

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION,
KENNEDY SPACE CENTER

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 513

Case No. 20 FSIP 025

BACKGROUND

This case, filed by National Aeronautics and Space Administration (NASA), Kennedy Space Center (Agency or Management) on December 19, 2019, under Section 7119 of the Federal Service Labor-Management Relations Statute ("Statute" or "the Statute") concerns a dispute over the parties' successor collective bargaining agreement (CBA). The Agency is located in Florida and is one of ten NASA field centers. Since December 1968, the Agency has been NASA's primary launch center of human spaceflight. The American Federation of Government Employees, Local 513 (Union) represents approximately 400 bargaining-unit employees in a variety of non-professional positions. The parties are governed by a CBA that the parties executed in 2006, which rolls over for periods of 4 years. This agreement is separate from the agreement that binds NASA and AFGE at the national level.

BARGAINING HISTORY

The parties executed a ground rules agreement for bargaining their successor CBA on July 10, 2019. They did so with the assistance of a Federal Mediation and Conciliation Services (FMCS) Mediator who had reached out to the parties in May 2019 because he was aware that the parties would begin CBA negotiations soon. Turning to CBA negotiations, the Agency began negotiations by exchanging proposals on seven revised articles, almost all of which revolved around President Trump's

May 26, 2018, Executive Orders (the Orders) concerning Federal-sector collective bargaining and personnel matters.

Over the course of the next several months, the parties had numerous in-person meetings, many of which the Mediator attended. The parties also exchanged emails. In addition to the 7 articles offered by the Agency, the Union offered a number of its own articles. The Agency also expressed an interest in separately implementing the Executive Orders. But, according to the Agency, Management was clear that this matter was to be separate from ongoing CBA negotiations.

In early November 2019, the Agency informed the Union that it had created a document that blended the parties' proposals on all remaining issues and had uploaded this document to a shared drive. Management requested that the Union review the document and provide any feedback shortly thereafter. The Union did so on November 15, 2019, but claimed its document was only "80% complete," and that it needed more time to prepare a complete document. The Agency attempted to schedule multiple meetings with the Mediator and the Union to no avail. On December 12, the Agency informed the Union that it was declaring impasse; the Mediator subsequently scheduled a meeting for December 20th with the parties to discuss the Agency's decision. The Union initially agreed to attend the meeting but cancelled on the morning of. Accordingly, the Agency requested that the Mediator release the parties from mediation, and he did so on the 20th.

The Agency subsequently filed this request for assistance and the Panel asserted jurisdiction over this dispute on March 16, 2020. The Panel directed the parties to resume negotiations with Mediator LaTwana Williams. The Panel's order asserting jurisdiction informed the parties that they would have 10 calendar days after the Mediator's "referral to the Panel" to submit any remaining articles, with supporting argument, to the Panel.

During negotiations, Mediator Williams helped the parties resolve 16 articles. Because further agreement could not be reached on 15 remaining articles, she released the parties. The following timeline unfolded:

- On April 3, 2020, Mediator Williams informed the parties that she had released them from mediation.

- On April 6, 2020, Mediator Williams forwarded the "official" release to the Parties and the Panel, and the parties were made aware of that fact.
- On April 13, 2020, the Agency submitted its post-mediation Panel submission to the Panel and the Union.
- On April 14, 2020, the Union stated its submission would be provided at the "end of the week," i.e., April 17.
- The Union did not provide a submission on the 17th, nor did it provide any justification. Accordingly, on April 20, 2020, the Agency raised an objection to any forthcoming Union submission. The Union acknowledged it missed the deadline due to competing matters. However, the Union generally stated it "disagree[d]" with the Agency's submission.

As established above, the Union failed to submit a post-mediation offer or briefing. The Union, on the 20th, did offer general "disagree[ment]." But, as the Panel's Order noted, the parties' positions were due 10 calendar days after the Mediator's referral. If "referral" counts as the day of the Mediator's actual release - April 3rd - positions were due April 13; if "referral" was the day the Mediator provided the Panel with the "official release" - April 6th - the due date was April 16. In either event, the Union missed both dates with little explanation. Thus, there is no official Union position within the record for the Panel to rely upon.

ISSUES

Fifteen articles remain for resolution. As already discussed, only the Agency provided final offers and argument. Due to the articles' length, they are attached to this Decision and Order and are referenced as appropriate.

I. Recognition and Unit Designation

A. Agency's Position

In Section 1 of this article, the Agency acknowledges that it will recognize the Union as the exclusive representative of the bargaining unit. However, the **Agency** proposes language in Section 3 of its article that lists eight Agency positions that are excluded from the bargaining unit. The Agency asserts that this language matches existing language in the CBA and

accurately reflects the intended composition of the bargaining unit. However, neither the parties nor the FLRA have been able to locate a copy of the original unit certification. The Agency acknowledges that the Panel lacks jurisdiction over issues concerning unit certification. As such, Management is prepared to file a request with the FLRA to clarify the status of the bargaining unit should the Panel decline jurisdiction over this article.

B. Conclusion

The Panel will impose a compromise proposal. The parties should be ordered to accept *only* the language from Management's Section 1. Sections 2 and 3 should be withdrawn.

The crux of this dispute revolves around which positions should be included within the bargaining unit. But, as the Agency acknowledges, issues involving unit clarification are a legal dispute that may be resolved *solely* by the FLRA.¹ Accepting descriptive language for Sections 2 or 3 would place the Panel in the position of validating one party's view on who should be included in the unit. That is not the role of the Panel. The language from Section 1 can remain because it will show only that the Agency generally acknowledges the Union's authority as the exclusive representative for the bargaining unit. If the parties continue to disagree over the composition of that unit, they can seek redress elsewhere.

II. Official Time

A. Agency Position

The **Agency** bases its proposed language on Executive Order 13,387, "Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use" (May 25, 2018) (Official Time Order). So, much of the Agency's language mimics the requirements of the Official Time Order: it prohibits employees from spending more than 25% of duty time in official-time status per year; the Union may not use official time to prepare and present grievances; employees must follow firm requirements for requesting official time; and official time is not authorized for lobbying or political activities. Further, in Section 4.A.4, Management proposes granting official time pursuant to 5 U.S.C. §7131(d) "to perform miscellaneous representational

¹ See 5 U.S.C. §7112.

activities authorized" by this statutory provision.² But, Management does not offer any defined amount of official time for this category.

Management maintains that it has an "obligation" to adhere to the Official Time Order. But, it believes the parties' circumstances support its proposal regardless. For example, according to Management's time-keeping data, Union representatives spend approximately no more than 15% of duty time per year on representational activities. Thus, its proposed 25% cap is actually "generous." On balance, the Agency's proposal meets the needs of effective and efficient government and should be adopted.

B. Conclusion

The Panel imposes a modified version of the Agency's proposal. Management's proposal is largely based on various provisions of the Official Time Order that places limitations on the use of official time under the Statute. The Panel has repeatedly written that the President's Executive Orders on federal-sector collective bargaining and labor-relations are an important source of public policy guidance for the Panel.³ The Union has not addressed this rationale. Indeed, the Union has provided no argument whatsoever. Consistent with the foregoing, then, it is appropriate to largely adopt Management's language for this article.

However, the Agency's language concerning amounts of official time warrants further review and discussion. The Panel has admonished all parties to an official-time dispute that they each have an obligation to justify their offers on official time for activities for 5 U.S.C. §7131(d).⁴ This statutory provision provides that official time authorized under it may only be granted where it is "reasonable, necessary, and in the public interest." Where a party has been unable to prove that their offer is "reasonable, necessary, and in the public interest," the Panel has applied the limitations set forth in Section 3(a) of the Official Time Order.⁵ Under Section 3(a), agencies are instructed that official time for all official-time activities -

² Agency Position at 4.

³ See, e.g., *U.S. Social Security Admin., Office of Hearings Operations and Administrative Law Judges, IFPTE*, 20 FSIP 001 at 13 (2020) (*IFPTE*) (citation omitted).

⁴ *Id.* at 13-14.

⁵ See *id.* at 14.

including those under 5 U.S.C. §7131(d) - is ordinarily not to be considered reasonable, necessary, and in the public interest if it exceeds more than 1 hour per bargaining-unit employee per year. That is, agencies are instructed to strive to cap official time at 1 hour per bargaining-unit employee per year.

The Agency has not demonstrated that the Panel should depart from the above framework in these circumstances. Its proposed language states:

Consistent with 5 U.S.C. Chapter 71 and this Agreement, the Employer will grant Union representatives official time for the following representational activities:

1. Term Negotiations—to prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. § 7131(a).
2. Mid-Term Negotiations—to prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. § 7131(a).
3. Dispute Resolution—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. § 7131(c).
4. *General Labor-Management Relations—to perform miscellaneous representational activities authorized under 5 U.S.C. § 7131(d).*⁶

As can be seen from the above language, Management has not placed any limitations on time to be authorized under §7131(d), or official time in general. That language could conceivably create a situation in which the Union would have a "blank check." Neither party presented any data suggesting such an approach is appropriate. Indeed, according to Management's unrebutted figures, Union representatives are only spending 15% of their duty time, on average, on representational activities.⁷ Accordingly, the above language will be modified to acknowledge that official time under the parties' CBA should be consistent with Section 3(a) of the Official Time Order. Thus, the following language should be imposed (new language in bold):

⁶ Agency Submission at 4 (emphasis added).

⁷ See *id.* at 5-6.

Consistent with 5 U.S.C. Chapter 71 and this Agreement, the Employer will grant Union representatives official time for the following representational activities **not to exceed more than 1 hour per bargaining-unit employee per year for:**

1. Term Negotiations—to prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. § 7131(a).
2. Mid-Term Negotiations—to prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. § 7131(a).
3. Dispute Resolution—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. § 7131(c).
4. General Labor-Management Relations—to perform miscellaneous representational activities authorized under 5 U.S.C. § 7131(d).

If the bank or cap authorized is exceeded in any given year, the Union may use the following year's official time allotment. Nothing in the language set forth above shall constitute a waiver of either party's rights arising under the Federal Service Labor-Management Relations Statute.

III. Adverse and Disciplinary Actions

A. Agency Position

This article covers different procedures that apply to Agency-initiated disciplinary and adverse actions.⁸ Broadly, the Agency is seeking to limit the Union's ability to challenge several matters through the parties' negotiated grievance procedure. Those matters include:

- Letters of counseling and verbal reprimands (Section 3);

⁸ "Adverse actions" refer to actions of 14-day suspensions or greater, including removal from Federal service. By contrast, "disciplinary actions" cover less vigorous disciplinary actions.

- Removal actions that are based upon misconduct or performance (Section 5); and
- Any adverse actions that may be appealed to the MSPB (Section 8).

The Agency argues counseling and verbal reprimands challenges should be excluded because they consume Agency resources that are disproportionate to the informal nature of those actions. It further contends that adverse actions and removals must be excluded from the grievance process because, since 2014, no employee has challenged a removal via the grievance procedure. Thus, allowing challenges to removals through this process is unnecessary. Moreover, the Agency's proposed exclusion of adverse-action grievances is consistent with Executive Order 13,839, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles" (May 25, 2018) (Removal Order).

In addition to the above grievance exclusions, Management proposes other changes to this article to streamline the discipline process. Throughout the article, rather than adhering to various specified contractual timelines, Management proposes to follow procedures established by various "applicable laws."

B. Conclusion

The Panel will impose a modified version of the Agency's proposal. The Agency's argument in support of full adoption of its proposal is premised upon the Removal Order. This Order calls for agencies to exclude three different topics from a negotiated grievance procedure: removal challenges; challenges to annual ratings; and challenges involving various forms of pay. The Agency's proposal goes beyond these three categories. It is, therefore, necessary to examine Panel decisions involving both this topic and the general topic of grievance exclusions.

To begin with, the Panel has recognized the significance of Federal court precedent concerning grievance exclusions. The Panel has acknowledged its obligation to adhere to the United States Court of Appeals for the District of Columbia's holding that a proponent of grievance exclusion must "establish

convincingly" in a "particular setting" that this position is the "more reasonable one."⁹

The Panel has further clarified that the Removal Order - and related Executive Orders - demonstrates important public policy that must be taken into consideration when resolving these types of disputes. That consideration, however, differs depending upon the exclusion that is involved. For example, under Section 3 of the Removal Order, an agency "shall endeavor" to exclude grievances involving removal actions in a negotiated grievance procedure "[w]henever reasonable in view of the particular circumstances."¹⁰ The Panel has recognized that this language means that a party seeking exclusion of this topic has a burden to demonstrate that exclusion is reasonable under the "particular circumstances" of the dispute before the Panel.¹¹ With that framework in my mind, the Panel turns to addressing each of Management's three proposed exclusions.

i. Adverse Actions

To begin with, the Agency seeks to exclude grievances involving all adverse actions in its Section 8.¹² The MSPB has jurisdiction over challenges to these actions.¹³ And, although an "adverse action" includes removals, this term also addresses a variety of other matters, such as furloughs, any suspension of 14 days or greater, and reductions in pay.¹⁴ Thus, the Agency's reliance upon Section 3 of the Removal Order -- or the Removal Order in general -- to cover the topic of "adverse actions," is inapplicable because that language applies solely to removals.

Because the Removal Order does not apply to the Agency's proposed exclusion, the Panel will rely upon its grievance-exclusion precedent discussed in SSA. Doing so demonstrates that the Agency has not "establish[ed] convincingly" that its position is the more "reasonable one." In this regard, the Agency argues exclusion is warranted because no employee has relied upon the grievance procedure to challenge removals since

⁹ SSA and AFGE, 19 FSIP 019 at 9-10 (2019) (SSA) (quoting AFGE v. FLRA, 712 F.2d 640, 649 (D.C. Cir. 1983)).

¹⁰ Executive Order 13,839, Section 3.

¹¹ See U.S. Dep't of Def., Dep't of the Air Force, Fairchild Air Force Base and Association of Civilian Technicians, #138, 19 FSIP 070 at 10-11 (2020) (Fairchild).

¹² See Agency Submission at 9.

¹³ See 5 U.S.C. 7512.

¹⁴ See *id.*

2014. Instead, they have pursued other appeal options.¹⁵ Even if this fact were accurate, it does not address the myriad other topics covered under the statutory meaning of "adverse action." And, within the context of SSA, the Panel has specifically held that a historical failure to pursue grievances over a particular topic does not justify excluding that topic from a grievance procedure.¹⁶ Consequently, Section 8 will be stricken in its entirety.

ii. Removals

The Agency's language involving removals in its proposed Section 5 will also be rejected. This proposed language calls for an exclusion to any challenges involving removals for performance issues or misconduct. These types of actions may arise under Chapter 43 or Chapter 75 of the United States Code. Various procedural aspects change depending upon which venue is pursued, but in any event, employees are permitted to challenge these actions via grievance or the MSPB.¹⁷

To support exclusion, Management once again relies upon Section 3 of the Removal Order. This section states that exclusion of this topic is warranted "[w]henver reasonable in view of the particular circumstances."¹⁸ And, once again, Management relies upon the idea that this burden is satisfied because of a lack of removal grievances since 2014 and because an employee may seek redress elsewhere. The Panel has considered, and rejected, a similar argument within the context of Section 3 of the Removal Order.¹⁹ The Agency has offered no other justification for its position, nor has it presented any reason why the Panel should depart from this previously stated approach. Accordingly, Management's proposed language in Section 5 will be rejected here as well: **"Pursuant to 5 U.S.C. 7121(a)(2), decisions to remove any employee from Federal service for misconduct or unacceptable performance shall not be subject to the negotiated grievance and arbitration procedures."**

¹⁵ See Agency Position at 10.

¹⁶ See *U.S. Dep't of Veteran Affairs and NFFE*, 19 FSIP 024 at 8 (2019).

¹⁷ See 5 U.S.C. §7512; 5 U.S.C. §4303(e).

¹⁸ Executive Order 13,839, Sec. 3.

¹⁹ See *Fairchild*, 19 FSIP 070 at 10-11 (Panel rejected agency argument that, because of a low number of grievances involving removals that created a culture of settlement, exclusion of removal challenges was warranted).

iii. Letters of Counseling/Verbal Reprimands

Management's proposed language in its proposed Section 3 that excludes challenges to letters of counseling/verbal reprimands will be rejected as well. Employees normally do not have the ability to challenge either of these actions as a matter of law, but they could arguably be challenged if some sort of prohibited personnel practice were involved, e.g., discrimination. Thus, the Union would normally have to rely upon the grievance procedure if it wished to challenge these actions. The ability to challenge them is significant because the Panel has imposed Management's proposed language in Section 2.B that would allow it to rely upon the concept of progressive discipline to formulate penalties. Under Management's proposed scheme, however, the Union would have no ability to challenge those underlying actions.

The Agency's proposed exclusions are not covered under the Removal Order, so it cannot rely upon that as a rationale. The only argument put forth by Management is that challenges to these actions drain Agency resources disproportionately to the benefit employees accrue. To begin with, the Agency provided no data establishing how often, or even if, these matters are challenged via grievance. Nor did it provide any sort of empirical data demonstrating how many resources are consumed by these types of grievance actions. Additionally, although Management decries the informal nature of these actions, as already outlined, nothing prohibits the Agency from relying upon them to elevate a proposed discipline. Accepting Management's proposal, then, could create an imbalance. As employees have no other venue to challenge these actions as a matter of course, and because Management failed to provide any supporting data, the Panel believes it is appropriate to conclude that the Agency has not demonstrated that its approach is the more "reasonable one" as discussed in SSA. It should, therefore, be rejected. The following language will be stricken from Management's Section 3: **"Admonishments and counselings are neither grievable nor appealable."**

IV. Performance and Performance Management

A. Agency Position

The **Agency**, in Section 1, proposes excluding challenges to annual performance ratings and performance-based actions from

the parties' grievance procedure.²⁰ Management believes this proposal is consistent with the language and the policy of the Removal Order. Management also opposes Union language concerning performance-improvement-plans (PIP). The current CBA language calls for an employee to be placed upon a PIP prior to performance-based separation. This requirement, Management argues, is inconsistent with the Removal Order.

B. Conclusion

The Panel will impose a modified version of the Agency's language. The Agency sets forth language for managing workplace performance and how to address deficiencies. Management takes significant umbrage to the Union's proposed language due to its cumbersome nature. For example, the Union is allegedly requesting language concerning PIP's that Management finds inappropriate. As the Union failed to provide language or argument, and because the Agency's proposed framework appears sensible, it is appropriate to largely accept Management's proposal with minor modification.

The remainder of the Agency's proposal in question deals with two grievance exclusions: (1) annual rating challenges; and (2) performance-based actions. The Panel will discuss both.

i. Rating Challenges

The Agency argues that grievances challenging annual ratings should be excluded because of Section 4 of the Removal Order. Section 4(a)(i) states agencies "shall" exclude challenges to "ratings of records" from a negotiated grievance procedure in order to "promote good morale in the Federal workforce, employee accountability, and high performance, and to ensure the effective and efficient accomplishment of agency missions and the efficiency of the Federal service."²¹ Unlike removals, this Order places no limitation on an agency's obligation to include this language within a CBA. The Panel has adopted Agency proposals that rely upon the policy evidenced under Section 4(a)(i), particularly when the party in opposition offers little in the way of rebuttal.

Here, the Union has offered no evidence in rebuttal. Indeed, it has offered no evidence whatsoever. The only supporting rationale in the record, then, is the important

²⁰ See Agency Statement at 10-12.

²¹ Executive Order 13,839, Section 4(a)(i).

policy considerations tied to Section 4(a)(i) of the Removal Order. In light of all the foregoing, then, it is appropriate to adopt Management's proposed exclusion in full.

ii. Performance-Based Actions

The Agency proposes excluding challenges to all performance-based actions, not just removals, in its proposed Section 1. In addition to removals, a performance-based action can include items like demotions.²² The Agency argues its proposed approach is consistent with Section 3 of the Removal Order. That section does not reference "performance-based actions." And, while this section does refer to "removals," it does not refer to demotions or any other potential personnel action. The Agency's reliance upon Section 3 within this context is unpersuasive.

Management's only other proffered support is that the Union can pursue these types of claims before the MSPB. Management did not explain why this is sufficient to support wholesale exclusion from the grievance procedure. If Congress had intended to have these matters proceed in only one forum, it could have done so. But, it did not. In sum, the Agency has not established that its proposal is more reasonable in these circumstances, thus, the following bolded language from Management's Section 1 will be stricken:

Statutory procedures and appeals provide exclusive redress for alleged violations of employee rights involving performance-based actions. Pursuant to 5 U.S.C. § 7121(a)(2), disputes over the assignment of ratings of record **or appealable performance-based actions arising under this Article** shall not be subject to the negotiated grievance and arbitration procedures.

V. Mid-Term Bargaining

A. Agency Position

Sections 1 through 3 of the Agency's proposal address prohibitions on bargaining over matters covered by the CBA, the appropriate level recognition for negotiations, and standardized ground rules for bargaining matters that arise during the life

²² See 5 U.S.C. §4303(a).

of the CBA.²³ Management claims that the Union tentatively agreed to these sections during negotiations but later withdrew that agreement. The Agency argues all of the foregoing contributes to effective government operations and is consistent with policies evidenced by Executive Order 13,386, "Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining" (May 25, 2018) (Bargaining Order).

Management's proposed Section 4 covers procedures to be followed when the parties' bargain after Management implements a change in conditions of employment, i.e., post-implementation negotiations. As part of these procedures, the Agency proposes that the Union would not be able to file an unfair labor practice (ULP) charge over "solely" any post-implementation action. Management believes this approach is efficient and would not prevent the Union from filing a ULP for anything other than the implementation itself. And, the Union could always file a grievance.

B. Conclusion

The Panel will impose a modified version of the Agency's proposal. The Agency's proposal establishes an orderly process for how bargaining is to arise during the life of the agreement. Indeed, it goes so far as to craft a standardized set of ground rules to be used during such negotiations. This will undoubtedly save time and resources that would have to be devoted to hypothetical ground-rules negotiations that could otherwise be used to further other Agency purposes. The Union has offered no counter. On balance, then, it is appropriate to largely accept Management's final offer. However, three areas should be addressed and modified.

i. Waiver of Bargaining Rights

The first area that must be addressed is language that could potentially run afoul of collective bargaining rights under the Statute. Management has proposed multiple instances in which the Union *must* responds to Agency language within a specific amount of time. If the Union fails to respond within that time, the Union will "waive" its right to engage in further negotiations and the Agency is permitted to implement its offer. The problem with this approach, however, is that it calls upon the Panel to authorize a specific scenario in which a party could lose their rights under the Statute. Per existing FLRA

²³ See Agency Submission at 12-13.

decisions, situations in which a party acts in bad faith - and could therefore lose the ability to avail themselves of rights under the Statute - are determined by the totality of the circumstances in each individual case.²⁴ And, those decisions are made by individuals bestowed with the authority to render decisions concerning bad-faith bargaining, e.g., administrative law judges. Accordingly, the Panel will strike the following language from Management's proposal in the below two sections (stricken language is in bold):

- Section 3.B: Bargaining Procedure. After receipt of the Union's proposals, the Employer and Union will bargain, as appropriate and in accordance with applicable law, rule and Regulation. **If the Union's proposals are not provided to the Employer within the five working days as stated above, then the request to negotiate will be deemed waived and closed, and the Employer may proceed with implementation, unless an extension is requested and approved in advance.**
- Section 3.B.4: Negotiations shall take place as soon as practicable, but no more than seven working days after the Union has provided proposals, unless the parties mutually agree to extend the period. Bargaining shall occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within 10 working days from the start of negotiations, but that period may be extended by mutual agreement of the Parties. **If the Employer determines the Union is not bargaining in good faith, the Employer may implement the proposed change prior to the completion of bargaining. Should the parties not come to agreement within ten days, the Employer may implement the change in its discretion. However, post-implementation bargaining procedures pursuant to Section 4 of this article will apply if the parties are unable to reach agreement prior to the implementation date declared by the Employer.**

ii. Post-Implementation Bargaining

Another area of concern is in Management's language on post-implementation bargaining, which is bargaining that arises

²⁴ See, e.g., *U.S. Dep't of Justice, Executive Office for Immigration Review, New York, New York and AFGE, Local 286*, 61 FLRA 460, 465 (2006) (citing *United States Dep't of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 524, 531 (1990)).

after Management has initiated a change in conditions of employment. In its Section 4.A, Management offers the following:

When the Employer determines that a particular change is necessary or appropriate, in accordance with law, rule or regulation, and must be implemented by a certain date, post-implementation procedures will apply if the parties are unable to reach agreement prior to the implementation date of the change.²⁵

Under this language, Management is asking the Panel to codify language that would grant Management unilateral authority to decide that a matter can be bargained *only* after a change in condition of employment is initiated. In other words, the Agency requests language that would grant it authority to forgo its bargaining obligations before it institutes a change in condition of employment. But, that ability could arise under law regardless of what the contract states. Indeed, under established precedent, a union's waiver of its bargaining rights turns on express agreement or bargaining history.²⁶ What the Agency appears to be seeking is insulation from potential legal challenges. But, it is not clear that the Panel has the authority to impose such language. To be sure, the Panel is not suggesting that the Agency could *never* institute a change and engage in negotiations after the fact. Rather, those situations should turn on the particular facts of each circumstance in accordance with existing law. The block-quoted language above will be stricken.

iii. Post-Implementation Bargaining and ULPs

The final concern in the Agency's proposed language is how to address ULP's that arise due to post-implementation actions. In Management's Section 4.B, the Agency proposes that: "The Union shall not file unfair labor practice charges solely over the Employer implemented change."²⁷ There is no qualification to this language: the Union will *not* be able to file a ULP charge over "solely" any implementation. Management, then, is asking for the Panel to approve of a situation in which the Union would not be able to pursue a statutory remedy. The Panel does not

²⁵ Agency Submission at 15.

²⁶ *Headquarters, 127th Technical Fighter Wing, Michigan Air National Guard, Selfridge Air National Guard Base and AFGE, Local 2077*, 46 FLRA 582, 583 (1992).

²⁷ Agency Submission at 15.

believe that it should condone this approach in an excess of caution. Again, if the Agency believes it is legally entitled to oppose a ULP in these circumstances, it may do so. Accordingly, the following language will be stricken from Section 4.B: **"The Union shall not file unfair labor practice charges solely over the Employer implemented change."**

VI. Employee Grievance Procedure

A. Agency Position

The Agency proposes various procedures for processing grievances involving challenges to proposed disciplinary and adverse actions. In addition, the Agency proposes excluding 14 topics from the parties' negotiated grievance procedure, all of which are discussed in greater detail below.²⁸

B. Conclusion

The Panel will impose a modified version of the Agency's proposal. Many of Management's proposals focus on establishing an orderly procedure for processing grievances, and it is appropriate to accept them. Again, the Union has given no reason for rejecting the majority of Management's approach.

The remaining issues involve various grievance exclusions that Management has proposed which the Union has, apparently, rejected. Those requested exclusions are:

- a. Any claimed violation relating to prohibited political activity.
- b. Retirement, life or health insurance.
- c. Suspension or removal for national security reasons (5 USC § 7532).
- d. Any examination, certification or appointment.
- e. Classification of any position which does not result in the reduction in grade or pay of an employee.
- f. Termination of a probationary or trial period employee.

²⁸ See Agency Submission at 20.

- g. Action taken under RIF procedures.
- h. Continuing Professional Education training denials.
- i. Content of position descriptions.
- j. Admonishments or counseling, pursuant to Article III, Section 3 of this Agreement.
- k. Appealable adverse actions, including removals for misconduct or unacceptable performance, pursuant to Article III, Sections 5 and 8 of this Agreement.
- l. The assignment of ratings of record or any appealable performance-based actions, pursuant to Article IV of this Agreement.
- m. The award of any form of incentive pay, including cash awards, quality step increases, or recruitment, retention, or relocation payments.
- n. The number or frequency of telework, or geographic location of a Union representative's telework location, pursuant to Article VII of this Agreement.

To begin with, under 5 U.S.C. §7121(c)(1)-(5), the matters covered under sections a-e of Management's proposal must be excluded from a negotiated grievance procedure as a matter of law. So, that language should be included in the agreement. The Panel has already rejected Management's proposed exclusions for sections j and k elsewhere in this Decision and Order; they should likewise be excluded here. Finally, section l excludes "ratings of record or any appealable performance-based actions." The Panel has already excluded the former item but not the latter. Section l should be modified to strike the following language: "**or any appealable performance-based actions.**"

The remainder of the Agency's proposed exclusions are matters that have not yet been addressed. The Panel will address each in kind briefly.

i. Section m - Pay Issues

The Agency proposes eliminating challenges to the "award of any form of incentive pay, including cash awards, quality step increases, or recruitment, retention, or relocation payments."

It cites Section 4(a)(ii) of the Removal Order in support. These are matters that are covered by Section 4(a)(ii), and the Panel has recognized the importance of accepting the policy contained therein.²⁹ Consistent with this approach, the Panel will impose this language.

ii. Section f - Termination of Probationary or Trial Period Employees.

Management wishes to exclude grievances that would allow the Union to challenge terminations of probationary or trial period employees. The Panel has approved of similar language in other disputes because these types of grievances are prohibited by law.³⁰ Accordingly, Management's language should be adopted as well.

iii. Remaining Issues

The Agency proposes four other exclusions: RIF actions; training denials for continuing education; contents of position descriptions; and issues concerning telework. Management makes a general claim that it advanced these proposals with the intent "to comply with federal law, to promote efficiency and accountability in the workplace, and to advance the Agency's mission."³¹ The Agency provided no other specific evidence or argument, and none of these matters are covered under the Removal Order. Given the lack of evidence, the Panel finds that the Agency has not demonstrated that these exclusions are reasonable and, as such, these proposed sections will be rejected.

VII. Union Rights

A. Agency Position

The Agency proposes language that recognizes the Union as the unit's exclusive representative and also recognizes the Union's right to be present at grievance meetings and formal discussions.³² Management is opposed to additional language proposed by the Union because such language would not be concise or efficient.

²⁹ See *Fairchild*, 19 FSIP 070 at 12.

³⁰ See *id.* at 21-22 (citation omitted).

³¹ See Agency Submission at 20.

³² See *id.*

B. Conclusion

The Panel adopts Management's language. The Agency's language generally acknowledges the Union's right to be represented at certain meetings. Management also recognizes that it must adhere to and follow other applicable sources of law. The Agency's language appears to capture any potential Union interest of enshrining various representational rights. Per the Agency, the only objection the Union raised was that this language should be more "specific." But, as already stated, the Union failed to submit any argument to the Panel. Accordingly, on balance, it is appropriate to accept Management's proposal in full.

VIII. Leave

A. Union Position

The **Agency** proposes language concerning scenarios involving leave abuse. If such abuse is suspected, an employee is required to provide specified medical information to a designated Agency employee. That information, however, would be kept confidential. The employee could also request a Union representative if they have a reasonable concern about discipline.

Management rejected Union-proposed language concerning administrative leave. According to the Agency, Office of Personnel Management (OPM) "policy" permits the use of administrative leave only in defined circumstances. The Union's language does not conform to this policy and, as such, should be rejected.

B. Conclusion

The Panel adopts Management's proposal. The Agency proposes a system wherein employees would be required to provide confidential medical information to verify their leave status. The Union would have a role to play upon an employee's request. This proposed arrangement balances the need of the Agency to maintain a functioning workforce and the needs of the Union to provide representation as necessary. Management rejected Union language because of its alleged inconsistency with OPM policy, but the Union did not provide that language or argument. It is, therefore, unnecessary to address this issue. The Agency's language is the most appropriate proposal to adopt.

IX. Training

A. Agency Position

The **Agency** proposes a two-paragraph proposal that focuses on the needs of the Agency and NASA as a whole. Any training must benefit the mission of the Agency. The Union is opposed to language the Union offered because it focused on local training even though Management "handles training on a national" basis. The Union's proposal - which offers 17 additional sections - would result in burdensome costs.

B. Conclusion

The Panel adopts Management's proposal. Its proposal presents a sensible proposition that Agency-funded training should benefit the needs and the mission of the Agency. The only opposition, as described in the Agency's submission, is a set of 17 Union-proposed sections that apparently focuses on scenarios specific to the Agency. However, without that set of proposals, it is difficult to gauge their appropriateness. Consequently, Management's proposal is most appropriate.

X. Use of Government Resources and Facilities

A. Agency Position

The Agency proposes language prohibiting the Union from the free or discounted use of Agency resources unless such resources are available on a similar basis to other non-government entities.³³ Consistent with this, the Agency proposes eliminating Union-reserved parking spaces because no other non-government entity has reserved spaces. This approach is mandated by Section 4(a)(iii) of the Official Time Order. Management would, however, entertain a Union proposal that would grant the Union a reserved space for a rental fee. Because Agency employees also may use Agency computers and may reserve a designated Agency area for social gatherings, the Agency similarly has no qualms with the Union using either of these resources under similar circumstances.

B. Conclusion

The Panel imposes the Agency's language. The Agency's proposal is heavily influenced by Section 4(a)(iii) of the

³³ See Agency Submission at 24-25.

Removal Order. As discussed already, this Order represents important public policy. And, as also discussed, the Union has not addressed this policy. Given the foregoing, it is appropriate to accept Management's position.

XI. Hours of Work

A. Agency Position

The **Agency** proposes language which acknowledges that Management has the right to establish tours of duty.³⁴ However, Management will also comply with the Federal Employees Flexible and Compressed Work Schedules Act (the Act), 5 U.S.C. §6101, et. seq.³⁵ But, Management will select the hours of work that may be used for flexible work schedules. In Section 3, Management proposes that an employee may request to work non-standard business hours. In its proposed Section 5, Management proposes that a "First Forty Tour" will be a tour offered as a "last resort." The language of the Agency's proposal, however, does not make clear what this type of tour of duty refers to or how it would arise.

Management rejects Union-proposed language that offered specific language on schedules because it is burdensome. According to the Agency, sufficient guidance already exists under regulations promulgated by the Federal government, OPM, and the Agency. The Union's language only confuses the situation.

B. Conclusion

The Panel imposes the Agency's proposal. The Agency's proposal is intended to balance the appropriate staffing needs of the Agency with the interests of employees who wish to work various types of alternative work schedules. This desire, of course, is entirely laudable. The Union has provided no countervailing rationale for rejecting Management's proposal. Accordingly, it is appropriate to accept it in large part.

XII. Emergency Closures

³⁴ See *id.* at 25-27.

³⁵ Normally, Federal agencies have unfettered discretion to establish tours of duty for its work force. Under the Act, however, exclusive representatives have the ability to negotiate over alternatives to the traditional work schedule of 8-hour shifts, 5 days per week.

A. Agency Position

The **Agency** opposes Union language that would create a new article on the topic of "Emergency Closures."³⁶ Management acknowledges it could have a statutory obligation to bargain over any Management-initiated changes in conditions of employment that could arise during an emergency situation. And, Management would honor that obligation as required by law. But, a CBA would not be able to capture every possible situation that could arise during these types of scenarios. Additionally, the Agency argues that the Union's language is potentially inconsistent with the Administrative Leave Act of 2016.³⁷

B. Conclusion

The Panel adopts the Agency's proposal, i.e., including no language within the CBA on "Emergency Closures." The Union failed to provide its proposal following release from mediation, so it is difficult to ascertain what precisely the Union requested. And, in any event, the Agency acknowledges it must adhere to any statutory obligation to engage in negotiations should a negotiable condition in employment arise. The Union's position - to the extent there is one - should be rejected.

XIII. Details and Special Assignments

A. Agency Position

Sections 3 through 5 in Management's proposal remain in dispute.³⁸ The Agency proposes language that permits it to decide which, if any, employees will be selected to fill work details that are offered to the workforce. However, an employee can request a hardship reconsideration if they are *involuntarily* selected for a detail. Finally, Management acknowledges it will use a "competitive placement procedure" if it chooses to utilize any details that last longer than 120 days.

Management is opposed to the Union's proposed language because it is onerous. That language supposedly addresses the length of details, methods of solicitation and selection for details, how the Agency will evaluate applications for details, involuntary details, returning from details, and communications

³⁶ See Agency Submission at 28.

³⁷ See 5 U.S.C. §6329a-c.

³⁸ See Agency Submission at 29-30.

with the Union about detailed employees. Management's existing policies already cover these topics. Additionally, the Union's proposal refers to an electronic system that is no longer utilized by the Agency. As such, the Union's language would lead to confusion.

B. Conclusion

The Panel adopts Management's proposal. Management's language represents an orderly process for selecting employees who will fill temporary positions that are of a need to furthering the Agency's mission. Additionally, the language creates safeguards for employees who are involuntarily drafted into a position and for when a lengthy detail must be utilized. The language balances the needs of the Agency, the work force, and the taxpayer. Further, the Union has not provided language to evaluate or an argument to counter the Agency's position. Accordingly, it is appropriate to accept Management's language in full.

XIV. Employee Privacy Protection

A. Agency Position

The Agency opposes a Union-proposed article on the topic of "Employee Privacy Protection." The Union's language mainly requires the Agency to adhere to existing Federal law, rules, and regulations concerning privacy. Management has this obligation regardless of contract language, however. The Union also proposes adding language on the topic of the maintenance of electronic Official Personnel Folders (OPF's). But, OPM actually maintains these documents electronically. So, the Union's proposed language would have no effect. And, to the extent the Union's language addresses Agency access to electronic OPF's, guidance is already in place that the Agency must adhere to. Accordingly, the Union's language remains unnecessary.

B. Conclusion

The Panel rejects the Union's proposed article and accepts Management's position. Once again, the Union's failure to provide language makes assessing the appropriateness of the language a near impossibility. And, Management has acknowledged its obligation to adhere to applicable privacy law, rules, and regulations.

XV. Merit Promotion and/or Placement**A. Agency Position**

The Agency agrees it will adhere to Federal merit-promotion principals in filling vacant positions.³⁹ But, the Agency opposes Union language on the use of competitive placement plans; the area of consideration for promotion opportunities; publication procedures for promotion opportunities; selection and evaluation criteria; the application process; temporary promotions; the organization of best-qualified lists; the sharing of information between the Agency, the Union, and employees; and cancellation of promotional opportunities. The Agency adheres to NASA guidance in filling positions. The Union's language goes beyond that guidance and would create an undue burden upon Management. It would also restrict Management's "hiring flexibility."

B. Conclusion

The Panel adopts the Agency's language. Its proposals represent tentatively-agreed to language, which the Union does not dispute. The only other language that apparently remains disputed is language that Management contends is overly burdensome. Other than Management's summary of what that language calls for, however, it is difficult to gauge the appropriateness of accepting whatever the Union intended to put forth. As such, the Panel is not in a position to weigh adopting it. Accordingly, Management's language should be imposed in full.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter
FSIP Chairman

May 22, 2020
Washington, D.C.

³⁹ See Agency Submission at 31-32.

**FEDERAL SERVICE IMPASSES PANEL
1400 K STREET, N.W., SUITE 220
WASHINGTON, D.C. 20424**

IN THE MATTER OF:

NASA – Kennedy Space Center)	Case: 20 FSIP 025
)	
and)	Date: April 13, 2020
)	
AFGE Local 513)	
)	
)	
)	

Agency’s Final Written Offers

Issue 1: Recognition and Unit Designation – Agency’s Offer

Section 1. The Employer hereby recognizes that the Union is the exclusive representative of all employees in the unit, as defined in Section 2 of this Article.

Section 2. With the exception of exclusions in Section 3, the unit to which this Agreement applies is composed of permanent civil service employees of NASA, Kennedy Space Center who are classified as non-professional. The classes of employees specifically defined in Section 3 of this Article are excluded from the terms of this Agreement.

Section 3. The following classifications identify exclusions from the unit:

- a. Professional (engineers and scientific as indicated in OPM handbook of Occupational Groups and/or Series of Classes-NASA Class Codes 200 and 700)
- b. Accountants and Auditors (originally listed as NCC 621, 622)
- c. Attorneys (originally listed as NCC 660)
- d. Supervisory (as defined in Section 7103 (a) (10) of Chapter 71)
- e. Managerial
- f. Temporary, Part-Time, and Student Employees
- g. Confidential (direct, confidential support to positions involved in formulation and administration of personnel and labor-management relations policy)
- h. Security (to include both physical and cybersecurity)

Issue 2: Official Time – Agency’s Offer

Section 1. Policy Statement

The parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, the Employer will grant Union representatives reasonable amounts of official time under the conditions described in this Article.

Section 2. Designation of Representatives

- A. The Union will provide the Employer with electronic lists of all designated Union representatives within 30 days of the effective date of this Agreement. The Union will provide an updated list within five days of any change to a designated Union representative. Each list will include the name, position, supervisor’s name, duty location, and telephone number of each designated Union representative.
- B. The Employer may authorize the use of official time for representational activities only for those employees identified on the list provided by the Union.

Section 3. Exclusions

- A. The Employer will not alter work schedules so that Union officials are in duty status for the sole purpose of using official time. In unforeseen or exceptional circumstances, at the sole discretion of the Employer, the Employer may alter work schedules for this purpose.
- B. Union representatives are not authorized to earn premium or differential pay, overtime or compensatory time (to include travel compensatory time) for their performance of Union representational duties.
- C. In accordance with 5 U.S.C. § 7131(b), any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.
- D. Official time is not permissible for Worker’s Compensation or EEO Complaint Cases.
- E. Union-sponsored training is not a representational activity for which official time may be used. The Employer will not authorize official time or pay for any associated expenses for Union-sponsored training, except as outlined in paragraph F of this Section.
- F. The Employer will authorize official time in an amount not to exceed four hours total per fiscal year for Union officers to develop SATERN training for BU employees regarding the terms of the Agreement and relevant labor laws, rules, and policies.
- G. The Employer will not authorize official time or pay for any associated expenses for any lobbying or political activities.
- H. The Employer will not authorize official time or pay for any associated expenses for pursuing grievances or binding arbitration with the following exceptions:
 - 1. Employees may use official time to prepare for, confer with their Union representative regarding, or present a grievance brought on the employee’s own

behalf, or appear as a witness in any grievance proceeding. Employees, however, may not use official time to prepare or pursue grievances on another employee's behalf.

2. Employees may use official time to challenge an adverse personnel action taken against the employee in retaliation for engaging in federally protected whistleblower activity.
3. Employees may use official time for other activities covered by 5 U.S.C. § 7131(c).

Section 4. Provisions for Official Time

- A. Consistent with 5 U.S.C. Chapter 71 and this Agreement, the Employer will grant Union representatives official time for the following representational activities:
 1. Term Negotiations—to prepare for and negotiate a collective bargaining agreement, in accordance with 5 U.S.C. § 7131(a).
 2. Mid-Term Negotiations—to prepare for and bargain over issues raised during the life of a term agreement, in accordance with 5 U.S.C. § 7131(a).
 3. Dispute Resolution—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. § 7131(c).
 4. General Labor-Management Relations—to perform miscellaneous representational activities authorized under 5 U.S.C. § 7131(d).
- B. The Employer may authorize Union representatives official time on a fiscal-year basis, not to exceed 25% of their established annual tour of duty in the performance of Union representational activities as described in Section 4.A.
- C. To prevent an operational burden, the Union may assign no more than 5% of employees in any branch, division or directorate as Union Representatives without the mutual agreement of the Employer.
- D. Union representatives will make every effort to perform their Union representational duties in a proper and expeditious manner.
- E. Repeated misuse of official time may constitute serious misconduct that impairs the efficiency of the Federal service. In such instances, the Employer shall take appropriate disciplinary action to address such misconduct.

Section 5. Official Time Requests and Reporting Procedures

- A. Employees may not use official time without advance authorization from the Employer. Requests to use official time must be made in the manner designated by the Employer. Should it be necessary for any Union representative to leave their work area for a purpose authorized by this Agreement, the Union representative shall notify his or her supervisor and the supervisor of the section they intend to visit. Union representatives will report to their supervisor upon returning to their workstation.
- B. The Employer will normally grant employees time away from their work unless it will unduly interfere with the effectiveness of operations, in which case the employee and the Employer will attempt to work out an acceptable time for that purpose. If an operational need does not permit the employee to use the official time when requested,

the Employer will generally make a reasonable effort to allow the employee to use the requested official time within two workdays, keeping in mind the interests of the Union, as well as the needs of the Employer. If the Employer and Union agree, all associated timelines, meetings, and deadlines throughout this Agreement will be adjusted proportionately until use of official time is approved. If the Employer is unable to approve a request for official time, the denying management official will provide the reason for denial in writing.

Issue 3: Adverse and Disciplinary Actions – Agency’s Offer

Section 1. Policy

The Employer shall determine when the need arises for disciplinary or adverse actions.

Disciplinary actions and adverse actions will be taken in accordance with applicable laws, rules, and regulations in effect at the time of the action. The specific corrective action for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

Section 2. Penalty Determination

- A. To determine the appropriate corrective action for an employee such as a disciplinary or adverse action, the Employer will, subject to applicable law, rule, and regulation, consider the relevant factors as determined by governing law (for example, applying the factors articulated by the Merit Systems Protection Board in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), to applicable adverse actions).
- B. The Parties recognize that discipline may be progressive in nature; however, the progressive sequence of discipline is not required.
- C. The Employer shall not agree to erase, remove, alter, or withhold from another agency any information about an employee’s performance or conduct in that employee’s official personnel records, including an employee’s Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

Section 3. Admonishments/Counseling

Admonishments and counselings are not formal disciplinary actions to which the procedures in this Article apply. Admonishments and counselings, which may be oral or written, may be used when an employee’s conduct or performance is less than acceptable and it is likely that an informal action will result in improvement. Admonishments and counselings are neither grievable nor appealable.

Section 4. Disciplinary Actions

For the purpose of this Agreement, disciplinary actions are defined as written reprimands and suspensions of 14 calendar days or less.

A. Reprimands

A reprimand is a written letter to an employee based on unacceptable conduct. Prior notice is not required before the issuance of a reprimand. A reprimand shall state the specific reasons for the action. A reprimand will remain in an employee's Official Personnel Folder (OPF) for up to two years, but may be removed by the Employer, at its sole discretion, anytime within the two-year period. The Employer will review letters of reprimand after six months and will provide a status update to the employee. A reprimand shall inform the employee of his or her appeal and grievance rights as required by law.

B. Suspensions of 14 calendar days or less

An employee against whom a management official has proposed a suspension of 14 days or less is entitled to the due process protections of 5 C.F.R. Part 752, subpart B.

Section 5. Adverse Actions

For the purpose of this Agreement, adverse actions are defined as suspensions of more than 14 days, reductions-in-grade or pay, and removals. Furloughs will be governed by applicable laws, rules, and regulations.

An employee against whom a management official has proposed an adverse action is entitled to the due process protections of 5 C.F.R. Part 752, subpart C. Pursuant to 5 U.S.C. 7121(a)(2), decisions to remove any employee from Federal service for misconduct or unacceptable performance shall not be subject to the negotiated grievance and arbitration procedures.

Section 6. Notice and Investigative Leave

The Employer will use notice and investigative leave in accordance with 5 U.S.C. § 6329(b) and 5 C.F.R. Part 630, subparts N and O, when published.

Section 7. Alternative Discipline

A. The Parties agree that alternative discipline may, under the right circumstances, be an efficient and effective approach in lieu of or in addition to traditional discipline. The Parties may consider and/or propose an alternative form of discipline at any stage during the disciplinary process. If the Employer and the employee and/or his/her representative come to an agreement on an alternative form of discipline, the terms of the alternative discipline will be set forth in a signed resolution/settlement agreement. The agreement may include, but is not limited to:

1. The specific form of the alternative discipline;

2. The date by which it is to be completed;
 3. The charged misconduct and the proposed traditional discipline;
 4. Recognition by the Parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
 5. A voluntary waiver of any appeal rights the employee may have regarding the matter.
- B. The following is a non-exhaustive list of types of alternative discipline the Parties may consider:
1. A leave donation by the employee through the Employer's leave donation program equal to the amount of time that would have been spent on suspension;
 2. Attendance by the employee at an appropriate counseling program approved by the Employer's Employee Assistance Program, and/or the employee's participation in training or classes such as anger management;
 3. Placing the employee on leave without pay in lieu of a formal disciplinary action;
 4. A "paper suspension," whereby the employee does not serve a suspension or lose pay, but the suspension may be relied on in future disciplinary actions for purposes of progressive discipline;
 5. A Last Chance Agreement, in which the Employer agrees to hold an adverse action decision in abeyance in exchange for an employee's:
 - a. Commitment to abide by a certain set of behaviors or conditions for a set period of time as determined by the Employer;
 - b. Waiver of his/her rights to challenge the decision; and
 - c. Agreement that if the employee fails to fulfill the terms of the agreement, the decision will be implemented.
 6. The employee issuing a formal apology.
- C. Nothing in this section shall require the Employer to use alternative discipline in lieu of formal disciplinary action. The failure of the parties to reach agreement regarding the use of alternative discipline is not a bargaining impasse that could be referred to FMCS/FSIP for resolution.

Section 8. Statutory Remedies

Statutory procedures and appeals (e.g., before the Merit Systems Protection Board) provide exclusive redress for alleged violation of employee rights involving appealable adverse actions under this Article. Pursuant to 5 U.S.C. § 7121(a)(2), disputes over appealable adverse actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.

Issue 4: Performance and Performance Management – Agency’s Offer

Section 1. The Employer will administer the Performance Management program in accordance with 5 U.S.C. Chapter 43, 5 C.F.R. Part 430, the appropriate Agency provisions of the Employee Performance and Communication System, and this Article.

Statutory procedures and appeals provide exclusive redress for alleged violations of employee rights involving performance-based actions. Pursuant to 5 U.S.C. § 7121(a)(2), disputes over the assignment of ratings of record or appealable performance-based actions arising under this Article shall not be subject to the negotiated grievance and arbitration procedures.

Section 2. The Employer and the Union agree that it is important for managers and employees to discuss employee performance throughout the year so that employees understand how they are performing and how to improve their performance. Progress reviews may be initiated by either the employee or the rating official. Performance shall be measurable.

Section 3. A rating official is responsible for an employee’s rating. A rating official may seek input from others with knowledge of the employee’s performance.

Section 4. In reviewing an employee’s performance, managers will look at all the work activities which were to be performed during the appraisal year. In rating an employee’s performance, employees will only be rated on work activities actually assigned. However, the number of work activities performed does not guarantee a specific rating. It is understood that there is no predetermined distribution of ratings among employees.

Section 5. The Parties agree employees must be under their performance standards for a minimum of ninety (90) days to receive an appraisal.

Section 6. The Parties agree there will be a minimum of one progress review to be conducted approximately at midpoint during the appraisal period. Employees may provide feedback to the rating official and provide comments in writing as part of the progress review.

Section 7. An employee may request reconsideration of his or her final performance rating if he or she disagrees with the rating official’s proposed rating within 10 calendar days of the employee’s notification of the rating in the performance system.

Issue 5: Mid-Term Bargaining – Agency’s Offer

Section 1. Rights and Obligations of the Parties

With the exception of changes mandated by law, rule, regulation, or changes flowing from the introduction of new technology, all matters covered by this Agreement will not be subject to change during the term of the Agreement, absent mutual consent of the Parties. When because of mandated changes or the introduction of new technology, there is a need to reopen existing articles or add new articles, the procedures in this article will be followed. The procedures in this article will also be used when there is a change in conditions of employment (non-mandated changes) that are not covered by this Agreement.

The Employer has the right to make changes to conditions of employment in the exercise of its management rights pursuant to 5 U.S.C. § 7106, or for any other reason associated with the accomplishment of its mission. However, the Employer does recognize its obligation, consistent with applicable laws, rules, and regulations, to notify the Union of such changes and to negotiate, upon request of the Union, pursuant to 5 U.S.C. § 7106(b)(2) and (3).

Section 2. Levels of Negotiations

- A. National Level – Negotiations of Agency-level changes, if the Union has national-level recognition, will be conducted and/or facilitated by the Director of Employee and Labor Relations (or designee) at the National level and the Union National President (or designee).
- B. Local Level – Negotiations of local-level changes will be conducted and/or facilitated by the Director of the local component, i.e., Center Director (or designee) and the applicable Local President (or designee).

Section 3. Applicable Negotiation Procedures

The procedures contained in this Section shall constitute the ground rules for all negotiations under this Article, unless the parties mutually agree to do otherwise.

- A. Notification Procedure – In issuing, revising or canceling rules and regulations relating to personnel policy, practices, procedures and matters affecting conditions of employment, the Employer shall give due regard to the obligations imposed by applicable laws, rules, regulations, and this Agreement. Before making changes to bargaining unit employees’ conditions of employment, the Employer shall provide the Union’s President with written notice of the proposed change(s). Such notice may be provided to the Union by mail, hand delivery, e-mail or facsimile (fax) or by any other method mutually agreed upon by the parties.

Specific procedures to be used pursuant to this Article are as follows:

1. Prior to implementation, the Employer will provide written notice to the Union of the Employer's intent to make a change(s) of bargaining unit employees' conditions of employment (that are not otherwise covered by the parties' agreement).
2. The Union will have seven days to advise the Employer, in writing, of the Union's request to negotiate. After the Union's request to negotiate, the Union will then have seven additional days to provide the Employer with proposals. The parties will then schedule a time and begin negotiating within seven working days after the Employer's receipt of the Union's proposals.

B. Bargaining Procedure After receipt of the Union's proposals, the Employer and Union will bargain, as appropriate and in accordance with applicable law, rule and regulation, If the Union's proposals are not provided to the Employer within the five working days as stated above, then the request to negotiate will be deemed waived and closed, and the Employer may proceed with implementation, unless an extension is requested and approved in advance.

1. The Employer will determine the location to conduct the negotiations and may choose that the parties conduct the negotiations virtually, e.g., via conference call or video technology.
2. The Union will be authorized the same number of bargaining representatives on official time as the Employer has representatives participating in the negotiations. The Employer will not reimburse the Union or pay for travel expenses for Union officials attending mid-term bargaining sessions, nor will the Employer grant official time for travel.
3. Either party may have a technical expert (TE) present as necessary who can provide information necessary for the successful completion of bargaining. The TE will not count toward the bargaining team's representatives. The Union's TE will not be granted official time. The Employer will not reimburse or pay for travel expenses for the Union's TE.
4. Negotiations shall take place as soon as practicable, but no more than seven working days after the Union has provided proposals, unless the parties mutually agree to extend the period. Bargaining shall occur during regular duty hours, unless otherwise mutually agreed by the Parties. The Parties will endeavor to reach agreement and conclude bargaining within 10 working days from the start of negotiations, but that period may be extended by mutual agreement of the Parties. If the Employer determines the Union is not bargaining in good faith, the Employer may implement the proposed change prior to the completion of bargaining. Should the parties not come to agreement within ten days, the Employer may implement the change in its discretion. However, post-implementation bargaining

procedures pursuant to Section 4 of this article will apply if the parties are unable to reach agreement prior to the implementation date declared by the Employer.

5. The Union may raise no additional proposals or subjects of bargaining after submission of its initial proposals except by mutual agreement, or under the post-implementation bargaining procedure under Section 4 of this Article.

Section 4. Post-Implementation Bargaining Procedure

A. Definition Post-implementation bargaining is bargaining after a management-initiated change has been implemented. When the Employer determines that a particular change is necessary or appropriate, in accordance with law, rule or regulation, and must be implemented by a certain date, post-implementation procedures will apply if the parties are unable to reach agreement prior to the implementation date of the change.

B. Post Implementation Bargaining Procedure The Union will be provided notice of change following the implementation date by the Employer and afforded the opportunity to bargain. The Union will have 15 days to submit their demand to bargain accompanied by their bargaining proposals related to the implemented change. The Union will be afforded the opportunity to submit bargaining proposals concerning the change for up to 20 working days following the date that implementation by the Employer has occurred. The Union shall not file unfair labor practice charges solely over the Employer implemented change. However, the Union reserves all other rights pursuant to applicable laws and regulations. Once Union proposals have been submitted to the Employer, the procedures in section 3.B above will apply.

Section 5. Agency Head Review

All negotiated agreements shall be subject to review by the head of the Agency (or his/her designee) pursuant to 5 U.S.C. § 7114(c).

Issue 6: Employee Grievance Procedures – Agency’s Offer

Section 1. This Article sets forth the exclusive procedure available to bargaining unit employees for the processing and disposition of grievances, as defined in this Article. The purpose of this Article is to provide for a mutually acceptable procedure for the prompt and equitable settlement of all grievances. Many workplace issues arise from misunderstandings and disputes and can be resolved promptly and satisfactorily at the lowest possible level. Accordingly, employees and managers are encouraged to work together to resolve these issues before they are elevated to the status of a grievance.

A grievance is a complaint, identified by an employee or the Union as a grievance, concerning: (a) any matter relating to the employment of the employee; (b) the effect or interpretation or a claim of breach, of a collective bargaining agreement; or (c) any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment (5 U.S.C. § 7103).

Section 2. This procedure shall not apply to any dispute concerning:

- a. Any claimed violation relating to prohibited political activity.
- b. Retirement, life or health insurance.
- c. Suspension or removal for national security reasons (5 USC § 7532).
- d. Any examination, certification or appointment.
- e. Classification of any position which does not result in the reduction in grade or pay of an employee.
- f. Termination of a probationary or trial period employee.
- g. Action taken under RIF procedures.
- h. Continuing Professional Education training denials
- i. Content of position descriptions.
- j. Admonishments or counselings, pursuant to Article III, Section 3 of this Agreement.
- k. Appealable adverse actions, including removals for misconduct or unacceptable performance, pursuant to Article III, Sections 5 and 8 of this Agreement.
- l. The assignment of ratings of record or any appealable performance-based actions, pursuant to Article IV of this Agreement.
- m. The award of any form of incentive pay, including cash awards, quality step increases, or recruitment, retention, or relocation payments.
- n. The number or frequency of telework, or geographic location of a Union representative’s telework location, pursuant to Article VII of this Agreement.

Section 3. This procedure shall be the exclusive procedure for resolving grievances that fall within its coverage.

Section 4. The Employer and the Union agree that every effort will be made by management and the aggrieved employee(s) to settle grievances at the lowest possible level. Inasmuch as

dissatisfaction and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, or loyalty or desirability to the organization. Reasonable time during working hours will be allowed for an employee to prepare for and present grievances brought on the employee's own behalf, including attendance at meetings with management officials.

Section 5. Procedures for Grieving Suspensions of 14 Calendar Days or Less

- 1) Step 1. The employee or the Steward must submit the grievance along with all supporting documentation in writing within 10 working days from the date the suspension ends. The grievance must be filed with an official one level above the official who issued the decision to effect the disciplinary action. The Employer agrees the decision letter will include the name of the individual to whom a grievance may be addressed. The official designated to decide the grievance will acknowledge the grievance in writing, review the grievance, and provide the Steward and the employee a written response within 15 working days after receipt of the grievance. In the event there is a personal presentation of the grievance, the official designated to decide the grievance will issue his or her decision within 15 days of that presentation.
- 2) Step 2. If the grievance was not satisfied with Step 1 above, the Union and the Employer will meet within 10 days of the decision to attempt resolution of the matter in lieu of arbitration. For purpose of such a meeting, not more than three individuals may represent each party.

Section 6. Procedures for Grieving Written Reprimands or Other Actions

- 1) Step 1. The grievance shall first be taken up orally by the concerned employee with his or her immediate supervisor or the appropriate supervisor in an attempt to settle the matter. Employees must present grievances within 15 working days from the date the employee knew or should have known of the matter. The Steward may be present if the employee so desires. The supervisor will meet with the employee as soon as practical, normally within one working day of the employee's request, and the supervisor will provide to the employee a decision, verbally or in writing, within five working days of the conclusion of the meeting.
- 2) Step 2. If the matter is not satisfactorily settled at Step 1 the Steward and/or employee may, within five working days, submit the matter in writing to a supervisor one level above the supervisor in Step 1. The higher-level supervisor will meet with the Steward and/or the aggrieved employee within five working days after receipt of the grievance and shall give the Steward and employee a written answer within five working days after the meeting.

- 3) Step 3. If the grievance is not settled at Step 2, the Union representative and/or the employee may within five working days forward the grievance to the next management supervisory level, provided the next level is not outside the appropriate directorate. The management official will review the grievance, consult with the Union representative and/or employee and give the Union representative and/or employee a written answer within 15 working days after receipt of the grievance. If the head of the primary organization considered the grievance under Step 2, this Step does not apply.
- 4) Step 4. If the Employer and the Union fail to settle the grievance in Step 3, either party may refer the matter to arbitration under Article VIII.

Section 8. When a number of employees file grievances relating to the same issue, the Employer and the Union may jointly select one of the grievances, which will be processed to a decision, which will be applied to the entire group.

Section 9. All time limits in this Article may be extended by mutual consent. Failure of the Employer to observe the time limits shall entitle the Union to advance the grievance to the next step. Failure of the Union to observe the time limits shall constitute grounds for terminating the grievance.

Issue 7: Union Rights – Agency’s Offer

Section 1. 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.

Section 2. Consistent with 5 U.S.C. 7114(a)(2)(A), as the exclusive representative, the Union shall be given the opportunity to be represented at any grievance meeting or other formal discussion.

Section 3. The Union recognizes the need for the confidentiality of certain personal or sensitive information and will keep that information confidential.

Issue 8: Leave – Agency’s Offer

Section 1. Employees shall, to the extent possible, plan for the use of annual leave throughout the entire year. An employee’s request for annual leave should be granted unless the approval would interfere with the significant work needs of the Employer. If a request for annual leave is denied, the Employer will provide the denial and reason(s) via the same method in which the request for leave was made and work to reschedule the leave as soon as practicable. In the event of denial of an oral request, the employee may request the reason for the denial in writing. Employees may request reconsideration of a denial of annual leave with the supervisor one level higher in the organization.

Section 2. When annual leave has been requested and approved, approval should not be canceled except in unusual situations in which the presence of the individual employee is required by the work needs of the Employer, and only after such need has been communicated to the employee. This is a situation that exists when work requirements are of such major importance as to prevent an employee from using annual leave that was scheduled and approved in advance.

In deciding whether to cancel any pre-approved leave, the Employer will consider possible alternatives and any personal reasons, including personal and financial hardships, presented by the employee. In these situations, the employee will be notified in writing as soon as possible in advance of the scheduled leave. Employees may request reconsideration of this agency decision with a supervisor one level higher in the organization.

Sick leave is an earned benefit. The employer shall grant accrued sick leave in accordance with current federal law and Agency policy.

Section 3. For restoration of forfeited annual leave due to exigencies of the public business or sickness of the employee, the Employer will follow the Leave Policies and Procedures.

Section 4. When more detailed medical information is deemed necessary to support a request for extended sick leave, the Employer may request further information from the employee. The employee may provide the information to the Occupational Health Facility (OHF) physicians which describes how the employee’s condition affects the employee’s ability to perform his or her job, a prognosis for his or her return to work and such medical information as the employee chooses to provide to support a request for extended sick leave. If further information is needed, including a diagnosis, the Employer will request this information from the employee. The employee or their designee may be requested to provide the information to the Chief Medical Officer.

Section 5. When the Employer suspects leave misuse, or time and attendance issues or similar conduct issues, detailed medical documentation may be required. Such detailed medical documentation should include how the condition affects the employee and the employee’s ability to perform his or her job, a prognosis if known, and, when the Employer deems necessary, a diagnosis, if determined. The employee will provide the requested information to Chief Medical Officer.

Section 6. If during leave misuse discussions the employee reasonably fears discipline (formal or informal), the employee can request a union representative under the Statute. The Agency will honor their request in accordance with the requirements of law. If the employer chooses to place an employee on leave restriction, it should be documented and include reasonable reviews and ability for the manager to remove the leave restriction at their discretion.

Section 7. When oral or written information is provided to managers of a sensitive and confidential nature such as information of a medical nature or other personally sensitive information (e.g., divorce), the managers will safeguard the information and take appropriate measures to ensure that it is not shared with anyone unless the employee authorizes the sharing of that information or the nature of the information requires that:

- a. It is shared with others when it is necessary to safeguard the employee or others in the workplace, is necessary to take appropriate actions with respect to the employee, or is otherwise required by the law to be shared;
- b. If an employee has provided a diagnosis of their medical condition, the employee has the right to request whether the diagnosis has been shared with others and, if shared, whom it has been shared with; or
- c. It be disclosed pursuant to a proper request in an administrative or judicial proceeding.

Section 8. Employees should request leave as far in advance as possible using time and attendance database, e-mail to the manager, or orally, or text, or a combination of these methods with supervisor's preference. Approval of leave requests may also be granted orally, by e-mail, by text, or through the time and attendance database. Employees are encouraged to enter the oral or e-mail request into the time and attendance database. When leave cannot be requested in advance because of an emergency, illness, or unforeseen circumstance, an employee should contact his or her manager to request leave approval. The request should be made within a reasonable period of time, normally prior to an employee's scheduled workday.

Issue 9: Training– Agency’s Offer

The Employer will provide employees with training and development opportunities which will enable them to accomplish the Agency’s mission, to do the work effectively, and where possible attain their career objectives. Training opportunities must first be in the best interest of the government. In no instance may training be solely for the benefit of the employee. Within the authorities and limitations of the Government Employee Training Act, special emphasis will be given to training, which would qualify employees for other positions in the event of displacement, including displacement by virtue of automation.

Issue 10: Use of Government Resources and Facilities – Agency’s Offer

Section 1. No employee, when acting on behalf of the Union, may be permitted the free or discounted use of government property or any other Employer or Agency resources if such free or discounted use is not generally available for non-agency business by employees. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems. Any use of government property or resources that is available to the KSC workforce for free or discounted use may also be utilized for Union activities on similar terms and conditions and in accordance with applicable law and NASA policy (e.g., current NPD 2540.1H or subsequent policies).

Section 2. The Union will be notified of all employee orientation sessions in which a bargaining union member is present and will be placed on the agenda. This time will be used by the Union to introduce the employees to their exclusive representative, which may be done through an oral presentation and/or the provision of materials. It is understood the time will not be used to solicit membership.

Issue 11: Hours of Work – Agency’s Offer

Section 1. The Employer has the responsibility and right to establish tours of duty and assign employees to work tours. The Employer will comply with 5 U.S.C. Chapter 61, Subchapter II, Flexible and Compressed Work Schedules. An employee assigned to a maxi-flex tour of duty may elect the time of such employee’s arrival at and departure from work, within designated hours set by the Employer.

Section 2. Employees may be assigned to existing work tour without further negotiation. New types of work tours must be negotiated prior to implementation. When a special work tour may be desirable for one individual, or one position, the supervisor of that organization, with concurrence of the Union, may initiate a request to establish this tour.

The maximum number of non-overtime hours which an employee may include on the work tour on any given day is ten (10) hours. Work hours must be accounted for in quarter (.25) hour increments, subject to exceptions as required by law or regulation.

Section 3. Limited exceptions to the standard business hours to permit employees to work their basic work requirement within the extended hours, Monday through Friday, may be requested by employees of their organizations Director or designee.

Section 4. Standard work tour within the basic workweek consist of five (5) consecutive days, Monday through Friday, and are scheduled to include eight (8) duty hours and a minimum of thirty (30) minutes for lunch. (Example: 8 a.m. to 4:30 p.m., including .5 hour for lunch, Monday through Friday.)

Section 5. First Forty Tour will be restricted to tours of last resort. In no case will such assignments be used to avoid the payment of overtime, night differential or holiday pay unless it has been determined by the Center Director that the use of such assignment is necessary due to funds limitation.

Section 6. The work tour known as Maxi-flex should be considered a standard tour. This tour should generally be subject to the following parameters, but may be adjusted by the Employer. Any changes to the parameters listed below will be subject to impact and implementation bargaining; however impact and implementation bargaining should not delay the Employer's ability to meet operational and business needs.

Section 7. Employees may earn credit hours in quarter (.25) hour increments during the employees assigned work tour. Credit hours cannot be earned on a holiday. Employees may use previously earned credit hours, subject to management approval, in the same manner as they use leave.

Section 8. The agreed upon work tour indicates the arrival and departure times and the number of hours the employee plans to work each day in the pay period.

Section 9. However, employees cannot vary their arrival and departure times:

- a. To be outside the assigned work tour; or
- b. To interfere with core hours, unless otherwise designated by their approved Maxiflex schedule; or
- c. If it would interfere with previously scheduled meetings.

Section 10. Changes in the basic workweek and work tour for employees shall be made only in those areas where the work requirements are clearly on a regular, recurring and continuous basis, and schedules can be determined in advance. No such assignments shall be made solely for the purpose of avoiding the payment of overtime, night differential or holiday pay.

All tours of duty outside the basic workweek and work tour shall be established and affected employees notified in writing at least two weeks in advance. Exceptions to the time elements specified in this section will be made only when the change is directly related to an emergency or an unforeseen work situation. In such cases the Union will be notified.”

Issue 13: Details and Special Assignments – Agency’s Offer

Section 1. The Parties recognize that details and special assignments are necessary to meet the staffing needs of the Agency and to provide training, experience, and career development opportunities for bargaining unit employees. Assigning employees to details or other special assignments and is a management right. The terms of this Article will be applied fairly and equitably.

- a. A detail is the temporary assignment of an employee to a different position or a different set of job duties for a specified period with the employee returning to his or her organization and grade level at the end of the assignment. Details may be to positions at the same, higher, or lower pay grade without change to status and pay. If the detail to a higher grade will exceed 120 days, the competitive procedures as found in this contract must be followed.
- b. A special assignment is when an employee assumes temporary collateral duties or responsibilities outside of his or her organization, which have agency-wide impact, while continuing to perform the primary duties and responsibilities of his or her official position.

Section 2. The Employer will select employees for details and special assignments consistent with the Agency’s Employer’s right to assign work and/or employees consistent with 5 U.S.C. 7106(a), its mission, staffing and workload requirements, and the terms of this Agreement. In making these selections, the Agency Employer will consider such factors as:

- a. Employee knowledge, skills, abilities, experience, and relevant competencies;
- b. Organizational needs, including the extent to which workload would be interrupted in the office from which the selectee may come;
- c. Other relevant job qualifications;
- d. Developmental needs of the employee; and
- e. Employee expressions of interest.

Section 3. To the extent that these opportunities do not interfere with the Agency’s mission requirements, confidentiality of assignment, specialized skill needs, or other legitimate business needs, the Employer will solicit all eligible participants for details and special assignments using the current agency process and systems.

Section 4. Employees involuntarily selected for details may request consideration of any personal hardship (such as a serious personal or family illness) either before or during the detail. Personal hardship requests shall be submitted in writing and shall not be unreasonably denied. Any denials of personal hardship requests shall be provided to the employee, with an explanation for the denial, in writing, if requested. To the extent an employee encounters personal hardship with the continuation of a detail, the Employer will attempt to either discontinue or modify the detail, where reasonable and appropriate.

At the end of an involuntary detail, an employee will return to his or her grade level. Employees may return to a different organization if mutually agreed between employee and management.

Section 5. The Employer agrees to use competitive placement procedures when detailing employees for more than one hundred twenty (120) days to a higher-grade position.

Issue 15: Merit Promotion and/or Placement – Agency’s Offer

Section 1. The Employer adheres to merit principles in all promotion and/or placement actions. All positions will be filled by selection from among the best-qualified candidates available. Selections will be made without regard to age, color, disability, ethnicity, sex, national origin, race, religion, sexual orientation, gender identity or other non-merit factors and will be based solely on job-related requirements.

Section 2. Employees who are temporarily absent (such as in military status, international organization assignment, Intergovernmental Personnel Act assignments, or absent for other legitimate reasons) may remain eligible for promotion while temporarily absent. However, to be considered for promotion or placement, the employee in this status must apply using the same processes as other employees. An employee who will be temporarily absent as described above should contact the Office of Human Capital for guidance.