, the union will be provided the valid operational reason for the blackout.
8. Reason for Leave. Employees are not required to specify the reason for a request of annual leave when such reasons are of a personal nature unless the employee is requesting leave under the emergency procedures of subparagraph 11 below. Such leave will be granted in accordance with provisions of subparagraph 3, above.
9. Canceled / Changed Leave. Both the needs of the employee and the Agency will be considered prior to any cancellation of annual leave. Consideration will be given to employee's expenditure of personal funds for pre-planned vacations. Approved annual leave requests for two (2) days or more will be canceled only for valid operational reasons which require the employee not to take leave. Valid operational reasons include such matters as illness or death of another employee, directed details by authority outside the Agency, special mission requirements which do not lend themselves to normal scheduling, and other events which create an actual necessity for personnel and not reasons which may make canceling leave merely desirable. Whenever possible, the employee whose leave is canceled will be notified at least forty-eight (48) hours in advance and will be given prompt opportunity to reschedule. Such notice will be given in writing.
10. Restoration of Canceled Leave. Annual leave that has been canceled for valid operational reasons may be restored in accord with the provisions of the governing regulations.
11. Emergencies.
  - (a) Where unforeseen emergencies arise requiring the use of leave, at the earliest opportunity, the employee shall notify his or her supervisor of the nature of the emergency, the anticipated extent of his absence, and seek the supervisor's approval for annual leave or leave without pay.
  - (b) Extension. If the emergency extends beyond the period for which leave was originally requested, the employee must again notify his or her supervisor and request additional leave.
12. Advance Annual Leave. Annual leave may be granted and used in advance of accrual, not to exceed the amount that is expected to accrue during the remainder of the same leave year.

#### C. SICK LEAVE.

1. Use of Sick Leave. When requested and approved as provided in this Article and applicable regulations, employees may use sick leave for personal medical needs, care of a family member, care of a family member with a serious health condition, and adoption related purposes.
2. Personal Medical Needs. Sick leave may be used for the following purposes:
  - (a) Medical Appointments. To receive medical, dental, or optical examination or treatment;

- (b) Incapacity. When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;
  - (c) Communicable Disease. When, as determined by health authorities having jurisdiction or by a health care provider, the employee's presence on the job would jeopardize the health of others as consequence of the employee's exposure to a communicable disease;
3. Care of a Family Member
- (a) Sick leave may be used for the following purposes:
    - (i) Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
    - (ii) Provide care for a family member as a result of medical, dental, or optical examination or treatment; or
    - (iii) Make arrangements necessitated by the death of a family member or attend the funeral of a family member.
  - (b) "Family member" is defined as a spouse or parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and/or any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
  - (c) A full-time employee may not use more than 104 hours of sick leave (or, for part-time employees, the amount of sick leave the employee normally accrues in a leave year) for this purpose within any leave year except as may otherwise be permitted by regulations.
4. Sick leave may be used to provide care for a family member who has a serious health condition as defined at 5 C.F.R. § 630.1202. A full-time employee may not use more than 480 hours of sick leave (or, for part-time employees, an amount of sick leave equal to 12 times the average number of hours in his scheduled tour of duty each week) for this purpose within any leave year. If an employee has used any portion of their sick leave under paragraph 3, above, the Agency shall subtract that amount of time from the maximum number of hours authorized.
5. Adoption. Sick leave may be used when the employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, attorneys, court proceedings, required related travel, and any other procedures necessary to allow adoption to proceed.
6. Sick Leave Request Procedures.
- (a) Anticipated Sick Leave. When an employee knows in advance that sick leave (i.e. scheduled doctor appointments, surgery) will be required, he or she shall request sick leave at the time the necessity for the leave is determined. Employees must provide notification at least one hour prior to beginning of the assigned shift.
  - (b) Unanticipated Sick Leave. When the need for sick leave is unanticipated and sickness or injury prevents the employee from reporting to work, the employee shall notify his or her supervisor as soon as possible. Employees are expected to provide notification of illness prior to the start of an assigned shift, but in no event later than one hour after the start of the shift. If the illness or incapacitation precludes such notification,

the employee shall provide notification as soon as possible. Employees will submit a completed WebTA request upon their return to duty.

- (c) Procedure for requesting FMLA Leave. The employee must provide notice of his or her intent to take FMLA leave not less than 30 days before leave is to begin, or as soon as practicable. The Agency may request medical certification for FMLA leave requests, where requested for the purpose of dealing with a serious health condition.
7. Evidence Of Illness. Employees may be required to furnish acceptable evidence to substantiate a request for sick leave if the sick leave exceeds three (3) consecutive workdays.
  8. Leave Restriction. Supervisors will counsel employees whose leave use could be considered inappropriate. In a situation in which an employee has demonstrated an abuse of sick leave, the employee may be subject to leave restriction. When leave restriction becomes necessary, the supervisor will provide written notification of the specific procedures for future leave requests and leave use by employee for a period of one year, or less if a determination is made by the supervisor that the leave abuse has ceased. If the leave restriction is to continue beyond one year, the employee will be notified, in writing, of the reasons for the continuation. If the leave restriction is not continued, the employee will be notified of the cancellation of the leave restriction. Records of the leave restriction shall be expunged if there is no recurrence of the problem within 6 months, except as otherwise required by rule or regulation.
  9. Annual Leave For Illness. Upon request by the employee, an approved absence which would otherwise be chargeable to sick leave may be charged to annual leave.
  10. Use of Sick Leave During Annual Leave. An employee may request sick leave during a period of annual leave for any of the purposes described above.
  11. Advanced Sick Leave
    - (a) Requirements. When an employee's sick leave balance has been exhausted, the Agency may approve requests for advance sick leave in cases of serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child if:
      - (i) Medical Certificate. The application is supported by a medical certificate;
      - (ii) Maximum Advance. The amount advanced to a full-time employee may not exceed 30 days. Part-time employees, working under a regular tour of duty, may be advanced sick leave on a pro rata basis;
      - (iii) Minimum Absence. The absence on account of illness must be for a period of five (5) or more consecutive workdays, but the actual advance may be for any part of the total absence;
      - (iv) Repayment may be reasonably expected.
    - (b) Repayment of Advanced Sick Leave. The total sick leave advanced must be charged against sick leave subsequently earned. In case of separation of any employee who is indebted for advanced sick leave (except in case of death, disability supported by an acceptable medical certificate, retirement for disability, or for active military service

with restoration rights) recovery shall be made in accordance with applicable regulations.

- (c) Temporary Employees. Temporary employees are not normally eligible for advanced sick leave. In cases where advanced sick leave is approved for a temporary employee, advanced sick leave may not be provided in excess of the amount which they will earn during the period of temporary employment.
- (d) Retiring Employees. Employees approaching mandatory retirement may not be advanced sick leave in excess of the amount which they will earn prior to date of retirement.

#### D. ADMINISTRATIVE LEAVE.

1. Definition. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to accrued leave.
2. Voting in Civil Election.
  - (a) General Rule. As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he or she may be granted an amount of excused leave to vote in a civil election which will permit him or her to report for work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off.
  - (b) Additional Time. Depending upon exceptional circumstance in an individual case, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the particular circumstances in his or her individual case, but not to exceed a full day.
  - (c) Travel Time. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted the time necessary to make the trip to the voting place to cast his or her ballot. Time off in excess of one (1) day shall be charged to annual leave or if annual leave is exhausted, then to leave without pay.
  - (d) In-person Registration. For employees who vote in jurisdictions which require registration in person, time off to register may be granted on the same basis as for voting, except that no time shall be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable one (1) day round trip travel distance of the employee's place of residence,
  - (e) Costs. All costs incurred for travel in cases described in Sections D2(a), (b), (c) and (d) will be borne by the employee.
3. Blood Drive. An employee donating blood at an officially authorized blood bank or in emergencies to individuals will be granted administrative leave, workload permitting, for the time necessary to make the blood donation and necessary time for travel and recuperation. The time authorized under this section shall be limited to four (4) hours on the day the blood is donated.
4. Administrative Leave may be granted for bone marrow or organ donation in accordance with law and regulation.

5. Change of Duty Station. Employees effecting changes in a residence in connection with a change in duty station within the Agency will be granted administrative leave of five (5) workdays. The first two (2) days will be provided by the losing activity and the remaining three (3) days will be provided by the gaining activity. The purpose of this leave is to make all arrangements, preparations, and actions relating to preparing for and actually effecting the changes in station. An additional one (1) workday of administrative leave will be granted by the gaining activity when the changes in station will not be at government expense.
6. Court Leave. Employees will be granted court leave to serve as a juror or to serve as a witness in a judicial proceeding in which the Federal, state, or local government is a party. An employee already on leave without pay, although otherwise eligible, may not be granted court leave.
  - (a) `Duration of Court Leave: Eligible employees properly summoned for witness service or for jury duty are entitled to court leave for that period of time during their regular working hours while actually under the jurisdiction and control of the court. An employee is responsible for informing his or her supervisor as soon as he or she is excused from jury or witness service, and shall only be required to return to work if he or she can perform at least four consecutive hours of work.
  - (b) Procedures. Employees will submit their summons to appear at court, supportive court order, or subpoena upon receiving such a court document to their supervisor; and submit written evidence of their attendance at court within 10 days of returning to work.
  - (c) Night-Shift Employees: Night shift employees may be granted court leave either the night before or the night after their service in court. As with all other employees, night shift employees may not be excused on court leave for more work shifts than the number of days they actually serve in court, as indicated by the required evidence of attendance.
7. Agency Interviews / Examinations. Employees being interviewed for positions within the Agency or taking examinations for positions within the Agency will be granted administrative leave for the actual time of the interview or examination.

#### E. LEAVE WITHOUT PAY.

1. Definition. Leave without Pay (LWOP) is a temporary non-pay status and absence from duty which has been requested and approved in advance by the Agency.
2. Matter Of Right. The following employees are entitled, as a matter of right, to take leave without pay for the following purposes:
  - (a) Disabled Veteran. A disabled veteran for medical treatment when he or she presents an official statement from a duly constituted medical authority that medical treatment is required. The disabled veteran must give prior notice of the period during which his or her absence for treatment will occur.
  - (b) Military Reservist. A military reservist or national guardsman for the period he or she is required to perform active duty training if he or she has exhausted his or her military leave or he or she is not entitled to military leave.

- (c) Family Necessity. An employee who presents FMLA compliant medical certification and requests leave under the Family And Medical Leave Act (FMLA) (5 U.S.C. § 6381 et seq.) will be granted up to 12 weeks of leave without pay during any 12 month period as necessary to manage one or more of the following circumstances: the birth, adoption, or foster care of a child; a serious health condition of the employee that renders the employee unable to perform the essential functions of his or her position; to care for a spouse, son, daughter, or parent of the employee when that person has a serious health condition. It is understood that the definitions as set forth at 5 C.F.R. Part 630, Subpart L, shall apply to the terms of this subsection to the extent such terms are so defined.
3. National Union Representatives. The Agency may approve leave without pay for periods of up to three (3) years at a time to any employee elected or appointed as a National Officer or Representative of AFGE. Such leave may be extended or renewed until such time as the employee's term of office or appoint expires.
4. Administrative Discretion. Recognizing that LWOP is a matter of administrative discretion and may not be demanded as a right, the Agency may approve requests for LWOP in the following circumstances:
- (a) Education. When requested at least sixty (60) days in advance (a response will issue within thirty (30) days of receipt thereof), an employee may be granted up to one (1) year to participate in full-time study at an accredited institution of higher learning when the following conditions are met:
- (i) Related to Position. The proposed course of study is directly related to the employee's position with the Agency and the employee has completed a minimum of five (5) years of service with Agency.
- (ii) Acceptable Performance / Expected Return. The employee has demonstrated an acceptable level of competence through past performance and it can reasonably be expected that the employee will return to work with the Agency upon completion of the study period. Such LWOP will be automatically terminated without further notice when the employee withdraws or is terminated from the study program.
- (b) Injury/Illness. For up to six (6) calendar months when an employee has an illness or injury, that would otherwise be covered with sick leave when the employee's annual and sick leave have been exhausted and there is reasonable assurance that the employee can and will return to work with the Agency at the end of the leave period.
5. Substitute for Annual Leave. An employee at his or her option may request leave without pay in lieu of annual leave.
- F. VOLUNTARY LEAVE TRANSFER PROGRAM. An employee who has exhausted his or her available paid leave because of personal or family medical emergency may apply for the Voluntary Leave Transfer Program.

## **ARTICLE 32 – OVERTIME - (OTHER THAN UNCONTROLLABLE OVERTIME AND LEAP)**

- A. **FAIR AND EQUITABLE ROTATION.** To the extent practicable, overtime assignments will be distributed and rotated fairly and equitably among eligible and qualified employees. Supervisors shall not assign overtime work to employees as a reward or a penalty, but solely in accordance with Agency need. Complaints or disagreements on distribution of overtime shall be processed in accordance with the negotiated grievance procedure.
- B. **PERFORMANCE OF DUTIES.** All employees in an overtime status will perform the duties assigned by the supervisor. They will wear attire consistent with the task to be performed.
- C. **MAINTAIN RECORDS.** Necessary records to comply with this provision will be maintained at each duty station and made available to all employees upon request.
- D. **LAWS, REGULATIONS, AND POLICIES.** The Agency agrees to comply with applicable regulations, laws and policies in the payment of overtime to employees.
- E. **EFFECT ON PERFORMANCE APPRAISAL.** The participation or non-participation of an employee in overtime work, where such work is voluntary, shall not in any manner reflect adversely on his or her appraisal.
- F. **OVERTIME CAP.** The Agency will continue to follow the procedures for obtaining authorization for personnel performing emergency or mission critical overtime to be paid under the annual earnings limitation rather than in accordance with the bi-weekly pay limitation.
- G. **BREAK IN OVERTIME HOURS.** Breaks in working hours of more than one (1) hour shall not be scheduled or assigned in any overtime day absent the agreement of the affected employee.
- H. **RESTRICTED DUTY.** An employee on restricted duty is not precluded from participating in overtime if there is a need for those restricted duties to be performed on an overtime basis.
- I. **OVERTIME ASSIGNMENT PROCEDURES.**
  - 1. **Overtime Rosters:** The Agency will create overtime rosters at the appropriate levels which will be used for purposes of assigning personnel on a rotating basis to voluntary regional and district overtime assignments.
  - 2. The overtime list will be compiled based on employee seniority, as defined in Article 31.
  - 3. When such overtime is available and this list is utilized, the employee at the top of the list will be offered the opportunity to volunteer for such overtime. Accepting or declining such overtime places that employee's name at the bottom of the list until the next time the employee's name rises to the top as the result of further processing of the list.
  - 4. In cases where the Agency needs employees to complete their ongoing project or has determined that special skills sets, training or certifications are required as a primary selection criteria, those special factors will advance persons possessing them to the top of the roster. Upon request by the Union, the Agency will provide its reasons for exercising this option.

5. In cases where the roster produces no volunteers for the overtime assignment, the employee at the top of the list will be assigned the overtime.

## **ARTICLE 33 – DETAILS AND TEMPORARY DUTY STATIONS**

### **A. RIGHT TO ASSIGN.**

1. Agency Right. The Agency retains the right to detail employees.
2. Limits. The Agency shall exercise this authority:
  - (a) Law, Regulation, and Contract. In accordance with applicable law, appropriate regulations, and this Agreement;
  - (b) Advance Notice. By giving as much advance notice as possible to employees selected for detail.
  - (c) Utilize Volunteers. Absent a particularized need for specific skills or qualifications the Agency shall utilize volunteers before requiring employees to participate on details involuntarily unless emergency circumstances preclude doing so or management determines that there is a need for a specific volunteer to continue to perform his or her regular duties.

### **B. SELECTION PROCEDURES.** The following procedures shall apply when the Agency offers temporary assignments, noncompetitive details or rotations, to members of the bargaining unit:

1. Detail Rosters: The Agency shall create detail rosters at the appropriate levels that will be used for purposes of assigning eligible and qualified personnel on a rotating basis to details. Absent an articulable need for specialized program members (such as FPS K-9 and HazMat Team members) to remain in their Region regarding a particular detail, these specialized program members will be included on the listing of qualified and eligible employees. Upon request by the Union, the Agency will provide a reason for exclusion from that specific detail.
2. The detail roster will be compiled based on employee seniority, as defined in Article 31.
3. When a detail occurs and this detail roster is utilized, the employee at the top of the list will be offered the opportunity to volunteer for such a detail. Accepting or declining such a detail places that employee's name at the bottom of the list until the next time the employee's name rises to the top as the result of further processing of the list. All employees on the detail roster regardless of leave status will be offered an opportunity for a detail. Employees who are in a leave status and cannot be reached telephonically within 15 minutes will be considered as having declined and he or she will move to the bottom of the list.
4. In cases where the Agency has determined that special skills sets, training or certifications are specifically required those special factors will advance persons possessing them to the top of the roster. Upon request by the Union, the Agency will provide its reasons for exercising this option.



5. Agency will make a reasonable effort to advise employees of the projected start date and length of the detail prior to commencement. The Agency will make every possible effort to be considerate of personal and family needs impacted by a detail order.
6. In cases where the roster produces no volunteers for detail, the employee at the top of the list will be assigned the detail.

C. DEFINITIONS. For the purposes of this Article, the following definitions apply:

1. Temporary Assignment: The change of an employee from one position, work location, or post of duty for a fixed or limited duration of time, upon the expiration of which the employee is expected to return to the original position, work location or post of duty. A temporary assignment may be in the form of either a temporary promotion or a detail.
2. Detail: Temporary assignment of an employee to a different position, work location, or post of duty without change of pay regardless of grade, for a specified period, with the employee returning to his or her assigned position at the end of the detail.
3. Rotation: The recurring assignment of employees to different work locations, work shifts and/or tours of duty within the confines of the employee's work location or other locations to which the employees are regularly assigned.

D. TEMPORARY PROMOTIONS. Temporary Promotions and details to higher graded positions will be handled in accordance with the Merit Promotion and Reassignment Plan.

E. UNDERCOVER EMPLOYEES. The Agency shall ensure that employees involved in undercover operations will not be assigned to activities that are likely to compromise their identity.

F. TIME LIMIT. Except for training courses, details away from the normal duty station will not normally exceed 35 calendar days, unless the employee volunteers for a longer period. A detail shall not exceed a total of 60 calendar days unless the Agency determines that there is a valid operational need for a specific employee to continue on the detail to complete a specific project.

G. UNION REPRESENTATIVES. The Agency will make every effort to avoid placing a Union representative on a detail that would prevent that official from performing his or her representational functions, unless the employee volunteers for the detail. The Union will be advised when HQ management conducts an onsite inspection of working conditions due to employee reports of adverse conditions of details exceeding 30 days and involving 10 or more employees. The Union President or designee will be allowed to travel on official time and at government expense to attend the inspection.

## **ARTICLE 34 – TRAVEL**

A. REIMBURSEMENT.

1. Federal Travel Regulations. Employees shall be reimbursed for travel on official business in accordance with law and the Federal Travel Regulations and interpretations thereof by the Comptroller General of the United States and/or interpretations of the Administrator, General Services Administration and in accordance with this Agreement.

2. Changed Rates. The Parties agree that any change in rates or reimbursements to Federal employees by law or regulation during the life of this Agreement will be adopted on the effective dates of the changes.

#### B. DEFINITIONS.

1. "Place of duty" is defined as: (a) the work location (such as station headquarters office) to which an employee is assigned permanently or, (b) if 50 miles or less from the employee's official duty station, any work location to which the employee is assigned as part of a predetermined rotational schedule.
2. "Temporary duty location" is defined as a place, away from an employee's official station, where the employee is authorized to travel.
3. "Official duty station" is defined as the corporate limits of the city or town where the employee is stationed, or if not stationed in an incorporated city or town, the reservation, station or other established area (including established subdivisions of large reservations) having definite boundaries where the employee is stationed.

C. TRAVEL STATUS. Regularly Scheduled Workweek. To the maximum extent practicable, the Agency shall schedule the time to be spent by an employee in a travel status away from his or her official duty station within the regularly scheduled workweek of the employee.

#### D. LOCAL TRAVEL / TEMPORARY DUTY STATION.

1. Local Mileage. After an employee places himself or herself at his or her place of duty, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the Agency. In this regard, once an employee arrives at the place of duty, the employee will receive mileage reimbursement for authorized use of a privately-owned vehicle in subsequent travel to any temporary duty location. For purposes of this Article, "mileage" includes road and bridge tolls, ferry/fares, and parking fees, as well as the authorized mileage rate for the distance travelled.
2. Home to Temporary Duty Location. When an employee travels by privately-owned vehicle from his or her home to a temporary duty location and/or from a temporary duty location to his or her home, the employee will be reimbursed for any, mileage in excess of his or her normal round trip from his or her home to his or her regular duty location.
3. Established Rotational Assignments Excepted. Subsections (1) and (2), above, do not apply to or cover established rotational assignments through different places of duty within fifty (50) miles of the employee's official duty station. The site of each rotational duty assignment shall be the employee's place of duty for the duration of the employee's rotational assignment. Work locations of more than fifty (50) miles from the official duty station shall be considered temporary duty locations for the purpose of entitlement to reimbursement of travel expenses.

#### E. PER DIEM.

1. Eligibility. Employees shall be eligible for per diem or actual subsistence allowance only when they travel to an assignment located outside their "official duty station" as defined in Section B (3).

2. Partial Per Diem. Employees performing travel outside the city limits of their official duty station for a period of less than twenty-four (24) hours but at least twelve (12) hours without incurring lodging costs are entitled to partial per diem.

F. TRAVEL ADVANCES.

1. Government Credit Card Advance. Those employees who have a valid government credit card for travel purposes are to use such credit cards to obtain necessary and appropriate cash advances.
2. Employees who have not been issued a government credit card for travel purposes will, upon request, be issued a travel advance with the assistance of their Region Mission Support Branch.

G. NECESSITY TRAVEL. When the nature and location of the work at a temporary duty location are such that suitable meals cannot be obtained there, the expense of daily travel required to obtain meals at the nearest available place may be approved as necessary transportation, not part of per diem or actual expense reimbursement. A statement of the necessity for such daily travel shall accompany the travel voucher.

H. ACCOMMODATE DISABLED EMPLOYEES. Although disabled employees may be directed to perform official travel, there are situations in which the assistance of an attendant or escort must be provided if the travel is to be accomplished. Under such circumstances, the transportation and per diem expenses of an attendant will be allowed as necessary expenses for travel.

I. ORDERED OVERTIME TRAVEL. An employee may be reimbursed for taxi cab fares, plus tip, for transportation between office and home incident to officially ordered overtime provided all of the following conditions are met:

1. Concurrent Authorization. Reimbursement is authorized concurrently, with the ordering of overtime work;
2. Official Business. The employee performed overtime duty incident to the conduct of official business at the designated post of duty;
3. Dependent on Public Transport. The employee is dependent on public transportation incident to the officially ordered overtime;
4. Infrequent Public Transport / Darkness. The travel is performed during hours of infrequently scheduled public transportation or darkness.

## **ARTICLE 35 – COUNSELING FOR PERFORMANCE AND CONDUCT**

A. Standards

1. Reasonable and Fair. Counseling shall be reasonable, fair, and used to encourage an employee's improvement in areas of conduct and performance.
2. Professionalism. Employees shall be treated with courtesy, dignity, and respect.

B. PRIVACY AND NOTICE. Oral counseling will be conducted in private with the employee. The supervisor will notify the employee in advance if more than one Management official is to attend the counseling session.

- C. **WRITTEN RECORD.** Not all counseling will necessitate a written record. However, if a counseling is reduced to writing, the employee will be provided a copy of the written record. If the counseling is reduced to writing, the written counseling will only include references to prior related oral and written counseling which occurred within the last three years.
- D. **PERFORMANCE RECORD.** A record of counseling for performance will be retained during the rating period for which it was issued. If the performance appraisal for that year incorporates information in the narrative sections from the counseling record or the counseling is incorporated into a performance improvement plan notice, it may be retained for a longer period.

## **ARTICLE 36 – PERFORMANCE MANAGEMENT**

- A. **PERFORMANCE MANAGEMENT PROGRAM.** The performance management program shall be administered fairly, provide employees with quarterly feedback, and provide information on an employee's current performance and assistance in improving that performance. This Article is to be used in conjunction with NPPD performance management guidance. This Article is controlling where there are any conflicts with the NPPD performance management guidance.
- B. **DEFINITIONS.** Terms used in this Article that relate to the Performance Management System, such as "appraisal," "critical element," or "performance rating" will, to the extent applicable, have the same meaning as in government wide regulation.
  1. Performance is the accomplishment of work assignments or responsibilities.
  2. Appraisal is the process under which performance is reviewed and evaluated as it relates to the employee's Performance Work Plan (PWP) and position description.
  3. Critical Element is a work assignment or responsibility of such importance that unacceptable performance on the element results in a determination that an employee's overall performance is *Unacceptable*.
  4. Performance Standards are the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.
  5. Rating of record means a written performance appraisal that is prepared at the end of the appraisal period, covering an employee's performance of assigned duties against performance expectations over the applicable period.
  6. A Summary Rating is the performance level summarizing the employee's overall performance during the period appraised.
- C. **EMPLOYEE PARTICIPATION, COMMUNICATION AND DISCUSSION.**
  1. Employees are encouraged to contribute and actively participate in developing their PWPs.
  2. Informal discussions are a standard part of supervision and should occur throughout the annual assessment period. Discussions may be initiated by the supervisor, rating official

(if not the immediate supervisor) or employee. Discussions may be held one-on-one or between a supervisor or rating official and a work group.

- (a) If an employee requests a discussion with his/her rating official to discuss his/her performance, it will be scheduled within 15 work days. If this is impractical, the employee's file should be documented to show the request for a discussion and the failure to have one.
  - (b) Discussions should be candid, forthright dialogues aimed at improving performance by assessing accomplishments, obtaining guidance and understanding, identifying and resolving problems and discussing work processes and standards. This may also be accomplished by e-mail.
  - (c) Discussions between the employee and rating official will normally be held when there is a change in the work situation that affects the requirements contained in the performance work plan.
3. Prior to receiving their performance plans, employees will be provided an opportunity and encouraged to participate in the establishment of their performance standards. Rating officials will give consideration to suggestions made by the employees.
  - (a) The performance plan will be given to the employee normally within (30) days after the beginning of the rating period or at other times in accordance with applicable performance management guidance.
  - (b) Employees will be given five (5) workdays to submit written or oral comments on any proposed performance plan applicable to them. Reasonable requests for extensions will normally be granted. Before comments are due, the employee may request to meet on duty time with a Union representative to discuss the proposed changes in his/her performance plan. The written comments of an employee will be considered before finalizing a new or revised performance plan.
  - (c) The employee's signature on the elements and standards will be requested and will signify receipt of the documents and that a discussion thereof took place. The employee's signature means that the supervisor has communicated the performance plan to the employee. It does not mean that the employee agrees with the plan. If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.
4. Within 30 days of the beginning of every rating period or upon entering on duty, employees will meet with their rating official regarding their job functions and responsibilities. During this meeting, the rating official and the employee will have a discussion to explain, clarify and communicate the employee's job responsibilities to ensure that there is a clear and common understanding of the duties and responsibilities contained in the performance plan and their relationship to the Agency's mission, and the levels of performance necessary to achieve each summary rating for a given critical or other element. If there are no changes in job functions, responsibilities, or their relationship to the employee's performance plan, the rating official will advise the employee of that fact, and document it in the employee's records.

5. An employee will not be held accountable for his/her performance plan until the employee receives it. However absent a performance plan, the employee is still accountable for their performance on a daily basis.

D. CRITICAL ELEMENTS AND PERFORMANCE STANDARDS.

1. Elements and standards will be in writing and related to the employee's assigned work.
2. To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met. To the maximum extent feasible, the performance standards will be consistent for standard or like positions.
3. The NPPD performance management guidance establishes that performance standards will be on a four tier basis; i.e., Achieved Excellence, Exceeded Expectations, Achieved Expectations, and Unacceptable.
4. A rating of record shall be based only on the evaluation of actual job performance during the rating period.

E. FREQUENCY OF APPRAISALS. The appraisal period will be for a 12-month period beginning generally on July 1 and ending on June 30. Employees will receive an annual rating of record. In no event will an employee be appraised if he or she has not worked under critical elements and performance standards for at least 90 calendar days.

F. APPRAISAL PROCESS.

1. Performance appraisals will be based on elements and performance standards. At the conclusion of the appraisal period, a summary rating will be given.
2. Each annual rating will be reviewed and approved prior to providing a copy to the employee.
3. When a copy of the final appraisal is given to the employee, the rating official shall discuss it with the employee and respond to any questions the employee may have. Employees shall sign the appraisal. The signature indicates the discussion(s) took place and the employee received a copy of the appraisal. It does not constitute agreement with the rating. The performance rating will normally be issued in writing to the employees within 30 days of the end of the assessment period. This period may be extended where the employee is subject to a Performance Improvement Plan (PIP) and the ending date of the appraisal period would not afford him or her reasonable opportunity to demonstrate improved performance.
4. When an employee's performance plan changes less than 90 days before the end of the appraisal period, the employee will be evaluated based on those parts of the performance plan that had previously been in place.
5. When assessing performance, the Agency may consider and make allowances for factors which affect performance that are beyond the control of the employee.
6. The rating official shall communicate with the employee regarding the achievement of his or her performance goals and objectives throughout the rating period. Formal face to face conversations are one way this communication can occur. Communication may include such things as comments on written products the employee has submitted, e-mail

comments regarding assignments, suggestions concerning better ways of conducting business, etc. Such feedback may be coupled with the required progress review discussion.

7. Rating officials are required to issue a written progress review to the employee at least once during the appraisal period. This review will be made at the approximate midpoint of the appraisal period. The progress review will provide feedback to the employee concerning each critical job element. The progress review will also provide the employee with recommendations to improve the employee's performance. If, at the time of a progress review, the rating official is aware of a specific performance deficiency, the rating official shall identify where the employee is deficient and provide ways to improve performance within that critical element.
8. Self assessments are voluntary on the part of employees. If an employee chooses to do a self assessment he/she will be provided with a reasonable amount of administrative time, not to exceed two (2) hours, to prepare a written self assessment concerning any performance appraisal that becomes the employee's annual rating of record. These self assessments will be attached to and become part of the appraisal.

G. UNACCEPTABLE PERFORMANCE. When an employee's performance is determined to be unacceptable, the Agency shall:

1. Inform the employee of the perceived deficiencies in the applicable critical element or elements, including a discussion of the applicable performance standards within the element or elements;
2. Inform the employee of the consequences of a unsuccessful rating in any critical element in terms of career ladder promotions and/or within-grade increases;
3. Recommend specific ways for the employee to correct the perceived deficiencies.

H. USES OF THE PERFORMANCE RATING. The performance rating given to employees under this performance assessment program is used for a number of purposes.

1. Within-Grade Increases (WIGI). An employee who has attained a rating of at least "Achieved Expectations," has achieved an "acceptable level of competence" and will be entitled to appropriate within-grade increases.
2. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.
3. This performance rating will be considered in making determinations regarding reductions-in-force (RIF) within the Agency in accordance with the Reduction-in-Force Article of this Agreement.
4. The rating of record may be used in evaluating candidates under the Agency's merit promotion plan.

## **ARTICLE 37 – ACTIONS BASED UPON UNACCEPTABLE PERFORMANCE**

- A. **PERFORMANCE BASED ACTIONS.** The actions covered by the provisions of this Article are: reduction in grade and removal for unacceptable performance pursuant to 5 U.S.C. § 4303, for employees in bargaining unit positions at the time the action was initiated.
- B. **PERFORMANCE IMPROVEMENT PLAN.** Before a performance based action is taken against an employee, the employee will be given an opportunity to improve his or her performance through the issuance of a written Performance Improvement Plan (PIP). The PIP will include the following:
1. **Identify Problems.** Identification and articulation of each critical element which is being performed at an unacceptable level.
  2. **Explain Standards.** An explanation of what the employee must do to bring his or her performance in the critical elements so identified up to an acceptable level.
  3. **Allow Improvement.** A reasonable period of time commensurate with the employee's duties and responsibilities in which to improve performance, but not less than forty-five (45) days.
  4. **Provide Assistance.** Where appropriate, the types of assistance that will be provided to the employee in improving his or her performance.
- C. Employees will be given an extra copy of the PIP to share with a union representative if they so choose. Upon request, the employee will be given a reasonable amount of time to meet with a union representative to discuss the PIP.
- D. **ADVANCE WRITTEN NOTICE.** An employee whose reduction in grade or removal under this Article is proposed shall be provided with at least a thirty (30) calendar-day advance written notice which identifies:
1. **Unacceptable Performance.** Specific instances of unacceptable performance;
  2. **Critical Elements.** The critical elements of the employee's position involved in each instance of unacceptable performance;
  3. **Time to Review and Respond.** That the employee will be provided a reasonable amount of official time to review material on which the action is based and to prepare an answer orally and in writing;
  4. **Right to Representation.** That the employee will be given the right to be represented by the Union or an attorney or other person of his or her choosing in responding to the proposed action; and
  5. **Written Decision.** That the Agency will provide a written decision with specific reasons for the action taken within thirty (30) calendar days after the expiration date of the notice period.
- E. **RIGHT TO REVIEW DOCUMENTS.** Where an action is proposed under this Article, the employee or his or her representative will be provided, upon written request, with a copy of those portions of written documents which contain information and evidence on which the action is based. The Agency will also supply the employee or his or her representative, upon written request, with a copy of those portions of written documents favorable to the



employee which are directly related to the specific instances on which the unacceptable performance is based.

## **ARTICLE 38 – INVESTIGATIVE INTERVIEWS**

A. INVESTIGATORY INTERVIEWS, FACT FINDING, MANAGEMENT INQUIRIES. The Agency will ensure that investigations are conducted in a manner conducive to public confidence, good order, discipline, good management practices and recognizing the individual's right to due process.

1. When any bargaining unit employee is determined to be the subject of an administrative investigation, he or she will be notified unless such notification would compromise the investigation.
2. Investigation: Whenever the Agency conducts an investigation which could lead to criminal charges, disciplinary or adverse action, interviews will be conducted under the following conditions:
  - (a) The Agency shall provide 48 hours advanced written notice, if practicable, to the employee that:
    - (i) includes the nature of the matter (i.e. criminal or administrative misconduct) and the general subject matter being investigated;
    - (ii) advises the employee he or she is subject to non-disclosure provisions;
    - (iii) advises the employee whether they are a subject of the investigation or whether they are sought as a possible witness; and
    - (iv) informs a subject of his or her right to be accompanied by a union representative if the subject so desires.
  - (b) If a union representative is requested, the Union will promptly designate its representative and make reasonable efforts to minimize delay. The failure to obtain representation, or adequately confer with the representative, will not delay a subject interview by more than 48 hours from the time the subject received notice of the interview. Upon request, a reasonable extension of time may be granted on a case by case basis.
  - (c) If during the course of a witness interview it becomes apparent that the witness could be subject to discipline and the witness is not represented, the Agency will inform the employee of his or her right to representation. If requested by the employee, the Agency shall provide a reasonable opportunity, but no more than 24 hours, to both obtain union representation and confer privately before proceeding with the interview. Upon request, a reasonable extension of time may be granted on a case by case basis. The Union retains the right to determine its representatives in accordance with this Agreement except in cases where a Union representative may be a witness or subject of the same investigation.
  - (d) At the commencement of each interview, employees will be given notification of all applicable rights including Garrity Rights, Kalkines Warning, Weingarten Rights and Miranda Warning.

- (e) Questions will be related to the misconduct being investigated. Employee will be told that the failure to answer the questions asked could result in disciplinary action. Any answers given under these circumstances may not be used against an employee in a subsequent criminal proceeding, except as provided by law regarding false statements. If an appropriate authority issues a written declination of criminal prosecution, the Agency will provide the employee with a copy of the declination within 7 calendar days of receipt.
3. Reasonable Hours: The interview will be conducted at a reasonable hour, preferably at a time when the employee is on duty unless the seriousness of the investigation is of such a degree that immediate action is required. Where an employee is directed to appear for an interview, all hours spent in the interview shall be compensated at the appropriate rate. To the extent practicable, interviews will take place at the offices of the Agency.
  4. Reasonable Periods: Interview sessions will be for reasonable periods and will be timed to allow for such breaks as are reasonably necessary.
  5. Investigating Parties: The employee being interviewed will be informed of the position, agency and name of any personnel conducting or participating in the interview. Personnel conducting interviews shall do so in a civil and professional manner.
  6. Informed of Rights:
    - (a) Employees placed under arrest will be informed of all their rights as provided by law.
    - (b) No Retaliation for Exercise of Rights: No employee will be removed, disciplined, demoted, reduced in pay, denied promotion, transferred or reassigned; or otherwise discriminated against in regard to his or her employment or be threatened with any such treatment, by reason of exercise of their rights.
    - (c) Union Representative Non-Disclosure: A union representative or employee may not be compelled to disclose confidential statements made in the course of representation in the absence of an overriding need.
    - (d) Weingarten Rights. The Agency will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:
      - (i) Reasonable Belief. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
      - (ii) Employee Request. The employee requests representation.
    - (e) Annual Notice. The Agency will advise employees in the unit of their Weingarten Rights annually.
  7. Disposition of Complaints: Complaints will be substantiated, unsubstantiated or unfounded. Employees who are the subject of an investigation shall be provided with written notification as to the findings of the investigation and disposition of the case within thirty (30) calendar days after the investigation is closed. Such notification shall be provided unless prohibited by law or applicable regulation.

- B. **WRITTEN STATEMENT.** In cases where management requests a written statement or explanation of facts regarding potential misconduct, the employee may consult with a Union representative prior to completing the statement.
- C. **POLYGRAPH.** In the event that an employee participates in a polygraph exam, a Union representative may be present if requested by the employee.
- D. **TRAVEL FOR INTERVIEW.** When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Agency shall pay appropriate travel and per diem costs in accordance with the Federal Travel Regulation for the employee.
- E. **SEARCHES.** Employees have a reasonable expectation of privacy in the work place (e.g. desks and locker spaces) as provided by law. When lawful circumstances necessitate the search of an employee's work place, the Agency will make reasonable effort, under the circumstances, to allow the bargaining unit member and union representative, if requested by the employee, to be present during the search.

**ARTICLE 39 – DISCIPLINARY AND ADVERSE ACTIONS**

The Agency will administer disciplinary and adverse action and other procedures identified in this Article to all employees in a fair and equitable manner, and only for appropriate cause as provided in applicable law. Management will make every reasonable effort to ensure the proposing and deciding official are not the same person.

- A. **DISCIPLINE DEFINITION.** The disciplinary actions covered by the provisions of this Article are written reprimands and suspensions of fourteen (14) days or less.
- B. **ADVERSE ACTION DEFINITION.** Adverse actions covered by the provisions of this Article are removals, suspensions for more than fourteen (14) days, reductions in pay, reductions in grade, and furloughs of thirty (30) days or less.
- C. **COUNSELING.** An oral counseling is corrective and advisory in nature and based upon articulable reasons. It should be confirmed in writing and a copy promptly furnished to the employee.
- D. **UNION REPRESENTATIVE / INFORMATION.**
  - 1. When the Union is designated as the representative in a disciplinary or adverse action, the employee will furnish to the Agency, in writing, the name and address of the union representative to whom a copy of all correspondence addressed to the employee relating to the case shall be mailed or delivered.
  - 2. When an employee has not designated a union representative, correspondence will be provided to the employee and the employee shall receive an additional copy which states at the top of the first page, "This copy may at your option be furnished to your union representative." It will remain the employee's prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.
- E. **DISCIPLINE / ADVERSE ACTION PROCEDURES.** Prior to issuing any proposal for disciplinary or adverse action, the Agency will make an effort to discover whether the employee did in fact engage in the alleged misconduct. All facts pertaining to a

disciplinary/adverse action will be developed as promptly, completely and fairly as possible in the course of due process. An employee's denial or challenge to the charges against him will not be grounds for an Agency charge, except for lack of candor and false statements.

1. Just Cause. The Parties agree that letters of reprimand and suspensions of less than fifteen (15) days, and adverse actions will be taken only for appropriate cause as provided in applicable law. Such cause, in the case of actions which are not based on unacceptable performance, shall be just and sufficient and only for reasons that will promote the efficiency of the Agency. Disciplinary/Adverse actions must be supported by a preponderance of evidence and must be consistent with applicable laws and regulations governing such actions. Disciplinary actions must be determined on the merits of each individual case.
  2. Letter of Reprimand. When such a letter is issued, the employee shall have the right, within fourteen (14) calendar days, to prepare and submit a concise statement of disagreement. The Agency will consider the statement, and if appropriate modify, or withdraw the letter. If the letter is not withdrawn the statement of disagreement will be filed with the letter of reprimand on the temporary side of the OPF. The Agency will notify the employee regarding the outcome of the rebuttal.
  3. Notice of Proposed Action. Notice to an employee of any proposed disciplinary or adverse action shall be given to the employee as early as operationally feasible after the alleged offense has been committed and made known to the Agency and investigated, if appropriate. The employee will be provided a complete copy of the material on which the proposed action is based at the time the proposal is served. It is understood that all witnesses' personal information will be redacted.
    - (a) If an employee's interview is recorded, a copy of the recording or certified written transcript of the proceeding will be provided to the employee.
    - (b) If an employee participated in a polygraph, the polygraphist's report will be provided to the employee.
  4. Timeliness. The Agency shall have a reasonable amount of time for the investigation of each individual case according to the individual circumstances of each case. The Parties recognize that disciplinary and adverse actions are time-consuming. The process of investigating, evaluating and acting upon information developed in any inquiry shall be free of unreasonable or unjustified delays. The Parties recognize that certain investigations are beyond the administrative control of the Agency. Where investigations have been unduly prolonged, regardless of whether they are within the administrative control of the Agency, a reasonable extension of the response period to the proposed disciplinary action will be granted by the Agency, upon the request of the employee or his or her representative.
- F. APPEALS AND GRIEVANCES. If an employee wishes to pursue an appeal or grievance concerning a discipline or an adverse action, they may:
1. Reprimands and Short Suspensions. With regard to written reprimands and suspensions of 14 days or less: file a grievance in accordance with the appropriate section of the grievance article or file a statutory appeal.

2. Adverse Actions. With regard to adverse actions: file either a grievance in accordance with the appropriate section of the grievance article or file a statutory appeal.
  3. Once an employee (or the Union on behalf of the employee) has filed a written grievance or a timely statutory appeal, he or she may not pursue the other procedure.
- G. UNWARRANTED DISCIPLINE. Any record pertaining to a disciplinary or adverse action later to have been unwarranted shall be removed from the employee's eOPF and destroyed and the employee so notified in writing.
- H. LAST CHANCE AGREEMENTS. Last Chance Agreements are agreements in which the Agency holds in abeyance an adverse action against an employee in exchange for the employee agreeing to terms, including conforming to certain conduct expectations, for a set period of time. The agreement is that if the employee does not meet his or her obligation under the agreement, then the Agency is free to implement the adverse action. The use of Last Chance Agreements shall not be arbitrary or capricious. The employee will not be compelled to waive their right to grieve or appeal an alleged Agency breach of a Last Chance Agreement.
- I. ALTERNATIVE TO FORMAL DISCIPLINE. Alternative forms of discipline in lieu of formal discipline may be appropriate in some circumstances and of benefit to both the employee and the Agency. Alternative discipline may only be used in place of disciplinary actions. If used, all provisions of this Agreement must be followed, such as but not limited to notice periods, complete copies of evidence considered by the proposing official, etc. The objectives of alternative discipline may include, but are not limited to:
1. Improving communications and interpersonal working relationships between supervisors and employees;
  2. Correcting behavioral problems; and
  3. Reducing the costs and delays inherent in traditional disciplinary actions.

## **ARTICLE 40 – GRIEVANCE PROCEDURE**

- A. PURPOSE. The purpose of this Article is to provide a fair, simple and expeditious means of processing grievances. This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which come within its coverage, except as specifically provided in C below. However, any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the Agreement and the exclusive representative has been given an opportunity to be present during the processing.
- B. DEFINITION. A grievance means a complaint either by a unit employee concerning his or her conditions of employment, by the Union in its own behalf concerning conditions of employment of any employee or alleged contractual violations by the Agency, or a complaint by the Agency concerning alleged contractual violations by the Union. Unless excluded below, such a complaint may concern, but not be limited to, the harms or adverse personal or workplace impacts or denial of due process stemming from:

1. Violation of Agreement. A claim of breach, any harm or adverse personal or workplace impact arising from such a breach, or a disagreement concerning the interpretation of this Agreement or any other written agreement between the Parties; or
2. Violation of Law, Rule, or Regulation. Any claimed violation, misinterpretation, or misapplication, of any law, rule, or regulation affecting conditions of employment.

C. EXCLUSION. This procedure does not cover grievances concerning:

1. Beyond Authority. Matters which are not subject to control by Agency management or control by the Union.
2. Political Activities. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S.C. (relating to prohibited political activities);
3. Benefits. Retirement, life insurance, or health insurance;
4. National Security. A suspension or removal under 5 U.S.C. § 7532 for reasons of national security;
5. Hiring Authority. Any examination, certification, or appointment;
6. Classification. The classification of any position which does not result in a reduction in grade or pay of any employee;
7. Statutory Discrimination Complaint. A complaint of discrimination which is listed in 5 U.S.C. § 2302(b)(1) if the employee has elected to use an available complaint procedure provided by statute, such as EEO;
8. Adverse Action Appeal. An appeal of an adverse action based on performance under 5 U.S.C. § 4302 or for efficiency under 5 U.S.C. § 7512 if the employee has elected to file an appeal under the statutory appeal procedure provided under 5 U.S.C. § 7701 or its implementing regulations;
9. Already Filed. Where the relief requested is the same, matters which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures;
10. Probation. The removal of a probationary employee during his/her probationary period.
11. Appointments. The Agency's determination not to extend the appointment of individuals serving under term or temporary appointments;
12. Proposed Actions. Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.

D. IDENTICAL OR "GROUP" GRIEVANCES. In the case of identical grievances involving separate employees, the grievance may be consolidated and one employee's grievance may be selected by the Union for processing as the "lead grievance." In such cases, all decisions on that "lead grievance" will be binding on the other grievance(s). The Parties agree that for the purposes of this section, identical grievances are those arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person

would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances.

E. RESOLUTION AT LOWEST POSSIBLE LEVEL.

1. Employees are encouraged to utilize their first line supervisor as the first path to resolving workplace matters of concern. Improving such communications, and applying fairness and good faith in the actions between the employees and managers through good working relationships is encouraged in order to promote efficiency and to avoid grievable matters.
2. The Agency and the Union agree that every effort will be made to settle grievances at the lowest possible level. The employee will be given a reasonable amount of time to present the grievance. At any time during the grievance process, the Parties may attempt to resolve a grievance informally. If the requested relief is granted, the grievance will be closed at that step, and no further processing will take place.

F. PROCEDURES FOR GRIEVANCES.

1. Step I Grievance.

- (a) Presentation. Step I is for a grievance filed by an employee, by the Union on behalf of the employee, by the Union or by the Agency. A Step I grievance must be presented in writing within 30 calendar days from the time the grievant knew or should have know the action or decision occurred. Grievances must identify the name(s) of the grievant(s), nature of the complaint (including the relevant provision(s) of law, regulation or Agreement), relevant material and information, and the remedy requested.
  - (i) Grievances filed by an employee or by the Union on behalf of an employee: Grievances must be presented in writing to the management official one level above the manager responsible for the action or decision being grieved.
  - (ii) Grievances filed by the Union or by the Agency: Grievances arising out of regional issues shall be presented to the Regional Director (or designee) or Local 918 Regional Vice President (or designee). Grievances concerning Agency-wide issues shall be presented to the Director, NPPD Labor and Employee Relations (or designee) or Local 918 Executive Vice-President (or designee).
- (b) Response. Within 14 calendar days after receiving the grievance, the management official or Union representative shall hold such meetings and complete such inquiry as he or she deems necessary and render his or her written decision.

2. Step II Grievance.

- (a) Presentation: If the grievant is dissatisfied with the Step I grievance decision or if the Step I decision was not provided in the allotted time, the grievant may file a Step II grievance. The Step II grievance must be presented in writing within 14 calendar days after receiving the Step I decision or within 14 calendar days of the date the Step I decision was due.

- (i) Step II Grievances filed by an employee or by Union on behalf of an employee: Grievances must be presented to the management official one level above the Step I official.
  - (ii) Step II Grievances filed by the Union or by the Agency: Grievances arising out of regional issues shall be presented to the Director, NPPD Labor and Employee Relations (or designee) or Local 918 President. Grievances concerning Agency-wide issues shall be presented to the NPPD Human Capital Officer or Local 918 President.
- (b) Response. Within 20 calendar days after receiving the grievance, the management official (or designee) or Local 918 President (or designee) shall hold such meetings and complete such inquiry as he or she deems necessary and shall render his or her written decision. The written decision shall set forth, in precise terms, the basis of the decision.
3. Step III Grievance.
- (a) Presentation. A Step III grievance may only be filed by the Local 918 President (or designee) in adverse action cases involving a penalty of a 45-day suspension or greater. The Step III grievance must be presented in writing to the Component head (or designee) within 14 calendar days after receiving the Step II decision or within 14 calendar days of the date the Step II decision was due.
  - (b) Response. The Component head (or designee), after review, shall either:
    - (i) Decline to render a decision on the merits. If the Component head declines to render a decision on the merits, he or she shall so notify the Local 918 President (or designee) in writing within 21 calendar days of receipt of the request to review the grievance.
    - (ii) Accept the grievance for decision on the merits. If the Component head agrees to review the grievance on the merits, he or she (or designee) shall conduct any necessary review and issue a written decision within 30 calendar days of receipt of the request to review the Step II decision.
4. Arbitration. If the employee is dissatisfied with the Step II or Step III (when utilized) decision, the Union may invoke arbitration as provided in the Arbitration Article. If either the Union or Management is dissatisfied with a Step II decision, they may invoke arbitration as provided in the Arbitration Article.

G. TIME LIMITS. All time limits set forth in this Article may be extended by mutual agreement of the Parties.

H. SERVICE OF PROCESS: Service of grievances and the decisions thereon, including arbitration notices shall be accomplished by email or personal delivery. Grievances and responses will be deemed timely if the email is sent or personal delivery is accomplished within the specified time limit. Response time periods will begin to run from the date the recipient receives a document in person, the date indicated on an automatically generated read receipt if sent between government email accounts or the date of a return email acknowledging receipt if sent to or from a non-government account. If no read receipt or acknowledgement is sent from the recipient, the relevant time period will begin on the sixth



day after the date the email was sent. The Parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents.

## **ARTICLE 41 – ARBITRATION**

- A. **INVOKING ARBITRATION.** If the Agency and the Union fail to settle any grievance processed under the negotiated grievance procedures, such grievance, upon written request by the Union or the Agency, may be submitted to arbitration within thirty (30) calendar days from the date the Agency or the Union’s Step II (or Step III if utilized) decision is received or was due. Requests for arbitration filed by the Union will be submitted to the NPPD Employee and Labor Relations Office. Requests for arbitration filed by the Agency will be submitted to the Local 918 President.
- B. **PANELS.**
1. **Selection:** Within 90 calendar days of the effective date of this Agreement, the Parties will establish one national level panel to handle arbitrations under this Article. The panel shall consist of nine (9) arbitrators. Representatives of the Parties will each nominate nine (9) arbitrators. If both sides nominate the same arbitrator, he/she will automatically become a member of the panel. Otherwise, the Parties will alternate strikes until nine (9) arbitrators are chosen. A coin toss will determine which party strikes first.
  2. **Replacements.** Should any arbitrator ask to be removed from the panel or be removed by either party, the Parties will each nominate three new arbitrators. If one name is on both lists, that arbitrator will be selected and added to the list. Otherwise, the Parties will alternate strikes until the arbitrator is chosen. A coin toss will determine which party strikes first.
  3. **Removal.** During the life of the Agreement, either party at the national level may unilaterally remove three (3) arbitrators from the panels by providing the other party with written notice. Such removal shall not be effective until thirty days after receipt of the written notice by the other party. Any additional removals must be done by mutual agreement.
  4. **Rotation.** Arbitrators will be used alphabetically on a rotational basis. If an arbitrator is not available within a mutually agreeable time, the Parties may agree to select the next arbitrator on the list.
- C. **THRESHOLD ISSUES.** In cases where there is a threshold issue, such as jurisdiction, grievability or arbitrability the Parties may agree that an initial decision be requested on the threshold issue.
1. **Arbitrators Decision.** The Parties may agree to use stipulations and/or briefs to obtain the arbitrator’s decision on the threshold issue. If there is no agreement and either party elects to proceed to arbitration of the grievance, such grievability/arbitrability questions are to be decided as a threshold issue by the arbitrator. If the arbitrator should determine that the grievance is either not grievable or not arbitrable, the decision shall consist of one part and no consideration of the merits of the grievance shall be provided.
  2. **Postponement.** If either party raises an arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right

to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification, as to the arbitrability issue, shall be borne by the party raising the question.

- D. **PRE-ARBITRATION CONFERENCE.** Not later than the 30th day after the date that arbitration is invoked, the Parties shall conduct a pre-arbitration settlement conference. At such settlement conference, the Parties shall make good faith efforts to reach a resolution of the case. The content of such settlement discussions are confidential. Any statements made during settlement discussions specific to the settlements, and any portions of written materials revealing the contents of such settlement discussions, may not be introduced in proceedings before the arbitrator.
- E. **TRANSCRIPTS.** Each party will inform the other no later than fourteen (14) calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the Parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and the Agency will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other party change its mind and seek a copy of the transcript, it shall then be responsible for half of the costs.
- F. **PROCEEDINGS.** Each party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance. At the request of either party, the Agency or the Union shall be provided a complete list of the other's known witnesses no later than five (5) days prior to the hearing, along with a brief synopsis of the anticipated testimony. The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than thirty (30) calendar days after the conclusion of the hearing unless the Parties mutually agree to extend the time limit. If no exception is filed during the thirty (30) calendar days period beginning on the date the award is served, the award is final and binding. Either party will immediately take the actions required by the final award within thirty (30) calendar days after it becomes final and binding, except as provided by the Award. This section does not apply to the expedited arbitration procedure set forth herein.
- G. **EXPEDITED PROCEDURE.** The Parties recognize the importance of promptly handling demotions, indefinite suspensions, suspensions of 14 days or more and removal cases after they have been heard at the final step of the negotiated grievance procedure and therefore adopt the following expedited arbitration process. These timelines may be used in other cases where it is mutually agreeable. For such cases, the Parties will ask the arbitrator to adhere to the following time lines:
  - 1. **Invocation.** If the Union wishes to invoke expedited arbitration, the Local 918 President or designee shall within ten (10) calendar days of the Step II (or Step III if utilized) decision notify the NPPD E&LR Director. The Union, however, may withdraw its request for the expedited grievance/arbitration procedure at any time prior to the setting of the hearing date.
  - 2. **Timelines.**

- (a) Hearing. Arbitrators are to conduct a hearing within thirty (30) calendar days of selection.
- (b) Briefs. Post hearing briefs will be submitted within twenty-one (21) calendar days after completion of hearing or receipt of transcript unless the Parties agree to an extension.
- (c) Decision. Arbitrators are to render a decision within twenty-one (21) calendar days of closing of the record. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing whichever is later.

#### H. COSTS.

- 1. The arbitrator's fee and the expenses of the arbitration, if any, shall be borne equally by the Agency and the Union.
- 2. Fees to be paid by the Agency will be governed by existing regulations. Travel and per diem shall not exceed that authorized by government-wide regulations.
- 3. Cancellation Costs. The Parties will share any cancellation costs equally when the pending issue is settled prior to the hearing. If one party cancels the hearing, that party shall be responsible for paying any costs associated with the cancellation.

I. LOCATION OF HEARINGS. The arbitration hearing will be held, if possible, on the Agency's premises during regular business hours. The arbitration will normally be held within the commuting area of the grievant unless the grievant has transferred from the site of the dispute. In such cases the hearing will be held at the site of the dispute unless both Parties agree to hold it in another location. Arbitration hearings regarding Agency-wide issues shall be held within the Headquarters commuting area. Arbitration hearings regarding group or consolidated grievances will be held at a mutually agreed upon site.

#### J. PARTICIPANTS.

- 1. Duty Status. All participants in the hearing shall be in duty status or on official time, if they would otherwise be in a duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Agency will adjust the employee's schedule so that the employee would be in a duty status.
- 2. Travel and Per Diem. Where the grievant and/or witnesses are not within the commuting area of the hearing site, and where the witnesses are deemed approved by the arbitrator, the Agency will pay travel and per diem for them. Should there be a disagreement as to the relevance of a witness where travel and per diem is required, the Union will pay travel expenses and the issue will be presented to the arbitrator who will decide on the relevancy of the testimony. If the arbitrator decides that the witness is relevant, the arbitrator will so state in the decision and the agency will pay travel and per diem at a rate no greater than that authorized by government travel regulations.

K. AUTHORITY OF ARBITRATOR. The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award in accordance with law. The arbitrator is bound by all applicable laws, rules, and regulations. The arbitrator will retain jurisdiction over the case where exceptions are taken to an award and the Federal Labor Relations Authority sets aside all or a portion of the award, or for enforcement purposes.

However, any adverse action appeals shall be presented to the appropriate appellate jurisdiction.

- L. **NO EX PARTE COMMUNICATION WITH ARBITRATOR.** With the exception of discussions regarding scheduling, both Parties agree that there will be no communication with the arbitrator unless both Parties are participating in the communication or one party has expressly agreed to the communication by the other party with the arbitrator.
- M. **ATTORNEY FEES.** Reasonable attorney fees and costs will be provided to the Union in cases where it represents employees who suffer unjustified or unwarranted personnel actions, in accordance with 5 U.S.C. § 5596 or other applicable law.
  - 1. **Procedure for Fee Awards.** Upon issuance of an award, the arbitrator shall retain jurisdiction to determine the entitlement to attorney fees in accordance with 5 U.S.C. § 5596 or other applicable law. The Union may request attorney fees after the award is final and all appeals have been exhausted. Such a request must be submitted within 30 calendar days after the arbitrator's decision becomes final, and shall be accompanied by sufficient documentation to enable the arbitrator to decide the amount to be awarded, and shall be simultaneously served on the Agency.
  - 2. **Objections.** Within twenty (20) calendar days of receipt of the Union's request, the Agency may submit any objections, which must be accompanied by appropriate documentation and simultaneously served on the Union.
  - 3. **Award.** The Arbitrator shall render a fee award within 30 calendar days of receipt of the Agency's objections, or within 30 calendar days of the initial request if no objections were filed.

#### **ARTICLE 42 – EFFECT OF LAWS, REGULATIONS AND OTHER PROVISIONS**

- A. In the administration of all matters covered by this Agreement, the Parties shall be governed by existing and future laws, Government wide rules and regulations in effect on the date this Agreement becomes effective, and by subsequently enacted government-wide rules and regulations implementing 5 U.S.C. § 2302. Should any conflict arise between this Agreement and any such laws or regulations, the provisions of such laws or regulations shall supersede conflicting provisions of this Agreement.
- B. Should any conflict arise between this Agreement and any government wide rule or regulation issued after the date this Agreement becomes effective, the terms of this Agreement shall supersede and govern.
- C. Any DHS or NPPD directives or policies in effect as of the effective date of this Agreement govern the working conditions of the Parties, unless it conflicts with the terms of this Agreement.
- D. All previously negotiated agreements and understandings between the Parties which were in effect prior to this Agreement at any level (national, regional and local) shall automatically expire upon the effective date of this Agreement unless expressly identified and incorporated in this Agreement. All past practices that conflict with law, government wide rule or regulation or this Agreement are extinguished upon the effective date of this Agreement.

- E. In a number of the provisions of this Agreement, statutes or regulations are restated for the convenience of the Parties and the employees covered by the Agreement. In restating the provisions of such statutes and regulations, some minor changes to the statutory and regulatory languages have been made for clarity or to place that language in context. These wording changes are not intended to change the meaning of the language in question. However, should there be any conflict between the language of this Agreement and the language of applicable statutes or regulations in effect at the time the Agreement became effective, the language of the statutes and regulations is controlling.
- F. Should any part of this Agreement or any provisions contained herein be rendered or declared invalid by reason of any changes in law, government wide rules or regulations, or court order, such provision or provisions may be severed from the rest of this Agreement, which shall remain in full force and effect.

#### **ARTICLE 43 – EFFECTIVE DATE AND DURATION**

- A. EFFECT. This Agreement shall take effect on the date that it is signed by the Under-Secretary and the President of the American Federation of Government Employees (or their respective designees) and shall remain in effect for three (3) years from that date. If either party subsequently desires to renegotiate this contract, it will furnish written notice to the other party not less than one hundred and eighty (180) days but not more than two hundred and ten (210) days prior to the termination of this Contract. If neither party desires to renegotiate the Agreement, it shall automatically be renewed for one (1) year periods.
- B. RENEGOTIATION. In the event notice is given by either party, negotiations on ground rules shall begin within sixty (60) days from the date of receipt of notice to renegotiate.

**EXECUTION OF AGREEMENT**

The National Protection and Programs Directorate and the American Federation of Government Employees, Local 918, hereby execute this Collective Bargaining Agreement on July 20, 2011.

For the Agency:

**A- 1**

**Michael Capps**  
Director  
Office of Resource Administration

For the Union:

**David L. Wright**

President  
American Federation of Government  
Employees, Local 918

**Peter E. Themelis**  
Chief Negotiator

**Salvatore A. Dimiseli**  
Chief Negotiator

## **APPENDIX 1 – DUES WITHHOLDING**

### **Section I**

#### **Definitions**

- A. **DUES:** The regular, periodic amount determined by the Union to be required of the member to maintain good standing in the Union. This amount is certified by the Union on the SF-1187 form and excludes special assessments, back dues, fines, and similar items not considered to be dues. A multi-level dues structure may be utilized.
- B. **SF-1187:** “Request for Payroll Deductions for Labor Organization Dues.”
- C. **SF-1188:** “Cancellation of Payroll Deductions for Labor Organization Dues.”
- D. **PAYROLL OFFICE:** National Finance Center, Department of Agriculture.
- E. **HUMAN RESOURCES OFFICE:** NPPD Employee and Labor Relations (ELR) Office

### **Section II**

#### **Eligible Employees**

To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- A. **BARGAINING UNIT EMPLOYEE.** Be in the Unit covered by this Agreement;
- B. **MEMBER IN GOOD STANDING.** Be a member in good standing with the Union;
- C. **REGULAR SALARY.** Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- D. **REQUEST.** Request the allotment on the prescribed form (SF-1187) which has been certified by the authorized Union official.

### **Section III**

#### **Responsibilities of the Union**

The Union shall:

- A. **VOLUNTARY NATURE.** Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
- B. **PROVIDE SF-1187.** Purchase and distribute the SF-1187 Form to its members;
- C. **CERTIFY SF-1187.** Certify on the SF-1187 Form the amount of dues to be withheld each biweekly pay period, and identify “AFGE Local 918” (the Union) to receive the dues deductions;
- D. **FORWARD SF-1187.** Promptly forward completed SF-1187 forms to the Human Resources Office;
- E. **LIST OF AUTHORIZED SIGNATURES.** Furnish written notification to the Human Resources Office concerning the names and titles of Union officials authorized to certify the SF-1187 form; and

- F. WRITTEN NOTIFICATION. Provide the Human Resources Office with written notification concerning:
1. Changes. Changes in the amount of Union dues;
  2. Terminations. The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of such determination; and
  3. Transfers. The name of any employee on check off who transfers.

#### Section IV

#### Responsibilities of the Agency

The Agency shall:

- A. SCREEN SF-1187. Screen SF- 1187. Screen each Form SF-1187 to ensure that only eligible employees are on the dues withholding listing. The Human Resources Office will also screen each promotion action to remove employees who are promoted or transferred out of the unit. The Agency will maintain the official bargaining unit employees' roster and keep it current and accurate.
- B. CERTIFY SF-1187. Receive in the Human Resources Office the SF-1187 form from the Union; certify on the SF-1187 form that the employee is a member of the bargaining unit; stipulate the bargaining group the employee is a member of by certifying the appropriate group in the upper right-hand corner of the SF-1187; and promptly forward the SF-1187 Form to the Payroll Office for processing.
- C. REINSTATE FROM TEMPORARY ASSIGNMENTS. Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit.
- D. REINSTATES FROM NON-PAY STATUS. Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (for example, leave without pay).

#### Section V

#### Procedures

It is agreed that the following procedures will govern the voluntary allotment of dues:

- A. WITHHOLDING OF DUES.
  1. Arrange Withholding. Upon receipt of a properly completed SF-1187 form from the Human Resources Office, the Payroll Office shall arrange to withhold the Union dues in accordance with existing pay periods (26 biweekly periods) and procedures under which employees are regularly compensated.
  2. Effective Date. The dues deduction will be effective as soon as possible, but in no case will be later than two (2) full pay periods following receipt of the SF-1187 form by the Payroll Office.
  3. Existing Withholdings. Employees who meet the eligibility requirements for dues withholding (stated in Section II) and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF-1187 form to



come under the provision of this Agreement; PROVIDED, that this Agreement does not necessitate any change being made to their current allotment.

**B. CHANGES IN DUES.**

1. Union Certification Required. The amount of dues certified on the original allotment form (SF-1187) will remain unchanged until an authorized Union official provides written certification to the Human Resources Office that the amount of dues has changed. New SF-1187 forms will not be required.
2. Once per Year. Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once every twelve (12) months.
3. Effective Date. Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt by the Payroll Office of the Union's certification of changes in its dues.

**C. TERMINATION OF ALLOTMENTS.**

1. Automatically:
  - (a) Loss of Recognition. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
  - (b) Termination of Agreement. When the dues withholding agreement is terminated;
  - (c) No longer Eligible. When an employee ceases to be eligible for inclusion in the Union in good standing, effective with the first complete pay period after receipt by the Payroll Office of written notice from the authorized Union official.
2. Voluntarily:
  - (a) Employee Revocation. An employee may submit a SF-1188 for the revocation of an allotment anytime between the anniversary date of the effective date of the dues withholding and 30 calendar days prior to the anniversary date. He or she may submit the request to the Human Resources Office. Revocations will be effective the first full pay period following the anniversary date.
  - (b) Procedures. Revocations by employees shall be on the SF-1188 form and shall be forwarded by the employee to the Human Resources Office. The Human Resources Office Payroll Unit will process the SF-1188 and retain a copy for the payroll records. A copy shall be returned to the employee at the address provided on the SF-1188. The Human Resources Office shall provide the names and local numbers of voluntary terminations to the Local 918 Secretary Treasurer.

**D. REMITTANCE OF DUES.**

1. The Agency will make a remittance to the Union for amounts withheld on a biweekly basis. The remittance will be made in the form of a single electronic funds transfer for the balance of the dues withheld and will be made payable to the National Secretary-Treasurer, AFGE, 80 F Street, N.W., Washington, D.C. 20001.
2. The payment will be accompanied by a Dues Deduction Report containing detailed information to support all deductions and charges reflected on the check, as well as those employees in the Local who did not have sufficient funds to allow a deduction. The

report will also contain a code indicating the employee's current pay status, and a code indicating whether the deduction resulted from the processing of a Time and Attendance Report or as a result of a payroll adjustment.

#### Section VI

##### Cost of Withholding

The service of withholding the Union dues shall be provided at no cost to the Union by the Agency.

#### Section VII

##### Under Payments and Over Payments

- A. **REJECTIONS.** The National Protection and Programs Directorate, Federal Protective Service does not assume responsibility for the maintenance in good standing in the Union of the employee. Any SF-1187 submitted to the Human Resources Office that the Agency does not process will be returned to the Union with the reasons why this was not accepted. The Union reserves the right to discuss the exclusions with Agency personnel.
- B. **ADMINISTRATIVE ERRORS.** Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance electronic funds transfers. If the employee organization is not scheduled to receive a remittance after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance.