

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

ENVIRONMENTAL PROTECTION AGENCY, GULF
ECOLOGY DIVISION

And

NATIONAL ASSOCIATION OF INDEPENDENT
LABOR, LOCAL 9

Case No. 20 FSIP 033

DECISION AND ORDER

This case concerns a request for Panel assistance filed by the Environmental Protection Agency, Gulf Ecology Division (EPA or Agency) involving the negotiations of the last 14 remaining articles in the Parties' successor collective bargaining agreement (CBA) between it and the National Association of Independent Labor, Local 9 (NAIL or Union). This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed the matter to be resolved in the manner discussed below.

BARGAINING AND PROCEDURAL HISTORY

The mission of the EPA is to ensure that Americans are protected from significant risks to human health and the environment, national efforts to reduce environmental risk are based on the best available scientific evidence, and that federal laws protecting human health and the environment are enforced fairly and equitably. The Union represents all of the bargaining unit employees (BUEs; approximately 46 impacted employees) at EPA's Gulf Ecosystem Measurement and Modeling Division (GEMMD) in Gulf Breeze, Florida. Specifically, GEMMD provides leadership and research in marine, estuarine, and watershed ecology and ecotoxicology to predict and assess the effects of human-generated stressors on the aquatic resources of the U.S.;

uses its research to help determine ecological conditions, evaluate rates and causes of declining systems, and predict future conditions under various alternative water quality scenarios; and works with communities, states, and the region to develop tools and provide a scientific basis for sustainable environmental management decisions that maximize economic, ecosystem, and social outcomes and resiliency. The Parties are covered by a collective bargaining agreement that was negotiated in 2001 (2001-CBA). The Parties continue to be covered by the terms of the 2001-CBA until agreement is reached on the terms of the successor CBA.

In June 2018, the Agency provided notice to the Union of its interest in reopening the 2001-CBA for negotiations. The Parties exchanged ground rules proposals. In September 2018, the ground rules were executed. In October 2018, the Union provided its initial proposals. Of the 47 Articles in the 2001-CBA, the Union proposed no change to the Preamble and 32 Articles, only slight modifications to 6 articles, and changes to 9 Articles. The Agency's initial proposals, provided in November 2018, envisions a much more streamlined CBA, proposing for the CBA to consist of only 8 Articles (instead of 47 Articles). The Parties negotiated on and off from December 2018 through March 2019 and engaged with the assistance of the Federal Mediation and Conciliation Services (FMCS) from May 2019 through October 2019. In April 2020, the Panel asserted jurisdiction over the 14 remaining provisions and ordered the Parties to resolve the impasse through Written Submissions. The Parties were directed to provide their submissions by April 27, 2020, and their rebuttals by May 11, 2020. The Union filed a written motion for extension of time; 60 days beyond the April 27, 2020-due date. The basis for the request was because all of the employees had been teleworking due to Covid-19, and it was difficult to gather all of the relevant information necessary to respond. The Agency confirmed VPN challenges raised by the Union but also opposed the requested extension. The Panel granted a 3-week extension to both the submission and the rebuttal.

Both Parties provided timely submissions. However, on June 3, 2020, the Agency filed a motion to strike the Union's rebuttal submission. In its procedural order, the Panel directed the Parties to submit a statement of position (no more than 28 pages, plus attached evidence¹) and a rebuttal (no more than 14 pages) to resolve the impasse over the 14 articles of the Parties' CBA. The Union's SOP submission was 25 pages, plus 37 attachments (including 17 affidavits) for a total submission of over 500 pages. In its motion, filed after the rebuttals were filed, the Agency argues that the Union's statement of position violated the intention of FSIP's page limitation directive as the Union's 17 affidavits are comprised almost entirely of arguments and positions. The Agency argues that the Union extended its argument into 17 affidavits, the Union's SOP, in essence, is many dozens of pages longer than the Panel's directive allowed. The Agency also provided an affidavit with its rebuttal. The Agency's affidavit is 19

¹ The Panel's procedural letter states in FN2 that Evidence may include, but is not limited to affidavits, reports, charts, graphs, and comparable data.

pages long, in small font. Just as the Union arguably used the affidavits, not simply to support their arguments, but to present their arguments, the Agency's affidavit goes beyond providing support.

The Panel's procedural letter states (in FN2) that Evidence may include affidavits. The Panel provides no guidance on the purpose of affidavits or limit to the number of attachments. While it appears to the Panel that both Parties may be avoiding the page limitation of the submissions by taking advantage of the opportunity to provide attachments, since the Parties have not technically violated the Panel direction by providing their affidavits, the Panel rejects the Agency's motion regarding the affidavits.

The Panel's directive was that rebuttals were to be no longer than 14 pages and were to be double-spaced. The Agency argues that the Union's submission was 14 pages long. However, the Union's submission, a Microsoft Word document, is not actually double-spaced, as required in the Panel's instructions. When the document is corrected to be double-spaced, it appears to actually be 18 pages long. The Agency argues that the Union has failed to comply with the Panel's procedural directive on submissions. The Agency asks that the Union not be rewarded for its disregard for the Panel's instructions. As such, the Agency moved that the Panel not consider the Union's rebuttal. The Agency noted that in 2018 FSIP 059, the Union submitted an 11-page document after being instructed to submit a 10-page document and the Panel decided not to consider the last page. In this case, the Agency argues that because the Union has attempted to conceal that its submission exceeded the page limitation, the Agency moves that the Panel to decline to consider the Union's entire rebuttal.

The Panel takes notice of the discrepancy in the Union's filing, and takes the Agency's concern under advisement. However, the Panel declines to reject the entire Union rebuttal.

PARTIES ARGUMENTS AND PANEL DECISIONS

There are parts or all of 14 articles that the Parties could not reach agreement over. Due to the sheer number of issues in dispute, the Parties' proposals will not be set forth in this memo. Rather, they are attached to this document.

Article 7 – Midterm Negotiations

This article provides for procedures and requirements in conducting midterm negotiations through the life of the CBA should there be a proposed change in conditions of employment that triggers a bargaining obligation under 5 U.S.C. Chapter 71. Both Parties proposed procedures for bargaining. In essence, the Parties disagree over the notice and bargaining schedule, should the Union choose to bargain over the proposed change. The current 2001-CBA provides for 10 work days between each

administrative step. Under the Agency's schedule, the Agency is essentially providing for 3 work days between each step: Parties could begin to bargain in as little as 23 days (including notice, briefing, and exchange of proposals) after the proposed change is served on the Union. Under the Union's proposal, the Union has shortened the schedule by providing for 10 calendar days between each step: bargaining could begin in as little as 40 days. The Agency failed to demonstrate how the current contractual timeframes (which have been in place since 2001) inhibit their ability to effectively implement changes. While the Union's affidavit supports a preference for the current procedures, the Union provides little more than speculation that a 3-workday time frame would be impractical. The Panel favors a more efficient and effective approach to bargaining. Both Parties have proposed a shortened time frame from the 2001-CBA. The Panel orders the Parties to adopt the Agency's proposal with modifications:

- Adopt Section 1.
- Adopt Section 2.
- Under Section 3, the Union shall have 5 workdays (instead of 3) to submit a written demand to bargain.
- Section 4.E. (3) and (4), and Section 5.J. reference entitlements to Official Time. Those references are to be removed. Official Time is addressed by the Parties in Article 4, which has been agreed to by the Parties and is not before this Panel.
- Section 5.L. addresses Caucuses. The last sentence is to be removed. That sentence limits holding caucuses at the begin or end of the day. The Parties should be free to determine the best time, within the flow of the bargaining, to hold a caucus.
- Section 5.O. addresses Impasses. The Parties will edit the language accordingly, "The Union's failure to file a request for assistance with the FSIP within five (5) workdays of release by the FMCS mediator may constitute a Union waiver."

Article 11 - Work Schedules

This article provides the work schedules that will be available and procedures for requesting and approving schedules. The Agency offered no challenges or concerns with the current terms regarding work schedules, and the Agency confirms that no grievances have been filed under the 2001-CBA over work schedule decisions. Nevertheless, the Agency offers a proposal that is significantly different from the 2001-CBA. Under the Agency's proposal, the Agency is attempting to establish a new standard for work schedule decisions, which would not be subject to challenge or review (i.e., not grievable); the Agency rejects adding any new or additional schedules or

flexibilities (e.g., gliding schedule); the Agency offers a new procedure (e.g., submission of a particular request form) for an employee to obtain approval for a Maxiflex schedule; and, most significantly, the Agency proposes that decisions of the manager not be subject to review or an arbitrator's judgement (i.e., not grievable).

The Union's proposal essentially maintains the terms of the 2001-CBA, with a few notable additions. The Union notes that the recording of time should now be done in the current T&A system: People Plus Tracking System. More significantly, the Union proposes the availability of a Gliding Schedule, which is not currently available under the terms of the 2001-CBA.

The Agency failed to demonstrate how the current contractual work schedule terms and procedures inhibit their ability to effectively operate. In its own statement of position, the Agency notes that there have been no grievances over work schedules in 19 years. In its submission, the Agency reminds the Panel that employees have no statutory right to a schedule and, therefore, "we should not lose focus on the reason employees have jobs is to contribute to the efficient and effective fulfillment of the Agency's mission." For that reason, the Agency asserts that their proposals are "superior in all facets to the 2001 contract."

The Panel orders the Parties to adopt the Union's proposal (which is essentially the 2001-CBA terms), with modifications:

- Gliding schedules (Section 3(b)(4)) will not be imposed. While the Union demonstrated an interest in the employees have the gliding schedule available, the Union failed to demonstrate the need for or, more importantly, the impact on the efficiency of the service in offering gliding schedules.

Article 12 - Credit Hours

This article is directly related to the previously addressed work schedule article above. This particular article, as proposed by the Agency, would only apply to credit hours granted under the Maxiflex program: the availability and procedures for requesting and approving. The Union has essentially proposed the terms of the 2001-CBA, making the credit hour option available to not only employees approved to work a Maxiflex schedule, but also applying to employees approved to work a Flexitour and (as proposed by the Union above) a Gliding schedule.

The Agency offered no issues or concerns that need to be addressed with the changes they have offered in this proposal. Nevertheless, the Agency argues that their additional requirements are "more favorable to employees." The common change

offered by both Parties is the requirement that the earning of credit hours must be pre-approved by the supervisor. Under the current 2001-CBA, Section 4, employees are allowed to work the credit hours without pre-approval of the supervisor. The Union's proposal (Section 4) addresses that by requiring that the employee must coordinate with their supervisor for the pre-approval of credit hours. The Agency's proposal requires pre-approval, introduces a new form that must be completed by the employee (i.e., Maxiflex Pay Period Time Sheet, used in addition to the T&A system) and also limits how many hours a supervisor would normally be allowed to approve (e.g., 2 hours).

While both Parties offered language that would increase the controls of management, by requiring preapproval, the Agency's proposal, without justification, is more limited in eligibility, requires unnecessary paperwork, and introduces an artificial cap on the supervisor's approval without explanation. The Panel orders the Parties to adopt the Union's proposal. The Parties should be advised that as the Panel has not imposed the Gliding schedule proposed by the Union, credit hours would not be available for a Gliding schedule.

Article 16 – Annual Leave

This article addresses rights and obligations regarding annual leave. In accordance with OPM guidance, an employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. The Union's proposal is essentially the terms of the 2001-CBA, except additional information added to Emergency Leave requirements. The Agency offers a revised article. The main distinction between the proposals surrounds the conditions to consider in granting a leave request and emergency leave requirements when an employee can be called back from leave to perform work.

The Parties have acknowledged that the 2001-CBA procedures seemed to have worked effectively – there were no examples provided that leave was improperly denied. Using the 2001-CBA as the starting point, under Section 4, the Union's criteria for reviewing and approving leave is consideration of workload and staffing. Under the Agency's proposal, the supervisor is to consider, "personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency at the employee's work unit." Under the Agency's proposal, there are so many criteria, both within and outside of the employee's control, it would be difficult to imagine a supervisor ever granting an

employee annual leave. Ultimately, supervisors are responsible for the overall planning, coordination, and approval of their employees' annual leave throughout the leave year so that the agency's mission and employees' needs are met, and so that employees do not approach the end of the leave year with a significant amount of annual leave that must be used or forfeited (i.e., "use or lose"). With so many factors to consider, a supervisor is more likely to deny the request, forcing forfeiture of leave and restoration actions². As neither party suggested that the use of leave and approval of leave has been a problem over the last 19 years, adding more criteria that will likely create issues isn't favorable. The Panel orders the Parties to maintain the current criteria (Union proposal; 2001-CBA, Section 4).

The Parties are in disagreement over how Annual Leave used for emergencies should be handled. Under the 2001-CBA, Section 4, approval of request for annual leave for unforeseen emergency reasons will be granted as the circumstances warrant, if possible. The Union's proposal maintains that language and adds procedures for requesting leave during a personal emergency; they must notify the supervisor or designated individual normally within two (2) hours after the start of the shift. Under the Agency's proposal, approval of requests for annual leave for unforeseen emergency reasons may be granted, as the circumstances warrant, and if possible. The Agency proposes procedures for requesting leave during a personal emergency; before the employee's scheduled tour of duty or, if that isn't possible, the employee must make the request as soon as possible. The Agency goes on to propose that if the employee is physically unable to make the request himself/herself, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified.

The Agency has no obligation to grant the leave requested, even in an emergency situation. The Panel orders the Parties to adopt language that reflects that the approval is not a requirement; the request may be granted. By definition emergencies are serious, unexpected, and often dangerous requiring immediate attention. If an employee is requesting leave under the conditions that meet the definition of "emergency", the least requirement necessary to facilitate the supervisor to make the determination of approval is preferable. The Panel orders the Parties to adopt language that provides for the request of leave.

Both Parties proposed language regarding calling employees back to work when they are on approved annual leave. The Agency proposes that they will only call employees back when the Agency determines that it is necessary for the employee to perform a specific time sensitive work duty. The Union proposes (same as 2001-CBA) that the employer will make every reasonable effort to avoid calling an employee back from leave. The Union's language provides no standard. The Agency's language

² Forfeited annual leave may be restored under 5 U.S.C. 6304(d)

provides a standard (i.e., necessary for the employee to perform a specific time sensitive work duty). The Panel orders the Parties to adopt the Agency's section 9 regarding call-backs.

In sum, the Panel orders the Parties to adopt the following:

- Union proposal sections 1-3.
- Union proposal section 4, with modification for emergencies – the request may be granted, as circumstances warrant. An employee unable to report for duty because of a personal emergency can request annual leave by notifying the supervisor or designee.
- Union proposal sections 5, 7, 8.
- Agency - section 9. Call Back From Annual Leave.

Article 17 – Sick Leave

This article addresses rights and procedures for requesting and approving sick leave. Sick leave is a paid absence from duty, granted to federal employees (full time and part-time) by Statute (5 U.S.C. chapter 63, subchapter I) and OPM regulations (5 CFR, part 630, subparts B and D). An employee is entitled to use sick leave for: personal medical needs; family care or bereavement; care of a family member with a serious health condition; and adoption-related purposes. If the employee complies with the notification and medical evidence/certification requirements, the agency must grant sick leave under the regulations.

There are a few major differences between the Agency's and the Union's proposal. The procedures executed under the 2001-CBA allowed an employee requesting sick leave to provide notice to their supervisor up to 2 hours after the start of the employee's shift. The Agency proposed procedures requiring that the employee request, approve and schedule the sick leave (presumably in the electronic system) before the employee is absent from work. Under the Agency's section 3, unless it is not possible to make a request for sick leave before the employee's scheduled tour of duty (e.g. the employee is totally incapacitated and unable to communicate to the employer), the employee must make the request before the work tour. If the employee is physically unable to make the request himself/herself, the employee must take proactive steps; someone else needs to make the notification for the employee.

The Union argues that the Agency failed to demonstrate that there was a problem with the 2001-CBA procedures. Further, the Union argues that it is impossible for employees to meet the request and approval requirement during up to 40% of the pay period³, because the electronic leave system is unavailable to employees. The Agency did not refute that the timekeeping system denies employees the ability to submit a leave request for several regular days each pay period.

The Union proposes, consistent with the terms of the 2001-CBA, that sick leave will be granted if the employee furnishes notice to the supervisor no later than two hours after the start of the employee's shift. The Union's proposal goes on to state that the 2-hour window would not apply in an emergency situation that precludes the 2-hour notification. The Union argues that this procedure, providing for a 2-hour notification window, has been effective in this work environment: employees perform scientific research with flexible schedules revolving around the core hours⁴.

The Agency argues that in order to properly manage the work, the supervisor needs to know who is coming to work before it is two hours into the workday. A supervisor should be able to expect staff to be working during their assigned tour, especially during the core hours, unless leave has been approved. It is not unreasonable for a supervisor to expect an employee to provide notice when they are unable to come to work due to medical incapacitation as defined by the Statute. It is unreasonable, however, to demand the employee to first meet a requirement that, 40% of the time, they are unable to meet due to the Agency's systems that they are relying upon to facilitate the employee meeting the requirements.

The Panel orders the Parties to adopt the request procedures in Section 2 of the 2001-CBA, with modification:

Earned sick leave will be granted to employees when they are incapacitated and unable to perform their duties provided that employees are not reporting for work due to circumstances described in applicable laws and regulations. In requesting sick leave, employees must furnish notice to the supervisor or the supervisor's designee as soon as possible prior to the start of the employee's shift, but no later than 1 hour before the start of the employee's shift, unless emergency conditions preclude such notification.

The Parties are in disagreement over the medical documentation needed to substantiate the request for leave. In accordance with OPM regulation, an agency may grant sick leave only when supported by administratively acceptable evidence⁵. An

³ In an affidavit provided by the Union, and the Agency did not refute, the employees are hindered from entering leave requests for approval for approximately 40% of each pay period due to the Agency's PeoplePlus (PPL) timekeeping system being offline from Weds — Fri during the second week of every pay period, and the first Monday of each pay period.

⁴ Core hours are the designated period of the day when all employees must be at work, unless on approved leave.

⁵ 5 CFR 630.405 (a)

agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence. If the employee fails to provide the required evidence within the specified time period, he or she is not entitled to sick leave. Both the Agency's Section 5 and the Union's Section 5 proposals provide that normally the employee would not be required to provide a medical certificate furnished by a doctor to meet the requirement of administratively acceptable evidence qualifying for sick leave. The Union's proposal (similar to the 2001-CBA) outlines the exceptional times where additional medical documentation would be required: leave abuse; to prove capability to return to work after extended leave usage; and questionable circumstances surrounding the leave request. The Agency argues that the Union failed to recognize another common exception found in most agencies and available to agencies under 5 CFR 30.405 - absence in excess of three (3) workdays.

The Panel orders the Parties to adopt a modified version of the Agency's Section 5. The Agency should have an opportunity, at their option, to request the employee to provide a medical certificate, as defined by 5 CFR 630.201(b), for absences in excess of three (3) workdays.

Section D. Medical Certificate.

1. Medical Certificate - As defined by 5 CFR 630.201(b), a "Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment."

2. When a Medical Certificate Is Required.

a. The supervisor may require a medical certificate for any absence in excess of three (3) workdays.

b. An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

Supervisors must exercise the option of requiring medical documentation with discretion and sensitivity. During the current COVID-19 Pandemic, the Occupational Safety and Health Administration (OSHA) has provided guidance discouraging employers from requiring their employees to visit medical doctors in order for the employees to secure medical documentation. "Guidance on Preparing Workplaces for COVID-19" states:

"Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness, or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide documentation in a timely way." "Maintain flexible policies that permit employees to stay home to care for a sick family member...."

In sum, the Panel orders the Parties to adopt the following with regard to Article 17 – Sick Leave:

- Accrual of Sick Leave - Adopt the provisions of the 2001-CBA, Section 1.
- Requesting Sick Leave - Adopt the sick leave request procedures in Section 2 of the 2001-CBA, as modified above.
- Granting of Sick Leave – Adopt the provision of 2001-CBA, Section 3.
- Evidence to Support Sick Leave - Adopt the provision of Section 5 of the 2001-CBA. Add the modified version of the Agency's Section 5 above regarding medical certificate.
- Adopt the provision agreed upon by the Parties regarding the Voluntary Leave Transfer Program (VLTP) under 5 CFR 630.901.
- Adopt the provision agreed upon for the Bone Marrow or Organ Donation program under 5 U.S.C. Section 6327.

Article 19 – Performance Management

This article addresses performance plans and performance-based actions. The 2001-CBA regarding Performance Evaluations is quite long; 34 sections. Both Parties proposed a more streamlined version of the article. The Union proposed 12 sections. The Agency proposed 6 sections. The Union's and the Agency's sections 1-5 are essentially the same, both offering more streamlined provisions for performance management. The Parties begin to diverge with Agency's Section 6 and Union's section 8, addressing unacceptable performance. The major areas of disagreement concern the establishment of a performance assistance plan (PAP) before putting the employee on a performance improvement plan (PIP) and the duration of time an employee can be on a PIP.

The law provides for two different processes for taking performance-based actions against a federal employee. If a performance-based action is taken under Title 5 CFR Part 432, a formal opportunity to improve period is required. If a performance-based action is taken under Title 5 CFR Part 752, an opportunity period is not required.

The Parties agreed in the 2001-CBA, that a Performance Assistance Plan (PAP) would be used to provide a poor performing employee notice of poor performance and to document counseling. An informal counseling memorandum would notify an employee that his/her performance in at least one critical element has fallen below the acceptable level. The PAP identifies deficiencies and provides assistance by describing the actions needed to improve performance to an acceptable level. A PAP is considered informal because it does not constitute a formal opportunity to improve performance. Under the Union's proposal, the PAP opportunity period would last at least 45 days.

If an employee's performance does not improve after the PAP, the Agency would still need to give the employee a formal opportunity to improve his or her performance, providing some of the same notifications and support. Many agencies have adopted the use of the Performance Improvement Plan (PIP) to provide the formal opportunity to improve period. This formal period is designed to give the employee an opportunity to bring his or her performance up to an acceptable level. It is also the supervisor's opportunity to clearly and formally express his or her expectations and the consequences of not meeting those expectations. If the employee fails to improve to an acceptable level by the end of the opportunity period, further action is warranted, including removal. Under the 2001-CBA terms, and the Union's proposal, the PIP period would be not less than an additional 120 calendar days.

The Agency primarily relies on the Trump Executive Order 13839 (EO 13839) as their basis for disagreement over the PAP and the length of the PIP opportunity period. Under EO 13839, removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors. The OPM July 5, 2018-guidance further states that the EO 13839, "precludes agencies from entering into any agreement that would purport to bind the agency to ... require affording employees any additional performance assistance period (e.g. PAP, etc.) or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period under 5 U.S.C. 4303(c)(6)." The EO further discourages agencies from entering into an agreement that affords a formal opportunity period (e.g., PIP) longer than 30 days.

The Agency has offered no PAP, arguing that the additional informal opportunity period is unnecessary and in conflict with good public policy (i.e., EO 13839). While the Agency has offered a PIP period, the Agency's formal opportunity period would be 30 days, consistent with EO 13839, as opposed to the 120-day PIP period in the 2001-CBA and the Union proposal. The Agency argues that the Union's proposals to have a 45-

day informal PAP opportunity period, plus a 120-day formal PIP opportunity period makes taking performance-based actions time-consuming and difficult. The Agency asserts that a 30-day formal PIP period is sufficient for an employee to demonstrate improvement.

The Union disagrees. Most of the employees in this bargaining unit are technically-trained science professionals who conduct research that may involve experimental design, experimental execution, data analysis, animal care, technical laboratory protocol execution, quantitative sample analysis, field sampling, literature interpretation and technical writing of many kinds. The Union argued that the complexity of the work for these research scientists makes it difficult if not impossible for a supervisor to measure improvement in just 30 days.

While the EO 13839 does not mandate a 30-day PIP period, it does recommend a 30-day period. The Panel has now consistently written that the President's EOs on labor relations matters are an important source of public policy and the Panel, when appropriate, has given weight to the principles espoused in those EOs. This Panel has made no ruling on having a PAP, however, the Panel has consistently limited the formal opportunity time period to improve to 30 days (e.g., 20 FSIP 012). The Union claimed that a 120-day formal improvement period (in addition to the 45-day informal PAP period) is necessary because of the complex nature of the employees work as scientific researchers; however, the Union did not provide any supporting data to conclude that a 30-day period would not, in some circumstances, be sufficient, e.g., the number of employees placed on a PIP during the term of the Parties' contract and time needed for each employee to demonstrate improvement (particularly when that time exceeded 30 days). In the absence of supporting information, the Panel will provide weight to the EO 13839, section 4(c), while also providing an opportunity to expand the period if appropriate given the complexity of the work. The Panel orders the Parties to adopt just the PIP formal opportunity period, and that opportunity period be no less than 30 days.

In addition to the timeframe for being on a PIP, the Parties disagree over the content of the PIP. The Union proposed a prescriptive list of elements that must be in the PIP. The Agency proposal offers very little in terms of required content to the PIP. The PIP formal opportunity period is designed to give the employee an opportunity to bring his or her performance up to an acceptable level. It is also the supervisor's opportunity to clearly express his or her expectations and the consequences of not meeting those expectations. In order to effectively provide formal notice of the improvement opportunity, the Panel orders the Parties to adopt the following content in the PIP:

- The duration of the opportunity period for the employee to demonstrate acceptable performance.

- A statement of the specific critical element(s) for which performance is at an unacceptable level.
- A description of the specific actions needed to improve performance to an acceptable level.
- The performance requirement(s) and, if applicable, standard(s) that must be attained in order to meet the acceptable level.
- The consequences of failing to improve during the opportunity period.
- The type(s) of assistance that will be offered to the employee to improve performance. This assistance may include formal training, on-the-job training, counseling, and coaching.

In sum, the Panel orders the Parties to adopt the following with regard to Article 19 – Employee Performance:

- Agency section 1, modified to eliminate the term “master” in master collective bargaining agreement.
- Section 2, definition as proposed by both Parties.
- Agency section 3, modified in 3(B) by eliminating “reserved management right”.
- Agency section 4.
- Agency section 5.
- Agency section 6, Unacceptable Performance – modified in section 6 (D) to provide a PIP formal opportunity period of no less than 30 days.

Article 21 – Disciplinary Action

This article addresses procedures for taking disciplinary actions and the maintenance of those actions in the personnel files of employees. The Union proposes to maintain the 2001-CBA, including the definition of a disciplinary action: letters of caution, letters of reprimand, and suspensions without pay of 14 days or less. Under the Union’s proposal, all disciplinary actions are grievable. The Agency’s proposal does not include letters of admonishment (i.e., letters of caution) as discipline, which means those supervisory counseling tools could not be considered discipline, are not maintained in an employee’s personnel file and, most importantly, are not grievable. The Panel orders the Parties to limit disciplinary actions in the CBA to include the formal disciplines: letters of reprimand and suspensions of 14 days or less. All other informal disciplines are just that, informal.

The next area of dispute involves taking disciplinary action against an employee. The 2001-CBA and the Union’s proposal includes the standard of “just and sufficient

cause". The principle of the "just cause" standard is a common disciplinary standard imposed to ensure actions are just and appropriate. These Parties have adopted a "just and sufficient cause" standard since at least 2001. The Parties presented no evidence or argument regarding the use of the standard or concerns with the execution of that standard. With no concerns raised, the Panel orders the Parties to maintain the current contract standard.

The next area of dispute concerns the length of time that a written reprimand will be retained in the Official Personnel File (OPF). Under the 2001-CBA and the Union's proposal, the letter of reprimand is retained for 2 years. The Agency has proposed a 3-year retention period, citing consistency with EO 13839⁶. Neither party presented evidence to demonstrate the appropriateness or challenges with a 2-year versus a 3-year retention. As discussed above, absent persuasive evidence otherwise, the Panel is inclined to provide weight to the EO 13839. The Panel orders the Parties to adopt a 3-year retention period for written reprimands.

The next area of dispute is over the number of days in advance the Agency would be required to provide an employee before suspending the employee for up to 14 days. Both Parties agree that the employee should be afforded advanced notice. Under the 2001-CBA and the Union's proposal, advanced notice was defined as at least 15 days. Under the Agency's proposal, they simply state the advanced notice will be provided, with no time frame commitment. The Agency provided no explanation for the change in the time frame commitment. The Agency provided no issues, concerns, or examples where length of the notice has been problematic. The Panel orders the Parties to maintain the current contract language concerning advanced notice for a disciplinary action.

The next area of dispute involves an employee's right to representation, including a Union representative. While the Agency acknowledges in their proposal the right to representation, they do not include mention of a NAIL union representative. The 2001-CBA and Union proposals include that notation. While the bargaining unit employee's right to a Union representative has not changed, the Agency provided no explanation why they would not mention that in the CBA. The Panel orders the Parties to maintain

⁶ Section 2(e) provides - When taking disciplinary action, agencies should have discretion to take into account an employee's disciplinary record and past work record, including all past misconduct -- not only similar past misconduct.

Section 5 of EO 13839 provides that agencies 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 a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

the current contract language concerning right to representation in responding to a disciplinary action.

In sum, the Panel orders the Parties to adopt the following with regard to Article 21 – Disciplinary Action:

- Union section 1, modified to read as follows: Disciplinary actions are defined as letters of reprimand and suspensions without pay of 14 days or less.
- Union sections 2-4
- Union section 5, modified to read that the letter of reprimand will be retained in the OPF for up to three (3) years.
- Union sections 6–7

Article 22 – Adverse Action

This article addressed procedures for taking adverse actions, including due process requirements. An adverse action is a removal, suspension for more than fourteen (14) days, furlough without pay for thirty (30) days or less, or reduction in pay or grade. “Furlough” means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons. This is a short article, generally following the rights and procedures covered in 5 U.S.C. Chapter 75 (i.e., the MSPB statute and regulations).

The Union essentially proposed the 2001-CBA language, with additional language to address furloughs due to unforeseen circumstances. The Union’s proposed language would allow the Agency to provide a shorter than 30-day advanced notice in the case of the need to conduct a furlough due to unforeseen circumstances (e.g., a lapse in funding). The Agency did not agree to that procedural reprieve.

The Agency’s language goes beyond following the statutory requirements. They also seek to include policy principles articulated in the EO 13839 (e.g., employees shall maintain high standards of integrity). The Union did not agree to incorporate these policy principles in the CBA. The Panel orders the Parties to maintain the prior 2001-contract language, without modification. Neither Party demonstrated the need to change the procedures.

Article 23 – Negotiated Grievance Procedures

This article addresses, among other things, the procedures for filing within the Negotiated Grievance Procedure (NGP), representation in the NGP, and exclusions from the NGP. The Statute (5 U.S.C. 7121) requires that a collective bargaining agreement must provide procedures for the settlement of grievances. Those procedures shall be the exclusive administrative procedures for bargaining unit employees to resolve grievances which fall within its coverage of the article.

The Union has proposed to continue the terms and procedures in the 2001-CBA. The Parties have relied on the established procedures for almost 20 years. The Union notes that over the past 10 years there were only 2 grievances filed, which were resolved at the first step, and only 1 case in the 20 years that was not resolved through the grievance procedure and was taken to an outside arbitrator. Nevertheless, the Agency has proposed many changes to the NGP article.

The first substantive difference concerns the exceptions to the grievance procedure. While the Parties are in agreement over most of the exclusions, the Agency seeks to also exclude from the NGP: (1) performance progress reviews and (2) the receipt or non-receipt of an award.

The Panel has now consistently stated that it will impose a “broad scope” grievance procedure consistent with *AFGE*⁷, unless the moving party to limit that scope is able to “establish convincingly” the need for a limited scope. The burden for exclusion turns on “the particular setting” of the dispute. The Panel is not bound by *stare decisis* and reviews each case separately based on the facts and evidence of that case. It is up to the Parties, particularly the party moving to exclude from the NGP, in each case to establish convincingly that the Panel should adopt their proposals.

In the instant case, the Agency argues that progress reviews shouldn’t be grievable because they are not decisions or rating, but are a review of discussions of the employee’s progress under the performance plan. The Agency offered no data or evidence on how many progress reviews have been challenged and how disagreements over the reviews were resolved. There doesn’t seem to be a problem with the current process. The Agency failed to meet the burden in order to establish the need to exclude progress reviews from the NGP. The Parties will not be ordered to add progress reviews to the list of exclusions.

⁷ *AFGE Local 225 v. FLRA*, 712 F. 2d 640 (D.C. Cir 1983)(*AFGE*).

The Agency also seeks to exclude awards from the NGP. While the Agency cites the EO 13839⁸ throughout their submission to support other topics, the Agency did not rely on this policy in support of its proposal to exclude awards, nor did the Agency present any argument to support the exclusion of award under this CBA. The Agency failed to meet the burden in order to establish the need to exclude awards from the NGP. The Parties will not be ordered to add awards to the list of exclusions.

The next area of dispute concerns a representative of the employee in the NGP. The Statute (7121(b)(1)(C)) has been interpreted by the Authority to allow either an aggrieved employee to file a grievance on their own behalf or to have the Union file a grievance on their behalf. An aggrieved employee cannot select their own outside representative (outside of the union; the exclusive representative) to file on their behalf. The Agency argues that section 5 of the Union's proposal is problematic because it provides that the employee can file on their own behalf or the employee can be represented by "a person approved by the Union." The Agency argues that such designation by the Union is not allowed under the Statute. The Agency's argument is misplaced. The Statute allows a union to select its representatives. This proposed language allows the employee to be represented by the Union or by a designee of the Union. That is consistent with the Statute. The Panel rejects the Agency's arguments regarding Section 5.

The remaining dispute in this article concerns the time limits and steps to processing a grievance. The Union proposes to maintain the procedures that have been in place for 20 years. The Agency proposes new time lines and procedures. The Agency argues that the current standards and timeframes have "the potential to lead to confusion and litigation". The Agency makes that assertion, however, after 20 years of operating under these contractual procedures, the Agency provided no evidence or examples of confusion or litigation. The Panel orders the Parties to maintain the current 2001-CBA procedures.

Article 24 – Arbitration

This article addresses procedures for invoking and engaging in arbitration. The Union proposes that the terms of the 2001-CBA continue. After being in effect for 20 years, the Parties have only had 1 case go to arbitration under the CBA. The Union argues that the current terms are simple and straightforward. The Union's proposal

⁸ EO 13839 directs agencies to remove certain matters from the grievance procedure. Under section 4 of the EO, it requires agencies to remove disputes over "ratings of records" or "the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments the negotiated grievance procedure."

provides: a ten (10) workday time frame from receipt of the decision completing the negotiated grievance procedure to invoke arbitration; the moving party will request a list of seven (7) arbitrators from the FMCS; the Parties will select an arbitrator within ten (10) workdays of receipt of the list of arbitrators; a flip of a coin will decide which party will strike first from the list; a transcript of the hearing will be made by mutual consent of the Parties with the cost borne equally (one party at their own cost may have a transcript); arbitration hearings will normally be held on the Agency's premises during the regularly scheduled workweek; and the cost of the arbitrator's fee and expenses will be paid by the losing party; cost will be borne equally by the Parties in the case of a split decision.

The Agency proposes a significant number of changes. The Agency's proposal: provides a longer thirty (30) day timeframe for invoking arbitration (however, the Agency has created the right for the Agency to declare a matter moot – no longer arbitrable- should the Agency be delayed in providing its grievance answer for an extended period of time and the Union doesn't move the matter to arbitration without the Agency answer); requires the Parties to share the cost of arbitration (including the cost of renting space outside of the Agency space to hold the hearing); commits to paying the grievant's expenses to participate, but not the Union representative⁹; sets the hearing date within 90 days (even if the arbitrator hasn't agreed to those dates); limits the matters that the arbitrator can hear to just those matters raised at the earliest possible step (Step 1); requires the procedural matters be bifurcated from the merits; and requires that the arbitrator's decision be consistent with law, rule, regulation, AND executive orders.

Where the terms of this article in the current 2001-CBA is barely over 1 page, the Agency has proposed a 7-page procedure. The Union argues that the additions and modifications are unnecessary and not relevant to this local Union in Gulf Breeze, Florida. The Agency argues that the additional procedures and details will increase the possibility of less disagreement. However, the Agency presented no evidence that their basis for change (i.e., less disagreement) even exists. There have been nearly no arbitrations in this unit. Where there was 1 case, the Agency did not submit evidence that the procedures failed the Parties or inhibited efficient and effective resolution of the grievance. With no evidence to support the need for the significant changes, the Panel orders the Parties to maintain the current 2001-CBA terms regarding Article 24 – Arbitration.

⁹ The basis for some of the Agency's proposed changes is the EO 13837, which asserts that Agency' should not pay for travel and per diem for union representatives to performance representational duties.

Article 32 – Drug-Free Workplace

This article addresses policy and procedures around drug testing in the workplace. On September 15, 1986, President Reagan signed Executive Order 12564 (EO 12564), establishing the goal of a drug-free Federal workplace. The EO 12564 made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off-duty. That EO also required the head of each Executive agency to develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public. On July 11, 1987, Congress passed legislation implementing the Executive Order 12564. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. Sec. 7301 (herein refer to as Section 503), was passed in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program. In compliance with EO 12564, Section 503, and Section 502 of the supplemental Appropriations Act of 1987, the EPA created the EPA's Drug-free Workplace Plan (DFWP). That plan was incorporated into the 2001-CBA.

The Union proposes to continue the terms of the current 2001-CBA. The Union asserts that the relevant authorities and the EPA Drug-Free Workplace Plan continue to remain in effect, amendments¹⁰ are incorporated by reference in to the CBA, and the Agency's attempt to expand the article to alcohol is not supported by any existing agency policy.

The Agency's proposed article would still incorporate the EO 12564 and the EPA Drug and Alcohol-Free Workplace Plan (although the Agency provided no evidence that an Alcohol-Free Workplace Plan exists, nor did they provide it to the Union when the Union requested to see such a policy). The biggest change is the Agency intends to apply the rules and procedures adopted to address a Drug-free workplace to an Alcohol-free workplace. The Agency provided no authority for such changes. The Panel orders the Parties to maintain the current 2001—CBA terms for Article 32 – Drug-Free Workplace.

¹⁰ Since the publication by Substance Abuse and Mental Health Services Administration (SAMSHA) of the Model Plan for a Comprehensive Drug Free Workplace Program in 1989, changes in language and implementation practice have been made by SAMSHA by direction of OPM and the Interagency Coordinating Group (ICG) Executive Committee, acting for the Office of National Drug Control Policy, in coordination with the Department of Justice.

Article 43 – Miscellaneous and General Provisions

This article includes access to Agency regulations and directives regarding conditions of employment impacting this bargaining unit, the personal use of Agency equipment, and the selection of office space. It is a very short article. The Parties are essentially in agreement on 6 out of 9 provisions remaining before the Panel. The Union's proposal is generally the 2001-CBA, with updates and modifications reflecting agreements reached by the Parties over the years. The Agency's proposal also incorporates updated agreements reached by the Parties. The Panel orders the Parties to adopt the following proposals:

- Agency Section 1
- Union Section 3-7

The Parties disagree over an employee's access to their hard copy Official Personnel File (OPF). Federal employees are entitled to receive a copy of their OPF. To facilitate these requests, OPM encourages employees to contact their HR Department for access to their OPF. The Union has proposed a procedure for employees to request a copy of their OPF. The Agency argues that the proposal is not agreeable because it assigns duties to specific management officials. However, the Agency did not offer a better procedure for an employee to request and receive a copy of their OPF. The Panel orders the Parties to adopt Union Section 8.

Finally, the Parties disagree over the definition of "days" in the CBA for the purpose of filings and due dates. "Days" is referenced numerous times throughout the CBA. The Union offers a proposal to clarify that "days" means "calendar days" throughout the CBA. It is hard to know the impact of that clarification in every possible reference throughout the CBA. Neither party offered impact information regarding this proposal. Without being able to appreciate the impact of ordering that language, the Panel declines to order the Union's language that attempts to define "days" throughout the entire CBA.

Article 44 – Use of Agency Facilities

This article addresses the Union's use of the agency facilities to conduct representational activities. The current 2001-CBA states that the Agency will provide the Union with dedicated office space, telephone, computer and FAX machine. However, in the last 10 years (duration of the current Union President's tenure), the Union has not sought access to those commitments; they haven't needed them. The Union has used

their own assigned office space for occasional representational meetings with employees, and the government computer and telephone for representational purposes under the Statute. The office support that has been provided to the Union is a small unused room that the Union has used for storage and a lockable file cabinet. The Union's current proposal reflects these current conditions in the facility – use of their assigned office to conduct representation activity (when on approved official time) and a loan of a lockable file cabinet.

The Agency's proposal reflects changes made by the Agency in their attempt to comply with the EO 13837, specifically Section 4 (a)(iii)¹¹, which prohibits the use of federal property unless others are also allowed access. The Agency argues that aside from the EO-prohibition from providing the Union support, they believe there is no reason why a union that collects dues every pay period cannot afford to supply its own office supplies.

The Union provided an Agency policy that permits the use of Agency resources by voluntary, nonlabor groups, associations, and organizations of Agency employees. Under that policy, non-labor groups are provided access to Agency facilities, services and equipment as long as such use does not interfere with official Agency business and subject to the availability of funds¹². The Agency also has a policy, Limited Personal Use of Government Office Equipment Policy, approved August 2019.

The Agency's proposal provides for the use by the Union of government equipment that is available and authorized by the Agency for personal use and use by other groups. The Agency's proposal is reasonable and equitable. The Panel orders the Parties to adopt the Agency's proposal regarding Article 44- Use of Agency Facilities.

¹¹ EO 13837, Section 4 (a)(iii) - No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.

¹² Reasonable use of meeting rooms on a space-available basis; reasonable use of copiers, fax, computers, telephone service and equipment, and bulletin boards; reasonable use of Agency internal mail services and electronic mail to group members to communicate group announcements, newsletters, and educational materials; the use of teleconferencing, mass mailing, and mass copying, if an office determines that the expenditure is proper and agrees to pay for the cost of the service; a Web site on the Agency's intranet if an office determines that the expenditure is proper and agrees to pay any costs of the site's development and continued maintenance; and any use permitted to individual EPA employees under the Agency's policy on personal use of Agency equipment.

Article 46 – Force and Effect of Agreement, Duration of Agreement and Negotiations of Subsequent Agreements

As the title indicates, this article addresses not only the duration of the CBA, but also the effect of agreements under this CBA and procedures for negotiating a successor CBA. The Union essentially proposes to continue to terms of the 2001-CBA. The Agency's proposal is expanded.

There are a number of provisions in dispute. The duration proposed by the Union is 3 years. The Agency proposes a 7-year duration. The Agency argues that the 7-year duration will save the expense of negotiating a new contract every 3 years. The Agency submitted evidence to show that the cost of bargaining the current contract is approximately \$113,790. The Agency argues that the Union should not object to the longer duration because they did not even open the instant CBA for 18 years. As neither party seems to be actively seeking to reopen the CBA very frequently, the Panel orders the Parties to adopt a duration of 7 years.

The Parties were also in disagreement over the notice period to reopen negotiations for a successor CBA. The Agency, in its rebuttal¹³, amended its timelines to address the Union's concern. The Parties do continue to remain in dispute over what happens if, during negotiations of a successor CBA, the Parties are unable to reach agreement within 1 year. The Agency proposes that failure to reach agreement (including subjecting the negotiations to mediation and impasse proceedings before the Panel) within 1 year, will result in a termination of the current CBA. It has taken the Parties two years to reach this point in the negotiations process, without any accusation of stalling or bad faith bargaining. It may be appropriate for negotiations to not be completed within 1 year. The Parties should not foreshadow that punishment will be warranted or necessary in seven (plus) years to effectively close out bargaining.

The Parties also disagreed over the Agency proposals over ground rules for negotiations over a successor CBA. The Union objects to establishing bargaining ground rules for the negotiations of the successor CBA without knowing what the conditions will be. In its rebuttal, the Agency clarified that they are only offering ground rules to govern the negotiations to get to new ground rules that will later be used for successor CBA negotiations. The Agency did not intend those ground rules to apply to the actual bargaining of the successor CBA.

¹³Agency Rebuttal, page 13: "The Agency hereby modifies its LBO Section 3 open period from 90-60 days to 105-60 days to track the Union's LBO and the 5 USC 7111(f) raiding period, and so that the Panel can order adoption of the entire Agency Article.

The Panel orders the Parties to adopt the following for Article 46 - Force and Effect of Agreement, Duration of Agreement and Negotiations of Subsequent CBA:

Section 1. Duration of Agreement - This Agreement shall remain in effect for seven (7) years from the effective date of this Agreement.

Section 2. Force and Effect of Agreements and MOUs/MOAs under this Agreement

A. Agreement. For the full seven (7) year term of the Agreement and, while the Agreement otherwise continues in effect under Section 3 of this Article, the provisions of this Agreement shall remain in full force and effect and unchanged unless both Parties consent to a change in the Agreement.

B. Supersedes Previous Agreements. This Agreement supersedes all negotiated agreements that were in effect prior to the effective date of this Agreement, unless the Parties have agreed to incorporate them into this Agreement by reference.

C. Duration of MOUs/MOAs. MOUs/MOAs negotiated under the terms of this Agreement shall be considered to be part of this Agreement and shall have a duration concurrent with the Agreement, unless otherwise specified in the MOU/MOA.

Section 3. Notice to Renegotiate and Termination of this Agreement

This Agreement shall be automatically renewed from year to year unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than one hundred and five (105) calendar days prior to this Agreement's expiration date. If notice to renegotiate is given, the Agreement shall be extended until a new agreement becomes effective.

Section 4. Negotiation of Ground Rules for a Subsequent Agreement

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the following procedures to negotiate ground rules will apply:

A. The Parties will make arrangements to meet within (30) calendar days after notice to renegotiate is given to commence ground rules negotiations.

B. Ground rules negotiations will be scheduled for a total of four weeks (Two - two weeks bargaining session with one week break in

between), beginning at 9:00 AM and concluding at 5:30 PM, with a one-half hour lunch break. If agreement on ground rules is not reached by the end of the four weeks of bargaining, within three (3) workdays of the conclusion of the last bargaining session, either Party may submit a request for mediation assistance.

- C. Ground rules negotiations shall be conducted virtually unless the Parties both agree that face-to-face negotiations are necessary.
- D. Ground rules negotiations shall be accomplished through the exchange of written proposals, telephone calls, and/or video conferencing technology.
- E. Each Party shall be represented by up to three (3) persons, including the Chief Negotiator who will have authority to bind their Party.
- F. If travel is necessary, each Party will be responsible for its own travel and per diem.
- G. If both Parties consent to face-to-face negotiations, the Agency will make a room available for negotiations.

ORDER

Pursuant to the authority vested in the 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

June 26, 2020
Washington, D.C.

Attachments:
Agency Proposals
Union Proposals

ADVERSE ACTIONS

Section 1. Employee Responsibilities

Employees shall maintain high standards of integrity, conduct, and concern for the public interest, and employees shall perform their job responsibilities efficiently and effectively.

Section 2. The Purpose of Discipline

The purpose of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

Section 3. Disciplinary Actions

An adverse action includes a suspension for more than fourteen (14) calendar days, a removal, a reduction in grade or pay, and a furlough for thirty (30) days or less, for disciplinary or non-disciplinary reasons, as defined in 5 U.S. C. Chapter 75.

Section 4. Removal, Suspension for More than Fourteen (14) Days, Reduction in Grade or Pay, and Furlough of Thirty (30) Days or Less

- A. Due Process.** An employee against whom an adverse action is proposed is entitled to:
1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed adverse action;
 2. The right to review the material which is relied on to support the reason(s) for the proposed adverse action;
 3. A reasonable time, but not less than seven (7) calendar days, to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
 4. Be represented by an attorney or other representative; and
 5. A written decision and the specific reasons for the decision.

B. Notice of Appeal Rights. When the Agency issues a written decision to an employee on an adverse action matter that is appealable to the Merit Systems Protection Board, the Agency will provide in the notice the information required by 5 CFR 1201.21.

Section 5. Exceptions

- A. "Crime Provision".** In instances where the Agency has determined that public or employee health, safety, or welfare may be impaired or endangered, or that there may be a serious breach of applicable standards of conduct, or that the "crime provision" of 5 U.S.C. 7513 (b) (1) applies, the Agency has the right to take appropriate action immediately and before the procedures in this Article are initiated or exhausted.
- B. Exclusions.** The provisions of this Article do not apply to disciplinary actions of probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under 5 U.S. C. Chapter 75.

ANNUAL LEAVE

Section 1. Government-wide Regulations

The employee shall earn and be granted annual leave in accordance with applicable Government-wide regulations.

Section 2. Explanations

No employee shall be required to give an explanation for what purpose annual leave is requested unless the employee is requesting emergency leave.

Section 3. Religious Compensatory Time

The following information is contained in 5 CFR 550.1001 thru 1010, is included for informational purposes only, and is not part of this negotiated Agreement.

- A. Religious Compensatory Time.** Religious compensatory time off permits an employee to rearrange work hours when the employee's personal religious beliefs require an absence from work to meet personal religious requirements. An employee earns religious compensatory time off hours by performing overtime work. Those hours are used to cover an approved absence. Thus, the overtime work does not generate entitlement to premium pay or other pay.
- B. Requests.** When religious compensatory time off is requested, the employee must provide the agency in writing with the name and/or description of the religious observance, dates and times of absence, and dates and times the employee plans to earn religious compensatory time off.
- C. Decisions.** To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee must be permitted upon request to take time off for a religious observance as required by the employee's personal religious beliefs.
- D. Earning Religious Compensatory Time.** The agency shall provide the employee with an opportunity to earn religious compensatory time off (to offset absences) by performing overtime work. The specific timing of the overtime work is a matter of Agency discretion based on the needs of the Agency. Religious compensatory time off may be earned only within thirteen (13) pay periods in advance of the pay period in which it is intended to be used, or within thirteen (13) pay periods following the pay period in which it was used.

- E. Government-wide Regulations.** 5 C.F.R., Part 550, Subpart J governs issues regarding employee coverage, employee and agency responsibilities, scheduling time to earn and use religious compensatory time off, accumulation and documentation, and employee separation or transfer.

Section 4. Annual Leave Decisions

When deciding whether to approve an employee's request for annual leave, the Agency shall consider personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency at the employee's work unit.

Section 5. Use or Use Annual Leave

Employees are responsible for requesting and using annual leave throughout the leave_year so as to avoid forfeiture of annual leave, and shall not wait until the end of the leave year to schedule annual leave. The Agency may restore annual leave that was forfeited because it was in excess of an employee's maximum leave if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. Any use or lose leave must be scheduled and approved prior to the beginning of the third pay period prior to the end of the leave year in order to be eligible for restoration of leave.

Section 6. Preapproval Required

Annual leave must be requested, approved and scheduled before the employee is absent from work.

Section 7. Emergency Annual Leave

- A. Requests.** Employees must notify their supervisor, or supervisor's designee, of the request by telephone/voicemail, email and text (as designated by supervisor). If an employee receives an "out-of-office" message from their supervisor, via phone or email, or otherwise becomes aware that their supervisor is not available that day, the employee must notify the supervisor's designee of their request for leave that has not been preapproved. When an employee's situation shall require the employee to be absent longer than one (1) day, the employee must indicate the expected return to duty date.

- B. Late Requests.** When it is not possible to make a request for emergency annual leave before the employee’s scheduled tour of duty (e.g. the employee is totally incapacitated and unable to communicate with the Agency), the employee must make the request as soon as possible. If the employee is physically unable to make the request himself/herself, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified consistent with this Article.

- C. Decisions.** Approval of requests for annual leave for unforeseen emergency reasons may be granted, as the circumstances warrant, and if possible.

Section 8. Annual Leave Decisions

An employee shall not presume that a request for annual leave has been approved. It is the responsibility of the employee to ascertain that the request for leave has been approved. The Agency shall act on the request for annual leave as soon as practicable following submittal and inform the employee of the decision. The employee can obtain a copy of the approved/disapproved Request for Leave from the automated timekeeping system.

Section 9. Call Back From Annual Leave

The Agency shall only call an employee back from leave when the Agency determines that it is necessary for the employee to perform a specific time sensitive work duty.

ARBITRATION

Section 1. Invocation of Arbitration

A. Time Limits to Invoke Arbitration.

A notice to invoke arbitration will be made in writing by electronic mail to the other Party within thirty (30) calendar days of receipt of the written decision rendered in the final step of the grievance procedure. If no written decision has been rendered, the thirty (30) calendar day period begins the day after the written decision was due. Failure to timely give notice of an invocation of arbitration will render the grievance not arbitrable.

B. The Parties.

Only the Union or the Agency may refer to arbitration any grievance that remains unresolved after the final step under the negotiated grievance procedure. A referral must be made only by the NAIL Local President or the Agency's servicing Labor and Employee Relations office. The notice to invoke arbitration filed by the Union must be served on both the alleged responsible management official and on the servicing Labor and Employee Relations office. The notice to invoke arbitration filed by the Agency must be served on the local or national Union president.

Section 2. Arbitrator Selection and Site/Timing of the Hearing

A. Time Limits to Request List of Arbitrators. Within five (5) calendar days of invoking arbitration, the invoking Party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial qualified persons to act as arbitrators. The invoking Party will request that the FMCS serve a copy of the panel list on both Parties (Union and Management). The invoking Party will pay the FMCS fee.

B. Site of Hearings. Hearings will normally be held within the commuting area of the grievant's official duty station and the panel list will contain arbitrators in that area. For grievants whose official duty station is their home due to telework arrangements, the site of the dispute will be the official duty station the grievant would otherwise be assigned to, but for the telework arrangement. An exception to holding the hearing at the grievant's official duty station is if the majority of witnesses are located outside of the grievant's local commuting area. In those

circumstances, the site of the dispute is where the majority of witnesses are located.

- C. Travel and Other Expenses and Official Time.** The Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the Parties will share the cost equally. Each Party will be responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses. Official time for attendance and travel to arbitration hearings, if otherwise in a duty status, is covered under the Official Time Article X.
- D. Selecting the Arbitrator.** After the Parties receive the list of Arbitrators, they will meet, in person, by telephone or by videoconference, within seven (7) calendar days or unless both Parties consent to extend this period. The invoking Party will arrange the logistics for a coin toss to determine the order for striking, i.e., whether the Agency or the Union strikes first. The logistics will include provision of the coin and securing a mutually agreeable time, date, and location for the coin toss. The non-moving party will flip the coin. If the coin lands "heads up," the Union strikes first; if the coin lands "tails up," the Agency strikes first. The Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one (1) name remains. The person whose name remains shall be selected as the arbitrator.

Once a final name is selected the Parties will sign the FMCS arbitration form letter and the invoking Party will email the form back to the FMCS within five (5) calendar days and provide a copy to the other Party. If electronic filing is used, the invoking Party will submit the selection form to FMCS and provide a copy to the other Party. The Parties will ensure that the listed names, addresses and phone numbers of the applicable Union and Management representatives are correct.

- E. Setting the Hearing Date.** Within fourteen (14) calendar days of selecting the arbitrator by returning the form to the FMCS, the Parties will communicate with the arbitrator and each other to select a date for the hearing; but to avoid arbitrating "stale" facts, in no instance will the hearing date be later than ninety (90) days of the Section 1.A. notice to invoke arbitration. Arbitrators have the authority to dismiss grievances based on staleness.
- F. Failure to Comply or Cooperate.** Failure by the invoking Party to comply with timelines in this Article and/or failure to cooperate in the selection of an arbitrator shall result in the grievance automatically being withdrawn and the invoking Party

shall not have a right to refile. If the non-invoking Party refuses to participate in the selection of an arbitrator than the invoking Party may select the arbitrator from the FMCS list.

Section 3. Fees and Expenses

The cost of the arbitrator's fees and expenses shall be shared equally by the Parties, including when an arbitration matter has settled. Outside of settlement, if the invoking Party withdraws its grievance prior to an arbitrator rendering a decision, the invoking Party is responsible for any arbitrator's fees or expenses incurred. If a settlement agreement is reached prior to the hearing, the Parties shall notify the arbitrator that the matter has been settled as soon as possible in order to minimize the costs.

Section 4. The Arbitrator's Jurisdiction

An arbitrator's jurisdiction is limited to the allegations raised in the grievance at Step 1. The arbitrator shall have no authority to alter in any way the terms and conditions of this Agreement, any supplemental other negotiated agreement, or any other condition of employment or issue not properly before the arbitrator.

Section 5. Bifurcation

Within twenty-one (21) calendar days of selecting the arbitrator, either Party may move to bifurcate the proceeding into separate jurisdictional and merits proceedings so that all jurisdictional issues shall be decided prior to a hearing on the merits of the grievance. Jurisdictional issues include, but are not limited to, questions of timeliness, staleness, standing, election of remedies and arbitrator authority. The Parties may submit documentation in support of their positions on jurisdictional matters. In the event no questions of fact exist regarding the jurisdictional issues, the Parties may, if both Parties consent, forego a formal hearing on jurisdiction and present written submissions directly to the arbitrator. The arbitrator is empowered to make a finding based on those submissions. If the Parties do not agree on whether questions of fact exist to warrant a formal jurisdictional hearing, either Party may request that the arbitrator make this determination and the arbitrator is empowered to do so. A hearing on the merits will only be scheduled after the arbitrator has rendered a decision on all jurisdictional issues.

Section 6. Pre-Hearing Procedures

- A. Pre-Hearing Exchange.** No later than 5:00 pm five (5) work days prior to the arbitration, the Parties will make available all evidence and proposed witnesses within its knowledge to the other Party. The list of witnesses shall include a brief one or two sentence summary of each witness's expected testimony. Rebuttal witnesses and rebuttal evidence not previously identified may be presented to the arbitrator. The arbitrator has authority to determine whether that information should have been previously identified and, if so, whether it shall be allowed into evidence and/or whether the other party shall be permitted a delay to present sur-rebuttal evidence. The above exchanges may be done in person or through e-mail.
- B. Disagreement Over Evidence.** In the event of a known disagreement over the Parties' proposed witnesses or evidence, the Parties will initiate a conference call with the arbitrator at least three (3) work days prior to the hearing to seek a ruling on the contested witnesses and/or evidence. If evidence or information becomes available to a Party prior to the start of or during the proceeding which has not been made available to the other Party and it intends to enter that evidence or information in the arbitration, the other Party will be provided that evidence or information immediately. If the information or evidence is substantial, the other Party may seek a postponement of the arbitration for one (1) work day or until the arbitrator's next available date. The above exchanges may be done in person or through e-mail.
- C. Joint Exhibits.** The Parties will attempt to reach agreement on joint exhibits.

Section 7. Stipulations

Prior to the hearing, the Parties will attempt to stipulate the issue(s) to be arbitrated and any factual matters which would expedite the arbitration. In the event no questions of fact exist, the Parties may, if both Parties consent, forego a formal hearing and present the grievance directly to the arbitrator by written submission. The arbitrator is empowered to make a finding and award based on those submissions. If the Parties do not agree on whether questions of fact exist to warrant a formal hearing, either Party may request that the arbitrator make this determination and the arbitrator is empowered to do so. If the Parties are unable to agree on a joint stipulation of the issues, each Party shall submit its statement of

the issue(s) to the arbitrator ten (10) days prior to the opening of the hearing. Five (5) calendar days before the opening of the hearing, the arbitrator will notify the Parties that the arbitrator has either: a) selected one of the Parties' statement of the issue(s); or b) has determined and framed the issue(s) to be arbitrated.

Section 8. Hearing Procedures

- A. Hearing Time and Official Time.** The hearing will be held during the regularly scheduled workweek
- B. Number of Representatives.** The Union and the Agency shall each be allowed up to two (2) representatives to present its case and to serve as technical representatives. Additional representatives may be permitted only by the consent of both Parties.
- C. Closed Hearings.** Arbitration hearings are not open to the public and, except by the consent of both Parties, may not be attended by anyone other than the Party representatives and the grievant.
- D. Hearings Not Held in the Local Commuting Area.** In arbitration hearings involving a single named grievant or multiple named grievants from a single duty station, if the hearing is not held at the official duty station of the grievant(s):
1. The Agency shall pay travel expenses and per diem, as authorized by law and regulations, for the single named grievant, or a representative grievant if there are multiple grievants.
 2. Witnesses, whose official duty stations are not in the local commuting area of the hearing location will participate via videoconference or teleconference, and the arbitrator will accept this testimony as if given in person.

Section 9. Case Presentation and Burden of Proof

- A. Pre-Hearing Briefs:** Both Parties may file pre-hearing briefs with the arbitrator outlining the party's argument and a summary of proposed evidence.
- B. Order of Presentation.** The Agency will make its presentation first in disciplinary and those adverse action cases subject to the negotiated grievance procedure. In all other issues, the Party invoking arbitration will

make its presentation first in the hearing and that Party has the burden to prove its case by a preponderance of the evidence. In bifurcated cases, the Party requesting bifurcation will make its presentation first in the jurisdictional hearing. For disputes presented only via briefs, rather than at a hearing, the Party invoking arbitration files first, with the other Party responding within a time period set by the arbitrator.

- C. Section 7114(b)(4) Information Requests.** The alleged failure of the Agency to comply with 5 U.S.C. section 7114(b) will be decided by the Federal Labor Relations Authority (FLRA) by the filing of an unfair labor practice charge by the Union, or the alleged failure can be raised in a new grievance.
- D. Post-Hearing Briefs.** Each party is entitled to file a post hearing brief by email within the time frame decided by the arbitrator at the hearing. Each Party shall serve by email the other Party with its brief at the time of filing.

Section 10. Arbitrator Decisions

- A. Issuance of Arbitration Decision.** The arbitrator will render a decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless both Parties consent to extend the time limit. When both Parties consent to an expedited arbitration, the arbitrator may render a decision at the close of the proceedings.
- B. Standards for an Arbitration Award.** Arbitrators will ensure that their award, as required by 5 U.S.C. section 7121(a)(1) is consistent with law, Executive Orders, Government-wide rules and regulations in effect at the time of the effective date of this Agreement, and Agency rules and regulations; and that the award, as required by 5 U.S.C. section 7121(a)(2), is not contrary to grounds similar to those applied by Federal courts in private sector labor-management relations.

Section 11. Exceptions to an Arbitrator's Award

- A. Filing Exceptions with the FLRA.** Either Party may file exceptions to an arbitration award with the FLRA under regulations prescribed by the FLRA.
- B. Finality of an Arbitration Award.** An arbitrator's award is final when no timely exceptions have been filed with the FLRA, or when timely filed exceptions have been decided by the FLRA. Once final under FLRA

precedent, the award is binding on the Parties as to the specific facts and circumstances of the grievance.

Section 12. Post-Award Jurisdiction.

Once an arbitration award issues, the arbitrator is “functus officio” and no longer has jurisdiction. If either Party claims that the other Party has not complied with an arbitrator’s award, the claiming Party may file an unfair labor practice with the FLRA, Office of the General Counsel or may file a new grievance.

MAXIFLEX CREDIT HOURS

Section 1. Maxiflex Credit Hours

Credit hours are those hours within the Maxiflex work schedule that are more than an employee's basic biweekly 80-hour work requirement and that the employee, upon supervisory approval, elects to work to vary the length of a workday, workweek, or pay period. Credit hours may be earned outside of the normal tour of duty (6:00 A.M. – 7:00 P.M.) with supervisory approval.

Section 2. Requesting Maxiflex Credit Hours

Employees who want to earn credit hours must make a written request by email to their supervisor. Upon the supervisor's request, the employee must provide information regarding the nature of the request (e.g., the work to be performed, the anticipated duration of work, etc.) before deciding on the request.

Section 3. Supervisory Preapproval is Required to Work Maxiflex Credit Hours

No employee can work and earn credit hours without prior written supervisory approval.

Section 4. Supervisory Preapproval is Required to Use Maxiflex Credit Hours

No employee can use earned credit hours without prior written supervisory approval.

Section 5. An Example of Earning Maxiflex Credit Hours

For an example of earning credit hours, assume an employee is scheduled to work 8 hours on Monday. The employee requests and is approved in writing to work 2 additional hours on Monday. If the employee works at least 72 more hours during the pay period, the 2 additional hours worked Monday are considered credit hours because they are more than the scheduled basic 80 hours that the employee is required to work in this particular pay period. However, if at the end of the pay period the employee has not accounted for 80 hours with a combination of approved leave and work, the 2 additional hours are counted towards the 80-hour biweekly work requirement and are not credit hours.

Section 6. Maxiflex Credit Hour Limits

Employees on Maxiflex can earn up to two (2) credit hours per workday and up to ten (10) credit hours per pay period, subject to prior supervisory approval.

Section 7. Standing Supervisory Approval to Work and Earn Maxiflex Credit Hours

A supervisor may grant a standing approval to work credit hours for known or anticipated workload needs if the credit hours are within the two (2) credit hours per workday and also are within the ten (10) credit hours per pay period limit. A standing approval for known or anticipated workload needs must be preapproved for a designated period with an end date.

Section 8. Exceptions to the 2/10 Credit Hour Limit

On rare occasions when necessary to meet the work-related needs, supervisors may grant more than two (2) credit hours per work day or more than ten (10) credit hours per pay period, on a case-by-case basis. There can be no standing approval for more than two (2) credit hours per workday or more than ten (10) credit hours per pay period.

Section 9. Weekend Maxiflex Credit Hours

Requests to earn credit hours on the weekend are subject to heightened review/scrutiny, and may only be approved in rare circumstances. The only flexible time bands for employees on Maxiflex who earn credit hours on Saturday or Sunday are 6:00 A.M. to 6:00 P.M. Employees cannot earn credits hours outside of that timeframe on the weekend.

Section 10. Recording Earned and Used Maxiflex Credit Hours

Each and every time that preapproved credit hours are earned, and each and every time that earned credit hours are preapproved to be used, the credit hours must be recorded by the employee on the *Maxiflex Pay Period Time Sheet* and in the Agency's Time and Attendance Reporting System.

Section 11. Earning and Using Maxiflex Credit Hours in Fifteen Minute Increments

Preapproved credit hours must be earned and recorded in fifteen (15) minute increments. If an employee works less than 15 minutes of credit time, those minutes cannot be counted as credit hours.

Section 12. Using Maxiflex Credit Hours

The preapproved use of earned credit hours is subject to the same approval process as annual leave, sick leave and all other leave. An employee may substitute earned credit hours for all or part of any approved leave before the leave is used. Credit hours must be earned before they can be used.

Section 13. Using Credit Hours Rather Than Use or Lose Annual Leave

If earned credit hours are used instead of use or lose annual leave and the annual leave is subsequently forfeited, the forfeited leave is ineligible for restoration.

Section 14. Carrying Over Maxiflex Credit Hours

The statutory limit for earned credit hour carryover from one pay period to the next is 24 hours for full time employees and 25% of the biweekly work schedule for part time employees. For example, a part time employee who works 64 hours per pay period may carry up to 16 credit hours from one pay period to another. In no instance can an employee carry forward any more credit hours than the statutory limit, even under extenuating circumstances. Employees are accountable for keeping track of their credit earned and used hour balances from day to day, week to week, and pay period to pay period. If an employee erroneously carries forward credit hours more than the allowable number and the credit hours are forfeited, the credit hours cannot be restored or paid to the employee. However, there is no prohibition to earning more than 24 credit hours in one biweekly period, but the employee must have preapproval to use the excess hours that are over 24 hours in the same pay period, or the excess credit hours shall be forfeited.

Section 15. Credit Hours Do Not Expire

Although there is a statutory limit on the number of earned credit hours that an employee may carryover from one pay period to the next, there is no time limit for using earned credit hours. Earned credit hours do not expire. If the employee's credit

hour balance does not exceed the statutory limit, those hours shall be available for use, upon supervisory approval, as long as the employee participates in the Agency's Maxiflex program. If for any reason - voluntary or involuntary, separation or transfer - an employee leaves the Maxiflex program, the employee shall be paid for the accumulated credit hours at the employee's current rate of basic pay.

Section 16. Overtime, Compensatory Time and Credit Hours

If credit hours are preapproved to be worked and overtime is subsequently made available prior to the employee working the credit hours, the employee shall be afforded the opportunity to elect to work the overtime. Supervisory approval to earn credit hours does not alter an employee's eligibility to earn overtime pay.

Section 17. Conversion of Credit Hours to Pay.

Full time employees receive pay for a maximum of 24 hours of earned, unused preapproved credit hours when they separate by retirement, transfer to another Agency, or when no longer subject to a flexible work schedule with credit hours. Part time employees shall be paid for credit hours up to one-quarter of their biweekly work requirement. Credit hours are paid at the employee's current rate of basic pay.

Moved to Work Schedule Article

Overtime. *Overtime work consists of hours of work that are officially ordered in advance and constitute more than eight (8) hours a day or forty (40) hours in a week, but does not include worked credit hours.*

Night pay. *When an employee elects to work preapproved credit hours or elects a time of arrival or departure at a time of day when night pay is otherwise authorized, night pay shall not be paid. If an employee's daily tour of duty includes eight (8) or more hours available for work during daytime hours (i.e., between 6:00 A.M. and 6:00 P.M), the employee is not entitled to night pay even though the employee elects to work hours for which night pay is normally authorized (i.e., between 6:00 P.M. and 6:00 A.M.).*

Holidays. *On a holiday, employees under Maxiflex work schedules are credited with eight (8) hours towards their eight (80) hour basic work requirement for the pay period, even if they would otherwise work more hours on that day. When the employee is scheduled to work more than eight (8) hours on the holiday that the employee is relieved from duty, hours greater than eight (8) must be rescheduled on*

another day, or the employee must account for those hours by charge to a category of approved absence. Part time employees shall be credited with the number of hours that they would have actually worked that day had it not been a holiday. In the event the President issues an Executive Order granting a "half-day" holiday, a full-time employee on a Maxiflex work schedule is credited with half the number of hours the employee was scheduled to work, not to exceed four (4) hours.

DISCIPLINARY ACTIONS

Section 1. Employee Responsibilities

Employees shall maintain high standards of integrity, conduct, and concern for the public interest, and employees shall perform their job responsibilities efficiently and effectively.

Section 2. The Purpose of Discipline

The purpose of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation.

Section 3. Disciplinary Actions

A disciplinary action includes a written reprimand and a suspension for 14 calendar days or less. A disciplinary action does not include an oral reprimand, an oral admonishment, nor a letter or memorandum of warning. A disciplinary action which constitutes an adverse action - a reduction in grade or pay and a removal – is covered in the Adverse Action article X.

Section 4. Written Reprimand

A written reprimand is a written letter which specifies the employee's misconduct. The reprimand will be maintained in the employee's electronic Official Personnel Folder for three (3) years.

Section 5. Suspension for 14 Days or Less

An employee against whom a suspension for 14 calendar days or less is proposed is entitled to:

- A. Advance Notice.** Advance written notice stating the specific reasons for the proposed action;
- B. Review Materials.** The right to review the material which is relied on to support the reason(s) for the proposed action;
- C. Response.** A reasonable time, but not less than seven (7) calendar days, to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response;
- D. Representation.** Be represented by an attorney or other representative; and
- E. Decision.** A written decision and the specific reasons for the decision.

Section 6. Exceptions

- A. “Crime Provision”.** In instances where the Agency has determined that public or employee health, safety, or welfare may be impaired or endangered, or that there may be a serious breach of applicable standards of conduct, or that the "crime provision" of 5 U.S.C. 7513 (b) (1) applies, the Agency has the right to take appropriate action immediately and before the procedures in this Article are initiated or exhausted.
- B. Exclusions.** The provisions of this Article do not apply to disciplinary actions of probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under 5 U.S.C. Chapter 75.

DRUG AND ALCOHOL-FREE WORKPLACE

Section 1. Purpose

The purpose of this Article is to implement Executive Order 12564 and establish a Drug and Alcohol-Free Workplace.

Section 2. Employee Responsibilities

- A. Employee Standards.** Employees must demonstrate and maintain the highest standards of employee competence, reliability, and integrity in order to meet the Agency's mission.
- B. Employee Responsibilities.** Employees must refrain from the illegal use or possession of drugs, on or off duty, as a condition of continued employment. Employees must refrain from the use of alcohol while in a duty status, and/or being under the influence of alcohol while in a duty status.
- C. Drug Free Workplace (DFWP) Plan.** Employees must fully comply with the Agency's DFWP, which is not a negotiated part of this Agreement.
- D. Employee Compliance.** Employees must fully comply with all applicable laws, Government-wide regulations, Executive Orders, the Agency's DFWP, and this Article concerning the use of drugs and alcohol.
- E. Health Care Assistance.** An employee's cooperation of availing himself or herself of professional health care assistance may be considered by the Agency when proposing or deciding disciplinary action related to the conduct or performance of the employee due to the use of drugs and/or alcohol.

Section 3. Drug Testing

- A. When Drug Testing Occurs.** The Agency will drug test employees in accordance with Executive Order 12564 and the Agency DFWP.
- B. Duty Status.** All employees required to take a drug test at the direction of the Agency will be in a duty status during the test. If the test extends beyond the employee's regular shift, the employee will receive overtime or compensatory time.

C. Designation as a Testing Designated Position.

1. An employee occupying a Testing Designated Position will receive written notice that the employee's position has been determined to meet the criteria and justification for random drug testing.
2. The written notice will be provided only once per entrance into a Testing Designated Position.
3. Any bargaining unit employees selected for random testing will be selected on the basis of neutral criteria.

Section 4. Specific Notification of Test

Employees selected for drug testing will be informed of any impending test in accordance with Executive Order 12564 and the Agency DFWP.

Section 5. Collection Procedures

Collection procedures will be performed in accordance with Executive Order 12564 and the Agency DFWP.

A. Report to Location. Upon direction by the Agency, employees designated for a drug and/or alcohol test will report to the designated location to be tested.

B. Samples. All samples collected will be maintained in accordance with Executive Order 12564 and the Agency DFWP.

FORCE AND EFFECT OF AGREEMENT, DURATION OF AGREEMENT, AND NEGOTIATION OF SUBSEQUENT AGREEMENTS

Section 1. Duration of Agreement

This Agreement shall remain in effect for seven (7) years from the effective date of this Agreement.

Section 2. Force and Effect of Agreement

- A. Agreement.** For the full seven (7) year term of the Agreement and, while the Agreement otherwise continues in effect under Section 3 of this Article, the provisions of this Agreement shall remain in full force and effect and unchanged unless both Parties consent to a change in the Agreement, or unless a change is required by law.
- B. Supersedes Previous Agreements.** This Agreement supersedes and replaces any and all negotiated agreements, written or oral, at all levels and facilities of the Agency, that were in effect prior to the effective date of this Agreement. Conditions of employment that are inconsistent with this Agreement or which are “covered by” the Agreement as that doctrine has been established and applied by the Federal Labor Relations Authority and by the U.S. Courts of Appeals, are no longer in effect as of the effective date of the Agreement.
- C. Inconsistent Past Practices.** If, after the effective date of this Agreement a condition of employment is established through a past practice under FLRA case law which is inconsistent with this Agreement, either Party may require the other Party to follow this Agreement rather than the past practice, upon notice to the other Party without the need for bargaining.
- D. Duration of MOUs/MOAs.** MOUs/MOAs negotiated under the terms of this Agreement shall be considered to be part of this Agreement and shall have a duration concurrent with the Agreement, unless otherwise specified in the MOU/MOA.

Section 3. Notice to Renegotiate and Termination

This Agreement shall be automatically renewed from year to year unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to this Agreement’s expiration date. If notice to renegotiate is given, the Agreement shall be extended for one (1) year

or until a new agreement become effective, whichever is earlier. If there is no agreement at the end of the one (1) year extension, this Agreement terminates.

Section 4. Negotiation Procedures for a Subsequent Agreement

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the following procedures will apply:

- A. Carry Over Ground Rules.** The Parties will make arrangements to meet within (30) calendar days after notice to renegotiate is given. The ground rules that were agreed upon by the Parties and used for this Agreement will be used to negotiate the subsequent agreement to begin ground rules negotiations. If both Parties agree, ground rules negotiations may be bypassed and the Parties may move directly into substantive negotiations. In the event the Parties elect to enter into ground rules negotiations, the Parties will exchange ground rules proposals that must include a reasonable substantive negotiation schedule, no later than ten (10) workdays prior to the date negotiations are scheduled to begin. Ground rules negotiations will be scheduled for a total of four weeks (Two - two weeks bargaining session with one week break in between), beginning at 9:00 AM and concluding at 5:30 PM, with a one-half hour lunch break. If agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three (3) workdays of the conclusion of the last bargaining session.
- B. Ground Rules Negotiations.** Ground rules negotiations shall be conducted virtually unless the Parties both consent that face-to-face negotiations are necessary.
1. Ground rules negotiations shall be accomplished through the exchange of written proposals, telephone calls, and/or video conferencing technology.
 2. Each Party shall be represented by up to three (3) persons, including the Chief Negotiator who will have authority to bind their Party.
 3. If travel is necessary, each Party will be responsible for its own travel and per diem.
 4. If both Parties consent to face-to-face negotiations, the Agency will make a room available for negotiations.

USE OF AGENCY FACILITIES

Section 1. **Non-Agency Business** Use of Agency **Property and** Resources

The only right that the Union has to the Agency's property and resources is that Union representatives are permitted the free or discounted use of Agency property and other Agency resources, such as conference rooms, for union activity to the same extent as those resources are generally available to employees when acting on behalf of non-Federal organizations for non-Agency business. To reserve a conference room, a Union representative must follow the same procedures used by employees who act on behalf of other non-Federal organizations.

MIDTERM NEGOTIATIONS

Section 1. Midterm Negotiations

This Article governs the mid-term bargaining relationship of the parties over matters which are not covered by this agreement. The Agency shall fulfill its midterm statutory bargaining obligations. The Agency has no duty to bargain under the Statute nor under this Agreement over matters that fall within the “covered by” doctrine as established and applied by the Federal Labor Relations Authority (FLRA) and the U.S. Court of Appeals for the District of Columbia. The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interests of the Agency, the Union, employees, Agency stakeholders and the American taxpayer.

Section 2. Agency Notice

A. Agency Notice. The Agency shall serve notice on the Union President when a proposed change in a condition of employment triggers a duty to bargain under the Federal Service Labor Management Relations Statute, 5 U.S.C. section 7101 et. seq.).

B. Content of Agency Notice.

The Agency’s Section 2.A. written notice shall be by email and shall include:

1. The known nature and scope of the proposed change;
2. The planned timing of the change; and,
3. The Agency’s point of contact.

Section 3. Union Request to Bargain, Briefings, and Union Proposals

A. Union Demand to Bargain. The Union must submit a written demand to bargain by email no later than three (3) work days after the Agency’s notice of the proposed change is served on the Union. The failure of the Union to timely demand to bargain shall result in the Union’s waiver of its statutory right to negotiate the proposed change.

B. Briefings. The Union may request a briefing in its demand to bargain. If the Union requests a briefing, the briefing shall be scheduled to occur within five (5) workdays after the Agency receives the Union’s demand to bargain/request for

briefing. If the Agency's subject matter experts (SMEs) are not available within the five (5) workdays, the Agency shall schedule the briefing as early as practicable.

- C. Union Proposals.** If the Union does not request a briefing, the Union must submit bargaining proposals within five (5) work days after the Union's written demand to bargain is served. If the Union requests a briefing, the Union must submit bargaining proposals within five (5) workdays after the briefing. The Union's failure to timely submit bargaining proposals shall result in the Union's waiver of its statutory right to negotiate on the proposed change.

Section 4. Timeframe to Begin Bargaining

Bargaining shall commence as soon as possible, but no later than ten (10) work days after the Union submits its bargaining proposals.

Section 5. Mid-Term Bargaining Ground Rules

The following ground rules shall govern all midterm bargaining under this Article. There shall be no further bargaining on additional ground rules.

- A. Authorized Representatives.** The parties shall approach negotiations in good faith with a sincere resolve to efficiently reach an agreement. Only the Union designated representative and the Agency designated representative shall negotiate and execute a midterm memorandum of agreement/understanding.
- B. Minimize Bargaining Costs.** The parties shall minimize, to the greatest extent possible, Agency and Union expenditures during negotiations. As such, virtual, telephonic and all other means of low-cost negotiations shall be utilized to the maximum extent possible.
- C. Coordinate Bargaining.** Whenever possible, the Parties shall coordinate negotiation meetings with other scheduled labor-management meetings.
- D. Consolidate Bargaining:** Whenever possible, negotiations on different proposed changes shall be consolidated or held concurrently.
- E. Face-to-Face Negotiations.** When there are face-to-face negotiations:
1. Negotiations shall generally take place at an Agency-provided location.
 2. Negotiations shall be conducted during the regular business

hours of operation where the negotiations are taking place. Participant schedules shall be adjusted to allow for a full week of bargaining per Section 5.K. below, and to account for all time spent on official time and for related negotiations travel.

3. The number of Union negotiators representing the Union in bargaining under this Article who shall be authorized official time under 5. U.S.C. section 7131 (a) (excluding travel time and preparatory time) for such purposes during the time the employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. The Agency shall inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals.
4. Each Union representative shall be entitled to eight (8) hours of leave without pay for preparation per weekly negotiation session, per Union team, unless otherwise requested by the Union and approved by the Agency. Such time shall be administered in accordance with the Official Time Article X.

F. Travel and Per Diem. Each party is responsible for the travel and per diem costs of its team associated with negotiations for all phases of negotiations, including assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).

G. Proposals. Proposals must be negotiable under the Statute and must be related to the proposed change. Where applicable, if proposals are intended by the Union to be negotiable appropriate arrangements, such proposals must identify the adverse impact upon the employees that the proposals are intended to reduce or remedy. At any point in the bargaining process, the Agency may elect to withdraw any proposed change, in whole or in part.

H. Number of Negotiators/Spokesperson Authorities/Alternates. Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective Party. The Parties shall exchange the names of their bargaining team members no later than three (3) work days prior to the commencement date of the bargaining. Alternates may substitute for team members with advanced notice to the other Party. Alternates shall be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team

members present shall not delay negotiations.

- I. **Subject Matter Experts (SMEs)**. Technical advisors and SMEs may be used by each Party with a limit of one technical adviser/SME at a time. The requesting Party shall be responsible for all costs associated with the attendance of technical advisors/SMEs. Technical advisors/SMEs shall be excused once they have served their purpose.
- J. **Silent Observers**. Either Party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. Union silent observers are volunteers and thus shall not be authorized official time pursuant to Section 5.E. 3.
- K. **Mid-Term Bargaining Schedule**.
1. When there are face-to-face negotiations, the negotiations shall be held on four consecutive work days, Tuesday through Friday. Participants' work schedules shall be adjusted as needed.
 2. Face-to-face bargaining sessions shall commence at 8:00 a.m. and conclude at 4:30 p.m. at the place where negotiations occur, except that Friday's bargaining session shall conclude by 12:00 p.m., to allow for travel.
 3. The schedule for bargaining sessions conducted by teleconference or videoconference may be modified to account for the time zone of participants, but shall generally be Monday through Friday and shall commence at 8:00 a.m. and conclude at 4:30 p.m. C.S.T., with thirty (30) minutes allocated for lunch.
- L. **Caucuses**. Either team may request a caucus and may leave the negotiating room to caucus at a suitable site provided by the meeting host for thirty (30) minutes, unless otherwise communicated. There is no limit to the number of caucuses which may be held, but each party must make a concerted effort to restrict the number and length of the caucuses since the purpose of bargaining is for the Parties to be negotiating with each other and not sitting in separate rooms. Caucuses cannot be held at the start or end of a negotiating day.
- M. **Failure to Reach Agreement**. If an agreement is not reached by the end of the third day of bargaining (Wednesday), the parties shall exchange last and best

offers no later than the fourth day (Thursday) no later than 12:00 P.M. E.S.T. By close of business on Thursday, FMCS mediation services shall be requested for the fifth day of bargaining (if agreement is not reached on the fourth day on the last best offers). If the services of a mediator are not available for the Friday bargaining session, negotiations shall be concluded for the week and a subsequent session shall be scheduled by the Parties to be held within five (5) work days or as soon as a mediator is available, unless the parties agree otherwise.

N. Memorializing Agreement.

1. Agreements shall be in the form of memoranda of understanding (MOUs)/memoranda of agreement (MOAs). Upon agreement of each section, the Chief Negotiator for each Party (or designee) shall signify temporary agreement on each section of the MOU/MOA by initialing and dating the agreed upon section(s) of the working documents. Upon agreement of the entire MOU/MOA, the Chief Negotiator for each Party shall sign and date two copies of the MOU/MOA to signify final agreement.
2. When an agreement is reached, it shall be typed in final form and signed by both parties without delay. Such agreements and understandings shall conclude negotiations on the proposed change.
3. All MOUs/MOAs signed by the parties and entered into during the life of this Agreement shall be considered an addendum to this Agreement and subject to its duration, unless a shorter expiration date has been agreed to in the MOU/MOA.

O. Impasse. Any bargaining impasse not resolved through the FMCS must be submitted by either party to the FSIP within three (3) workdays of either Party declaring impasse. The Union's failure to submit a bargaining impasse to the FSIP within three (3) workdays of a declared impasse constitutes a Union waiver, and the Agency may unilaterally implement the proposed change.

MISCELLANEOUS AND GENERAL PROVISIONS

Section 1. Manuals and Handbooks

Agency Manuals and Handbooks shall be made available for employee bargaining unit members and union officials.

Section 2. Personal Use of Agency Equipment Policy

The Agency, Union and bargaining unit employees shall abide by the Agency policy concerning Personal Use of Agency Equipment, dated August 19, 2019, which policy is not a negotiated part of this Agreement.

Section 3. Quality Assurance MOA

The Agency, Union and bargaining unit employees shall abide by the MOA between the Agency and the Union concerning the Office of Research and Development's Policy and Procedures Manual, Section 9.14 (Scientific Data Management), Section 13.3 (Implementing Quality Assurance Under ORD Research Action Plans) and Section 13.7 (Use of the Graded Approach for Quality Assurance of Research), signed January 11, 2017.

Section 4. Clearance Policy MOA

The Agency, Union and bargaining unit employees shall abide by the MOA between the Agency and the Union concerning the Office of Research and Development's Policy and Procedures Manual, Section 14.3 (Clearance Policy), signed July 12, 2017.

Section 5. Plan for Preventing Violence in the Workplace

The Agency, Union and bargaining unit employees shall abide by the Plan for Preventing Violence in the Workplace at the Gulf Ecology Division, signed November 6, 2007, which plan is not a negotiated part of this Agreement

Section 6. Office Space Selection MOA

The Agency, Union and bargaining unit employees shall abide by the MOA between the Agency and the Union concerning the Gulf Ecosystem

Measurement & Modeling Division's Office Space Selection, signed
October 23, 2019.

NEGOTIATED GRIEVANCE PROCEDURE

Section 1. Sole and Exclusive Procedure

The Parties agree that this Article establishes the sole and exclusive procedure available to bargaining unit employees and the Parties for the processing and settlement of grievances that fall within its coverage, including questions of grievability and arbitrability.

Section 2. Grievance Definition. A grievance means any complaint:

- A. By any bargaining unit employee concerning any matter relating to the employment of the employee;
- B. By the Union concerning any matter relating to the employment of a bargaining unit employee; or
- C. By any bargaining unit employee, the Union or the Agency concerning:
 - 1. The effect or interpretation, or claim of breach of a negotiated agreement; or
 - 2. Any claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment.

Section 3. Exclusions

- A. **Statutory Exclusions.** Grievances on the following matters are excluded by 5 of U.S.C. section 7121(c)(1) thru (5) of the Statute:
 - 1. Any claimed violation of subchapter III of chapter 73 of title 5 of the U.S. Code, (relating to prohibited political activities);
 - 2. Retirement, life insurance, or health insurance;
 - 3. Suspension or removal under 5 U.S.C. section 7532 for national security reasons;
 - 4. Any examination, certification, or appointment; or,

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

B. Other Exclusions. Grievances on the following matters are also excluded by this Agreement:

1. The adoption or non-adoption of a suggestion or the receipt or non-receipt of an honorary or cash award;
2. The non-renewal or non-extension of a temporary employee, termination of a temporary appointment due to reduction in force, and any other termination of the appointment of a temporary employee;
3. Separation of a term, trial or excepted service employee;
4. Non-selection for promotion;
5. Performance progress reviews;
6. Removal of an employee pursuant to 5 U.S.C. Chapter 75, and the implementing regulations at 5 C.F.R. Part 752;
7. Removal of an employee pursuant to 5 U.S.C. Chapter 43; and the implementing regulations at 5 C.F.R. Part 432;
8. Adverse personnel action (as enumerated in 5 U.S.C. section 7512) taken against probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under 5. U.S.C. Chapters 43 or 75.

Section 4. Other Applicable Procedures

- A. No Waiver of Rights.** Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.
- B. Statutory Option Selection.** An employee shall be deemed to have exercised the employee's option under 5 U.S.C. section 7121(d) and (e)(1) of the Statute when the employee timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever event occurs first.
- C. Informal EEO Grievance.** Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is filed within forty-five (45) calendar days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

Section 5. Designation of Representative

Only the employee or a representative designated by the Union may be the representative in a grievance under this procedure. If the Union is the grievant's designated representative, the employee will so state in writing at the initial filing of the grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation also will be in writing. Each Party shall have a representative available to meet referenced grievance filing time frames. Extensions may be granted by the consent of both Parties.

Section 6. Filing an Employee Grievance

- A. Time To File.** A grievance is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance must be filed within fifteen (15) calendar days of the date of the specific action which is the subject of the grievance. If the grievant was prevented from filing the grievance during the fifteen (15) calendar day period because of an Agency failure to perform a duty owed to the grievant or because of any concealment by the Agency that prevented discovery of the action during the fifteen (15) day period, the grievance must be filed within fifteen (15) calendar days of the grievant's discovery of the action. A step of the grievance procedure can be waived by the consent of both Parties.
- B. Extension to File.** Requests for extensions to the time limits for filing must be submitted, in writing, to the other Party prior to the expiration of the applicable time limit. Requests for extensions of time limits shall be considered upon receipt of a written request and justification. A written decision will be provided to the requesting Party.
- C. Agency Failure to Meet a Time Limit.** If the Agency fails to comply with the time limits at any step of the grievance process, the grievance may be advanced to the next step of the process.
- D. Section 7114(b)(4).** The alleged failure of the Agency to comply with section 7114(b)(4) of the Statute will be decided by the FLRA upon the filing of an unfair labor practice charge, or the alleged failure can be raised in a new grievance filed under this Article.

Section 7. Official Time

A reasonable amount of official time during work hours will be allowed for employees and Union representatives to discuss, prepare for, and present grievances including attendance at meetings with Agency officials concerning the grievance.

Section 8. Employee Grievance Procedure

- A. Informal Grievance.** The Parties recognize that grievances may arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis.
1. At the election of the employee or the employee's representative, an employee dispute with the Agency may be brought to the employee's supervisor or to the appropriate Agency official with authority to resolve the matter in an attempt to resolve the matter informally.
 2. The supervisor or appropriate Agency official may provide a written response within five (5) work days of the matter being brought to their attention under this Section.
 3. If a matter is not resolved in this manner, the employee or the employee's representative may file a grievance in accordance with the procedures set forth in this Article.
 4. At the election of the employee or the employee's representative, this informal process may be bypassed.
 5. An election to pursue resolution under this informal process does not toll the required time frames for filing a formal grievance. However, an extension may be granted under Section 6.B.
 6. If the dispute cannot be resolved informally or the employee or the employee's representative chooses to forego the informal meeting described above, the following formal process must be used:

Formal Step 1

- A. Where to File a Grievance.** An employee must file the grievance in writing with the employee's immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In that case, the employee must file the employee's grievance with the Agency official at the level having the necessary authority.

- B. Content of the Grievance.** The employee must state specifically that the employee is presenting a grievance; the specific evidence, including providing copies of any existing documentary evidence, that supports the employee's grievance; the personal relief sought; the name, organizational unit and location of the aggrieved; the name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance; a statement of the law, rule, regulation or this Agreement alleged to have been violated, citing specific sections, paragraphs and articles; designation by name of the Union representative or a statement of self-representation. The failure of the grievance to supply this information will render the grievance deficient and the grievance will be dismissed. The return of a deficient grievance does not extend the required time frames for filing a formal grievance. The failure to raise evidence or issues at the Step 1 stage shall result in an inability to raise the evidence or issue at Step 2 or at arbitration. The grievance must be signed and dated.
- C. Consolidation of Grievances.** The Agency may consolidate multiple employee grievances into one grievance for processing and decision making that raise the same or similar issue alleging a violation of the same law, rule, or Agreement Article and section.
- D. Step 1 Decision.** Within fifteen (15) calendar days after receipt of the grievance, the Step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the authority to resolve the matter. The Agency's failure to respond to the grievance within the specified time frames, or as consented to by the Parties, will automatically advance the grievance to the next step.

Formal Step 2

- A. Filing a Step 2 grievance.** If the matter is not satisfactorily settled following Step 1, the aggrieved employee and/or representative, if any, must file within fifteen (15) calendar days of notification of denial or the date that a response should have been received, the matter in writing to the Step 2 Agency official identified in the Step 1 decision. The grievance will contain the information submitted in Step 1 plus the Agency response at Step 1.
- B. Step 2 Decision.** The Step 2 Agency official shall issue a written decision on the grievance within thirty (30) calendar days of receipt of the grievance. If the

grievance is not satisfactorily settled, the Union may refer the matter to arbitration in accordance with the procedures set forth in the Arbitration Article X.

- C. Settlement and Withdrawal.** If at any time during the processing of a grievance a settlement agreement is accepted by the employee or the employee's designated representative, the agreement shall be in writing. Execution of the settlement agreement automatically withdraws the grievance in its entirety.

Section 9. Institutional Grievance of the Parties

- A. Content of an Institutional Grievance.** Should either Party have a grievance concerning institutional rights granted by law, regulation or this Agreement, it shall inform the designated representative of the other Party of the specific nature of the complaint in writing, including the specific evidence, including providing copies of any existing documentary evidence, that supports the grievance; as well as any provision of law, rule, regulation or this Agreement allegedly violated, citing specific sections, paragraphs and articles; the name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance; and the relief sought. The failure of the grievance to supply this information will render the grievance deficient and the grievance will be returned to the filing Party for correction. The return of a deficient grievance does not toll the required time frames for filing a formal grievance. The grievance must be signed and dated.
- B. Time Limits for an Institutional Grievance.** A grievance of a Party is one specific action which is described in Section 2. In order to avoid stale litigation, a grievance of a Party must be filed within thirty (30) calendar days of the date of the specific action. If the Union or Agency was prevented from filing the grievance during the thirty (30) calendar day period because of an Agency or Union failure to perform a duty owed to the other Party or because of any concealment by the Agency or Union that prevented discovery of the action during the thirty (30) day period, the grievance must be filed within thirty (30) calendar days of the Union's or Agency's discovery of the action.
- C. Failure to Raise an Issue.** Failure to raise evidence or issues at the grievance of the parties' stage shall result in an inability of the grieving Party to include or raise the issue at arbitration.

D. Where to File. The grieving Party will file the grievance with the designated representative of the other Party authorized to receive a Party grievance.

1. A local matter will be filed with the designated local representative of the other Party; and
2. A national matter will be filed with the designated national level representative of the other Party.

E. Decision. Within thirty (30) calendar days after receipt of the written grievance, the receiving Party will send a written decision on the grievance. If the matter is not resolved, the grieving Party may refer it to arbitration in accordance with the procedures set forth in the Arbitration Article X.

Section 10. Alternative Dispute Resolution (ADR)

The Parties, upon request, will explore resolution of all potential grievances before being filed, individual grievances at Steps 1 and 2, and Party grievances. Settlements will be in writing and execution of the settlement agreement automatically withdraws the grievance in its entirety. Settlement discussions will not toll the time limits for filing and processing a grievance in this Article. However, the parties may consent to toll the time limits on a case by case basis.

PERFORMANCE

Section 1. Overview

The Agency shall administer the performance management program in accordance with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430. The Agency shall not prescribe a distribution of levels of ratings for employees covered by this master collective bargaining agreement (MCBA). Each employee's performance shall be judged solely against the employee's performance standards.

Section 2. Definitions

Terms used in this article that relate to the performance management system, such as "appraisal," "critical element" or "performance rating" shall have the same meaning as in 5 C.F.R. Part 430.

Section 3. Critical Elements and Performance Standards

- A. Critical Element.** Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable."
- B. Performance Levels.** The Agency shall comply with 5 C.F.R. Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element and when determining whether a rating level shall have a written performance standard.
- C. Performance Standards.** Application of all performance standards shall be fair, equitable and consistent with 5 C.F.R. Part 430.

Section 4. Communications

- A. Discussing the Performance Plan.** Within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor shall discuss the performance plan with each employee. The supervisor shall present the employee a copy of the draft performance plan, which contains the critical elements and performance standards.
- B. Delivering the Performance Plan.** As required by 5 C.F.R. 430.206(b)(1): "Agencies should encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The

supervisor shall give the employee a copy of the final performance plan and ask the employee to sign and date to acknowledge receipt. If the employee refuses to sign and date, the supervisor shall note the employee's refusal on the performance plan and state the date the employee received the plan.

C. Changes to a Performance Plan. During the rating period, the supervisor shall discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan.

D. Performance Discussions.

1. A mid-year discussion, a closeout of current appraisal period and an establishment of standards for the new appraisal period discussion must take place each appraisal period.
2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
3. Performance discussions between the supervisor and the employee shall be aimed at improving the work process or product and developing the employee. As appropriate, the discussion shall provide the opportunity to assess accomplishments and resolve problems.

Section 5. Procedures

- A. Appointment/Reassignment.** Within thirty (30) days of appointment or reassignment, the employee shall be issued a new performance plan.
- B. New Supervisor.** Within thirty (30) days of a change in supervisor; the new supervisor shall conduct an expectation discussion and review the current performance plan.
- C. Annual Rating.** Employees shall receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the employees within thirty (30) days following the end of the rating period.

D. Minimum Time. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.

Section 6. Addressing Unacceptable Performance

A. Issuance of a Performance Improvement Plan. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more critical elements is at the unacceptable level, the supervisor may notify the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Performance Improvement Plan (PIP).

B. Content of PIP. The PIP must inform the employee that unless their performance in the specified critical elements improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.

C. Duration of PIP. The PIP shall afford the employee thirty (30) calendar days to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position.

D. Assistance During the PIP. During the PIP period, the supervisor shall offer assistance to the employee to improve the employee's unacceptable performance.

E. Ratings. A supervisor can issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action under 5 C.F.R. Part 432 shall be proposed until the completion of the PIP.

F. Termination of a PIP. Once the PIP has expired or the supervisor determines that assistance is no longer needed, the supervisor shall provide the employee with a written notice of this determination.

SICK LEAVE

Section 1. Government-wide Regulations

Employees will accrue sick leave in accordance with applicable laws and Government-wide regulations.

Section 2. Purpose to Use Sick Leave

Earned sick leave will be granted to employees for all purposes described in 5 CFR § 630.401.

Section 3. Requesting Sick Leave

- A. Preapproval is Required.** Sick leave must be requested, approved and scheduled before the employee is absent from work.
- B. Requests.** Employees requesting sick leave must notify their supervisor, or supervisor's designee, of the request by telephone/voicemail, email and text (as designated by supervisor). If an employee receives an "out-of-office" message from their supervisor, via phone or email, or otherwise becomes aware that their supervisor is not available that day, the employee must notify the supervisor's designee of their request for leave that has not been preapproved.
- C. When Preapproval is Impossible.** When it is not possible to make a request for sick leave before the employee's scheduled tour of duty (e.g. the employee is totally incapacitated and unable to communicate to the employer), the employee must make the request as soon as possible. If the employee is physically unable to make the request himself/herself, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified consistent with this Article.
- D. Request for Longer Than One Day.** When an employee's situation requires the employee to be absent longer than one (1) day, the employee must indicate the expected return to duty date.
- E. Fifteen Minute Increments.** Sick leave must be requested and used in fifteen (15) minute increments.

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- F. Out of Office Procedures.** Employees using leave must comply with their office workforce scheduling procedures, including updating electronic and/or hard copy calendars with planned leave. Employees are also must comply with their office's out-of-office procedures, including modifying their outgoing voicemail, updating their out-of-office email messages, and if applicable, notifying their customers of their absence(s).

Section 4. Evidence to Support Sick Leave

As required by 5 CFR 630.405(a): The Agency will grant sick leave "only when the need for sick leave is supported by administratively acceptable evidence."

Section 5. Medical Certificate.

- A. Medical Certificate.** As defined by 5 CFR 630.201(b), a "Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment." Medical certificates should contain, at a minimum, a statement that the employee is under the care of a medical professional, the nature of the incapacitation, the impact of the incapacitation on the employee's ability to perform his/her duties, and the expected duration of such incapacitation.
- B. When a Medical Certificate Is Not Required.** If an employee provides administratively acceptable medical documentation, the employee shall not normally be required to provide specific medical information, such as a diagnosis.
- C. When a Medical Certificate Is Required.**
1. The supervisor may require a medical certificate for any absence in excess of three (3) workdays. The supervisor will require a medical certificate for any absence less than three (3) workdays when the supervisor makes the unreviewable management determination that based on any of the following circumstances, a medical certificate is required to support the reason for the absence:
 - a. Previous leave usage;
 - b. The length of the absence;

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- c. A sick leave request was made after the employee has been assigned an undesirable work assignment or unwanted overtime or has been denied annual leave; or
 - d. Any other situation surrounding the employee's leave request that raises reasonable questions about whether sick leave should be granted.
2. When requested by the supervisor (or other Agency official), an employee must provide a medical certificate within fifteen (15) calendar days of the date of the request. Per 5 CFR 630.405(b), an employee who does not timely provide a requested medical certificate "is not entitled to sick leave."

Section 6. Reasons for Sick Leave

A. Reason to Take Sick Leave. Pursuant to 5 CFR 630.401, the Agency must grant sick leave to an employee when the employee:

1. Receives medical, dental, or optical examination or treatment;
2. Is incapacitated for the performance of the employee's by physical or mental illness, injury, pregnancy, or childbirth;
3. Provides care for a family member:
 - a. Who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
 - b. With a serious health condition; or
 - c. Who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;
4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

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5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by the employee's presence on the job because of exposure to a communicable disease; or
6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

Section 7. "Family Member"

For the purpose of Section 6.A.3 and 4, per 5 C.F.R. section 630.201, the term "family member" means an individual with any of the following relationships to the employee:

- A. Spouse and parents thereof;
- B. Sons and daughters, and spouses thereof;
- C. Parents and spouses thereof;
- D. Brothers and sisters, and spouses thereof;
- E. Grandparents and grandchildren, and spouses thereof;
- F. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (B) through (E) of this definition; and
- G. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Section 8. Earning Sick Leave

- A. **Sick Leave To Care for a Family Member.** The amount of sick leave granted to an employee during any leave year for the purposes described in Section 6.A.3.a. and c. and 4, of this Article may not exceed a total of 104 hours (or for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave the employee normally accrues during a leave year).
- B. The amount of sick leave granted to an employee during any leave year for the purpose of section 6.A.3.b. of this Article may not exceed a total of 480 hours (or for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in the employee's scheduled tour of duty each week), subject to the limitations of 5 CFR 630.401(d).

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Section 9. Voluntary Leave Transfer Program

An employee may participate in the Voluntary Leave Transfer Program (VLTP) to care for a family member or for a personal medical emergency pursuant to 5 CFR 630.901. While on a temporary VLTP, an employee may accrue up to a maximum of forty (40) hours annual leave and sick leave. Such leave will only become available after the medical emergency terminates or the employee terminates participation in the leave transfer program.

Section 10. Bone Marrow or Organ Donation

In accordance with 5 U.S.C. section 6327, an employee may use up to seven (7) days of paid leave every calendar year to serve as a bone-marrow donor. An employee may also use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave. Except in emergency cases, such absences must be requested by the employee and approved in advance of the absence. The request must state the nature of the donation and the amount of time requested. Official documentation from the medical center/provider must be submitted along with the request.

WORK SCHEDULES

Section 1. Definitions

For the purpose of this Article:

- A. *Administrative workweek*** means the period of seven consecutive calendar days beginning Sunday and ending Saturday. There are two administrative workweeks per pay period.
- B. *Alternative Work Schedule*** means a compressed work schedule or a flexible work schedule.
- C. *Basic Work Requirement*** means the number of hours, excluding overtime hours, that an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.
- D. *Biweekly Pay Period*** means the two-week period for which an employee is scheduled to perform work.
- E. *Compressed work schedule*** means:
1. In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled by the Agency for less than 10 workdays.
 2. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled by the Agency for less than 10 workdays and that may allow the employee to work more than 8 hours in a day.
- F. *Core hours*** means the time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the Agency to be present for work or on approved absence.
- G. *Credit hours*** means those hours that an employee working a flexible work schedule elects to work, after supervisory preapproval, that is more than the employee's basic work requirement to vary the length of a workweek or workday.

- H. Fixed work schedule** means a work schedule that is assigned or approved by the supervisor and that cannot be changed without prior supervisory approval. Standard/Regular and compressed work schedules are fixed work schedules.
- I. Flexible work schedule** means a work schedule established under 5 U.S.C. 6122, that:
1. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine the employee's own schedule consistent with this Article.
 2. In the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine the employee's schedule consistent with this Article.
- J. Maxiflex** means a type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee, upon supervisory preapproval, may vary the number of hours worked on a given workday or the number of hours each week consistent with this Article.
- K. Flexible hours** means the times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule, with supervisory preapproval, may choose to vary the employee's times of arrival and departure from the work site consistent with work-related needs.
- L. Overtime Hours** means:
1. **Standard/Regular (Straight-8) Work Schedule:** The hours of work officially ordered more than 8 hours in a day or more than 40 hours in an administrative workweek.
 2. **Compressed Work Schedule:** Any hours officially ordered more than those specified hours for full-time employees that constitute the Compressed Work Schedule (i.e., 5-4/9 or 4-10). For part-time employees, overtime hours are hours required to be worked outside of the compressed work schedule. However, if those additional hours still total

less than eight (8), the employee receives a basic pay rate for the added hours. Only hours greater than eight (8) in a day and 40 in a week earn an overtime rate of pay.

3. **Maxifelix:** Any hours more than 8 hours in a day or 40 hours in a week that are officially ordered in advance, but not including credit hours. Credit hours worked by the employee beyond 8 hours in a day or 40 hours in a week are not overtime hours.

- M. Regularly Scheduled Administrative Workweek** means: For a full-time employee, the period within an administrative workweek within which the employee is regularly scheduled to work. For a part-time employee, the officially prescribed days and hours within an administrative workweek during which the employee is scheduled to work.

- N. Tour of Duty** means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

- O. Work Day** means the period, including the unpaid lunch break, during which an employee is normally scheduled to be at work.

- P. Basic Work Requirement** means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.

- Q. Approved Work Schedule** means the number of hours of work and/or hours of absences that the employee plans to accomplish in a given biweekly pay period and which is preapproved by the supervisor.

- R. Work-Related Needs** means office staffing; office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; the need to meet with customers, and other operational needs that involve the work of the Agency.

Section 2. Management Work Schedule Decisions

- A. Management Decisions.** The Agency may consider “work-related needs” when making any unreviewable management work schedule decisions, including but not limited to:
1. Directing, approving, denying, modifying or suspending, temporarily or permanently, all requested or established work schedules, either for individuals or an entire work unit.
 2. Approving and denying an employee’s request to earn and/or use credit hours.
 3. Terminating an approved alternative work schedule.
 4. Restricting participation in an alternative work schedule for positions the Agency determines are of a critical nature.
 5. Changing an employee’s approved work schedule due to training or travel.
 6. Resolving conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule or Maxiflex.
 7. Approving and denying adjustments of more than 60 minutes (earlier or later) to the arrival and departure times of the approved Maxiflex proposed work schedule.
 8. Approving and denying credit hours.
- B. Non-Grieveable.** The management decisions in Section 2.A. are not subject to the Negotiated Grievance Procedure in Article X.

Section 3. Employee Responsibilities

- A. Adhere to Schedules.** Employees must adhere to their individually assigned work schedule and must be present for duty during hours corresponding to assigned or approved work schedules.
- B. Time and Attendance.** Employees must ensure that their time and attendance submission is proper, coded for overall accuracy, and timely

entered and attested to in the Agency Time and Attendance Recording System.

- C. **Work Schedule Requests.** Employees approved for Maxiflex must timely submit requests for specific Maxiflex work schedules.
- D. **Approved Leave.** Employees must request prior supervisory approval to be absent from their scheduled hours.
- E. **Work Schedule Requests.** All employees must timely request work schedules and changes to approved work schedules in accordance with this Article.

Section 4. Types of Work Schedules and General Requirements

- A. **Work Schedule Options.** The following work schedules are available at the Agency:
 - 1. Standard/Regular (Straight-8 or 5/8) Work Schedule (fixed)
 - 2. Compressed Work Schedules (a fixed alternative work schedule)
 - a. 5-4/9 Work Schedule (a fixed alternative work schedule)
 - a. 4-10 Work Schedule (a fixed alternative work schedule)
 - 3. Maxiflex Work Schedule (a flexible alternative work schedule)
- B. **Management Approves All Work Schedules.** Employees do not have an entitlement to participate in any particular alternative work schedule; i.e., compressed or Maxiflex. Preapproval to participate in an alternative work schedule is a management decision.
- C. **Management Makes Work Schedule Changes.** All employees may not have the same degree of personal choice in their work schedules because of different employee responsibilities and work situations. Supervisors will make work hour adjustments when needed to meet “work-related needs.”
- D. **Agency Priorities.** All work schedules must be consistent with “work-related needs,” including providing for adequate, continuous office

coverage, and resulting in no diminution or reduction in the effectiveness of the work performed.

- E. Work Schedule Approvals/Disapprovals.** All work schedules must be preapproved by the supervisor. If an employee's request for a specific alternative work schedule is denied, upon request, the supervisor will provide a written explanation to the employee.
- F. Termination.** The Agency may terminate an employee's alternative work schedule when there are documented misconduct or performance issues, when the employee does not comply with the provisions provided in this Article, or to meet "work-related needs." In such event, an employee may request that the employee's alternative work schedule be reinstated upon resolution of the issue that prompted the termination.
- G. Lunch Period.** All daily tours of duty of six (6) or more hours must include at least a 30-minute unpaid lunch break each day. Fixed schedule daily tours of duty cannot contain an unpaid lunch break greater than 60 minutes. The lunch break must be taken between 10:30 A.M. and 2:00 P.M. An employee cannot skip the lunch break and work during the lunch period to shorten the length of a workday or to earn credit hours. An employee's tour of duty will be established to ensure that the employee works the required number of hours for the type of work schedule selected and accounting for the lunch period.
- H. Restriction for Critical Positions.** The Agency will restrict participation in an alternative work schedule for positions the Agency determines are of a critical nature.
- I. Training Conflicts.** An employee's approved work schedule may be changed when the employee is attending training and the training hours conflict, or are inconsistent, with the approved work schedule. An employee will notify the employee's supervisor as soon as the employee becomes aware of the training conflict.
- J. Travel Status.** An employee's work schedule may be changed when the employee is in a travel status and if the hours at the temporary duty station differ from the employee's approved work schedule. An employee will notify the employee's supervisor as soon as the employee becomes aware of the work schedule difference.

- K. Temporary Changes.** The Agency will make temporary changes in an employee's work schedule due to “work-related needs.”
- L. Requested Changes.** Other than returning to a 5/8 schedule, employees may change work schedule types no more than once per quarter to accommodate work-related needs or for personal reasons. For example, an employee cannot not work on a Maxiflex schedule one pay period and then the next pay period switch to the 5-4/9 compressed work schedule, and then the next pay period switch back to Maxiflex. Supervisors will only approve an employee’s requested change in an approved fixed schedule if the requested change does not create an administrative burden and does not have a negative impact on “work-related needs.”
- M. Maxiflex Withdrawal.** An employee who has withdrawn from a Maxiflex schedule cannot request to return to a Maxiflex schedule in the same quarter.
- N. Telework and Alternative Work Schedules.** Employees who work an alternative work schedule may utilize telework opportunities consistent with Article X of this Agreement. Employees on a regular and recurring telework arrangement are required to report to the official worksite and duty station as needed, as determined by the Agency. Irrespective of the telework schedule or alternative work schedule, employees (other than when on travel) are expected to report physically to the official worksite and duty station a minimum of three (3) days per week. Maxiflex scheduled days off, compressed days off and regular telework days will count as a day away from the official worksite for the purpose of this requirement.
- O. Work Schedule Request Form.** Employees must request their work schedule on the Agency’s Work Schedule Request Form or designated electronic system.
- P. Work Schedules for New EPA Employees.** New employees (i.e., employees who have worked at the Agency for less than six months) will be on a Standard/Regular 5/8 Work Schedule through their first full pay period. They may request an alternative work schedule but are encouraged to get experience in their organization or work unit. While that amount of time will vary by employee, an “orientation” period of 90 days up to six months would be considered reasonable before allowing a new employee to work an

alternative work schedule.

Section 5. Standard/Regular Work Schedules

- A. Work Week and Hours.** The basic 40-hour workweek is scheduled on five days, normally Monday through Friday, and the working hours are the same each day.
- B. Fixed Schedule.** The 8-hour regular schedule tour of duty times are fixed and must be between 6:00 a.m. and 6:00 p.m.
- C. Overtime.** An employee is entitled to overtime pay when a supervisor orders the employee to perform overtime work beyond eight (8) hours in a day and 40 hours in a week.
- D. Night Pay.** An employee is entitled to night pay when the employee is required to work overtime hours between 6:00 P.M. and 6:00 A.M.
- E. Holidays.**
1. When relieved from duty on a holiday, full-time employees are entitled to basic pay for 8 hours. Part-time employees are entitled to basic pay for the number of hours they were scheduled to work on the holiday.
 2. When an employee is required to perform non-overtime work on a holiday, the employee is entitled to holiday pay for the number of hours during which work is performed.
 3. When an employee is required to perform work on a holiday outside of the employee's regularly scheduled daily tour of duty, the employee earns the employee's overtime rate of pay for the hours worked.

Section 6. Compressed Work Schedules

- A. 5-4/9 Work Schedule.** This is a fixed schedule where employees complete the basic 80-hours requirement in eight (8) days of nine (9) hours of work each day and one day of eight (8) hours of work with one scheduled non-workday each pay period, totaling 80 hours of work per pay period. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and a fixed non-workday. Fixed arrival and

departure times must be the same for each workday.

- B. 4-10 Work Schedule.** This is a fixed schedule that includes four days of ten (10) hours of work each day and one compressed day off each work week. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and two fixed non-workdays, one day each week. The fixed non-workdays must be the same day of each administrative work week and must not be consecutive. Fixed arrival and departure times must be the same for each workday.
- C. Fixed Tour of Duty.** Compressed schedule tours of duty times are fixed and must be between 6:00 A.M. and 6:00 P.M.
- D. Change in Day Off.** Employees may request to change their compressed day off prior to the commencement of the pay period, subject to supervisory preapproval. A scheduled compressed day off, as part of the schedule, cannot be changed once a pay period begins.
- E. Time and Attendance.** Employees who are approved to work a compressed work schedule are required to provide affirmative evidence that they have worked the proper number of hours in a biweekly pay period in accordance with 5 CFR 610.404. This is done by making proper entry into the Agency time and attendance system. Supervisors may also require employees to use a tracking system or email to sign in or sign out.
- F. Overtime Pay.** An employee is entitled to overtime pay when the employee is required to work beyond the number of regularly scheduled hours in a day for a compressed work schedule. For a full-time employee, overtime work consists of all hours of work outside of the established Compressed Work Schedule. For a part-time employee, overtime work consists of hours outside of the Compressed Work Schedule for the day (more than at least 8 hours a day) or for the week (more than at least 40 hours).
- G. Night Pay.** Employees are entitled to night pay for regular hours and regular overtime hours ordered to be performed between 6:00 P.M. and 6:00 A.M.

H. Holidays.

1. If a federal holiday falls on an employee's eight (8) hour work day, it will be recorded as eight (8) hours. If the holiday falls on a nine (9) or ten (10) hour work day, it will be recorded as nine (9) or ten (10) hours respectively.
2. If the holiday falls on an employee's scheduled compressed day off, and:
 - a. If the holiday falls on a Sunday, the employee will get the next regularly scheduled workday off (e.g., if the employee's compressed day off is Monday, Tuesday will be observed as the "in-lieu-of holiday").
 - b. If the holiday falls on any other day, the employee will get the preceding regularly scheduled workday off (e.g., if the employee's compressed day off is a Monday and the holiday falls on Monday, the preceding Friday would be the "in-lieu-of" holiday").

I. **Conflicts in Days Off.** Supervisors will resolve conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule. Supervisors may consider the following factors when resolving conflicts:

1. "Work-related needs."
2. The order in which involved employees selected the schedule.
3. Employee seniority (based on service computation date for leave).

J. **Credit Hours.** Employees on compressed work schedules may not earn credit hours.

Section 7. Maxiflex Work Schedule

A. **Flexibilities.** Maxiflex allows employees to request their own schedule consistent with this Article. Maxiflex has an 80-hour bi-weekly work requirement for full time employees (and a prorated number of hours for part time employees), rather than a daily or weekly work requirement. Maxiflex permits employees to request to vary the number of hours worked each day and each week. Maxiflex allows employees to complete the 80- hour work requirement in less than 10 workdays each pay period, and to earn approved

credit hours for work performed in more than 80 hours bi-weekly.

- B. Tour of Duty.** A tour of duty under a Maxiflex work schedule is the time period within which an employee must complete the employee's basic 80-hour biweekly work requirement. The tour of duty is composed of both core hours and flexible hours. The tour of duty for employees on Maxiflex is Monday through Friday, and may begin as early as 6:00 A.M. and end as late as 7:00 P.M.
- C. Ten Hour Work Days.** Employees may work up to a maximum of ten (10) non-overtime hours in a single workday. These hours can be work hours, hours of approved absence, or a combination of both. No hours can be worked outside of the tour of duty without prior supervisory preapproval. These ten (10) work hours do not include a scheduled unpaid lunch break for daily tours of duty of six (6) or more hours.
- D. Finality of Schedules.** Once a Maxiflex work schedule is preapproved by a supervisor, the work schedule is final for that particular pay period unless adjusted as allowed under this Article.
- E. 60-Minute Variations.** Once a biweekly Maxiflex work schedule is approved, an employee may adjust the arrival and/or departure times of the approved work schedule by a maximum of thirty minutes without prior supervisory notification or preapproval, provided the 60-minute change does not interfere with the established core hours and does not impact already scheduled meetings or "work-related matters." Thus, the actual work schedule may vary from the approved work schedule. While the 60-minute adjustment does not need prior supervisory notification or preapproval, like all hours worked or used for approved leave or credit hour use, the adjusted hours must be accurately recorded by employees in the Agency's Time and Attendance Reporting System. Adjustments of more than 60-minutes to the arrival and departure times of the approved work schedule requires supervisory preapproval.
- F. Core Hours.** Core hours are the designated hours and days during which an employee must be present for work. Core hours may be accounted for through duty time, use of leave, or use of accrued credit hours. The core hours for employees on Maxiflex are 9:30 A.M to 2:30 P.M. local time. Part-time employees working less than five hours on a scheduled work day, must schedule their hours within Agency (FWS) core hours. Subject to supervisory

preapproval and the needs of the organization, employees with less than five (5) hours remaining in their 80-hour biweekly requirement may work less than the full core hours on their last scheduled work day of the pay period. For example, if by the second Thursday of the pay period, an employee has earned 77 regular hours and is scheduled to work only three regular hours on Friday, the employee may work these three hours during or outside of core hours during their normal tour of duty, and need not account for the rest of the core hours on that day with leave or credit hours.

- G. Flexible Time Bands.** Flexible time bands/flexible hours are the times during the workday, work week, or pay period when an employee covered by a Maxiflex work schedule may choose: to vary the employee's times of arrival to and departure from work consistent with "work-related needs;" earn and use credit hours; and be absent without being in a leave status. The flexible time bands for employees on Maxiflex are: 6:00 A.M. to 9:30 A.M. and 2:30 P.M. to 6:00 P.M.
- H. Changes to Work Schedule.** Employees may alter their Maxiflex work schedule on a pay period to pay period basis with supervisory preapproval.
- I. Biweekly Work requirement.** Regardless of the particular hours that an employee requests and actually works, at the end of each pay period, all full-time employees must meet the 80-hour biweekly work requirement (or the prorated number of hours for part time employees). Maxiflex has no mandatory daily or weekly work requirement. For example, employees are not required to meet a daily work requirement of 8 hours or a weekly work requirement of 40 hours.
- J. Overtime.** Overtime work consists of hours of work that are officially ordered in advance and constitute more than eight (8) hours a day or forty (40) hours in a week, but does not include worked credit hours.
- K. Night pay.** When an employee elects to work preapproved credit hours or elects a time of arrival or departure at a time of day when night pay is otherwise authorized, night pay shall not be paid. If an employee's daily tour of duty includes eight (8) or more hours available for work during daytime hours (i.e., between 6:00 A.M. and 6:00 P.M.), the employee is not entitled to night pay even though the employee elects to work hours for which night pay is normally authorized (i.e., between 6:00 P.M. and 6:00 A.M.).

- L. Holidays.** On a holiday, employees under Maxiflex work schedules are credited with eight (8) hours towards their eight (80) hour basic work requirement for the pay period, even if they would otherwise work more hours on that day. When the employee is scheduled to work more than eight (8) hours on the holiday that the employee is relieved from duty, hours greater than eight (8) must be rescheduled on another day, or the employee must account for those hours by charge to a category of approved absence. Part time employees shall be credited with the number of hours that they would have actually worked that day had it not been a holiday. In the event the President issues an Executive Order granting a "half-day" holiday, a full-time employee on a Maxiflex work schedule is credited with half the number of hours the employee was scheduled to work, not to exceed four (4) hours.

Section 8. Obtaining Approval of a Maxiflex Work Schedule

- A. Requesting a Maxiflex Work Schedule.** Employees interested in participating in a Maxiflex work schedule must:
- (1) Acknowledge in writing that the employee has read and understands this Article;
 - (2) Submit the completed *Work Schedule Request Form* to their supervisor for preapproval or disapproval; and
 - (3) Submit a proposed work schedule on the *Maxiflex Pay Period Time Sheet* to their supervisors in advance of each pay period.
- B. Start/End Date.** Employees cannot begin or stop using Maxiflex in the middle of a pay period since the Maxiflex schedule format is based on two-week intervals.
- C. Initial Request Approval/Disapproval.** An employee's initial request to work a Maxiflex work schedule should be preapproved or disapproved by the supervisor in writing normally within 14 calendar days. The failure to meet this time goal has no impact on the approval process. Employees may request in writing an explanation for a disapproval of a requested Maxiflex work schedule.

Section 9. Maxiflex Work Schedule Employee Requirements

- A. Advance Scheduling Requirement.** All employees on Maxiflex are subject to an advanced scheduling requirement each pay period. Since Maxiflex allows employees to vary their work hours during flexible times for each pay period, employees must electronically submit a proposed work schedule on the *Maxiflex Pay Period Time Sheet* to their supervisors in advance of each pay period. The *Maxiflex Pay Period Time Sheet* is not a substitute for the electronic Agency's Time and Attendance Reporting System. Rather, the *Maxiflex Pay Period Time Sheet (MPPTS)* is a tool for an employee to request specific work hours and it serves as a reference to be used when an employee completes the biweekly work requirement and for a supervisor to be aware of an employee's weekly work schedule.
- B. Completing the Maxiflex Pay Period Time Sheet.** Employees must timely submit their *Maxiflex Pay Period Time Sheet*, pursuant to the supervisor's designated deadline, that documents: a) the planned hours to be worked in the upcoming biweekly pay period with specific days, and starting and ending times, b) the requested leave usage of all types; c) the number of credit hours the employee is requesting to earn; and d) the number of credit hours the employee is requesting to use. Advanced requests for scheduling of the pay period minimizes potential problems in determining an employee's entitlements to pay and leave and best allows for supervisors to be able to plan and assign work.
- C. Failure to Timely Submit the Maxiflex Pay Period Time Sheet.** Employees who fail to submit the *Maxiflex Pay Period Time Sheet* in advance with sufficient time for the supervisor to approve or disapprove are required to work fixed 8-hour days (either from 8:00 A.M. to 4:30 P.M. or from 9:00 A.M. to 5:30 P.M.) for the affected pay period.
- D. Disapprovals.** If the supervisor does not approve all or part of the requested Maxiflex work schedule, the supervisor will state the reason(s) for disapproval on the *Maxiflex Pay Period Time Sheet* and may offer an alternative, if available.
- E. Time and Attendance Reporting.** Employees must separately request leave and credit hours to be earned and to be used in the Agency's Time and Attendance Reporting System.

- F. **Recording Daily Hours.** Employees must record their time in to work and time out of work daily either by a method directed by the supervisor (e.g., contemporaneous email), or on the *Maxiflex Pay Period Time Sheet* and also in the Agency's Time and Attendance Reporting System.

- G. **Recording Credit Hours.** Employees must record the number of credit hours earned and used each workday. Employees must be aware that at the end of the pay period, hours worked will be counted as credit hours only after the 80-hour bi-weekly requirement is met.

- H. **Recording a Lunch Period.** Employees must document a 30 to 60-minute unpaid lunch period when scheduled to work at least 6 hours in a day.

- I. **Electronic Calendar.** Employees must maintain their current work schedule on the Agency's electronic calendar to assist coworkers to know their availability for meetings. The employee's free/busy time must be visible to all staff and clients, unless provided an exception by the supervisor.

- J. **Maxiflex and Annual Leave Forfeiture.** Employees must carefully plan and schedule annual leave throughout the year to avoid annual leave forfeiture. Employees on Maxiflex in high leave earning categories or with high leave balances run the risk of annual leave forfeiture at the end of the leave year. Employees must ensure that their annual leave is requested and scheduled in writing each leave year to prevent any loss of annual leave at the end of the leave year. Requesting and recording annual leave is an employee responsibility. An employee's approved work schedule is not a basis on which annual leave can be restored.

Section 10. Earning and Using Maxiflex Credit Hours

The responsibilities and requirements to earn and use Maxiflex credit hours is covered in Maxiflex Credit Hours Article X.

ARTICLE 7 NEGOTIATIONS

Section 1. It is agreed that the Employer shall negotiate with the Union on all proposed changes in conditions of employment in accordance with 5 USC Chapter 71. It is understood that the Employer in this context means a representative with delegated authority to speak for the Center Deputy Director. The Employer shall provide written notice to the union of proposed changes to conditions of employment that may adversely affect the bargaining unit. Written notice will include those matters initiated locally and/or at a higher Agency level.

Section 2. Negotiation is defined as collective bargaining between the Employer and the Union with the objective of reaching formal written agreement with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws, regulations and published policies.

Section 3. Procedures for bargaining. The following procedures for bargaining will be followed unless otherwise agreed to by the Parties:

- a. The Employer agrees to notify the Union President in writing prior to the planned implementation of a proposed change in conditions of employment. The notification will indicate the general nature of the proposed change and the planned implementation date.
- b. The Union shall have ten (10) calendar days from the date of notification to request bargaining. Within ten (10) calendar days of the Employer's receipt of the request to bargain, a meeting will be held to discuss the proposed change. After conclusion of the meeting, the Union will have ten (10) calendar days to forward written proposals to the Employer.
- c. If the Union does not request bargaining within the time limit, the Employer may implement the proposed change(s).
- d. Bargaining will normally commence within ten (10) calendar days, after submission of Union proposals, unless otherwise agreed to by the Parties.
- e. The Employer shall have ten (10) calendar days from the date of receipt of Union initiated proposed change to conditions of employment to forward written proposals to the Union. Bargaining will normally commence within ten (10) calendar days, unless otherwise agreed upon by the Parties.
- f. Upon mutual agreement, the Parties will use all available technology (e.g., teleconference, email, Google Hangouts, VTC) to negotiate as an alternative to face-to face bargaining.
- g. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiations.

Section 4. It is recognized that this Agreement is not all inclusive, and the fact that certain working conditions have not been specifically covered in the Agreement does not lessen the responsibility of either Party to meet with the other for discussion and exchange of views and/or negotiations in an effort to find mutually satisfactory solutions to matters related to policies, practices, procedures, and conditions of employment not covered in this Agreement.

Section 5. Issues regarding impasse or negotiability of an item under discussion will be resolved in accordance with applicable provisions of Title 5 Code of Federal Regulations (CFR) and the rules and regulations of the Federal Labor Relations Authority.

ARTICLE 11

WORK SCHEDULES

Section 1. Purpose. To establish policy on Alternative Work Schedules for (1) Flexible Work Schedules, and (2) Compressed Work Schedules and (3) and regular work schedules as well as hours of duty in general.

Section 2. Policy. Alternative Work Schedule programs have the potential to enable managers and supervisors to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their personal activities. Under such arrangements employees may, for example, balance work and family responsibilities more easily, become involved in volunteer activities, and take advantage of educational opportunities.

Section 3. Work Schedules

- A. **Regular.** The regular (standard) workweek, for all employees not on an alternative work schedule, consists of five (5) eight-hour workdays, Monday through Friday, with a schedule of 7:30 a.m. to 4:00 p.m. (including a 30-minute lunch period).
- B. **Flexible Work Schedules.** Work schedule established under 5 U.S.C. 6122 that in the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine his/her own schedule; and in the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine his or her own work schedule. Employees on these schedules may work credit hours. See Article 12 for the credit hour program provisions. The Flexible work schedules for GED are as follows:
- (1) **Flexitour work schedule.** Under this schedule employees must be at work
 - (2) during the core hours of 9:00 a.m to 3:00 p.m. However, employees are allowed to select starting and stopping times within the flexible hours (6:00 a.m.-9:00 a.m. arrival and 3:00 p.m-6:00 p.m. departure). Once selected, the employee continues to adhere to the fixed starting and stopping times for the pay period (e.g. Monday 7:00 - 3:30 p.m.; Tuesday 7:00 - 3:30 p.m., etc.).
 - (3) **Maxiflex work schedule.** Maxiflex schedule means a type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization. Under this schedule, employees must be at work or in approved leave status during the core hours of 9:00 a.m to 3:00 p.m. on the core days of Tuesdays through Thursdays. Maxiflex allows Employees to

"flex" their starting and stopping times with no set times of arrival or departure except to be there during the core hours Tuesdays through Thursdays.

- (4) Gliding Schedule: A type of flexible work schedule in which a fulltime employee has a basic work requirement of eight (8) hours each day and 40 hours in each week, may vary starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

C. Compressed Work Schedules. Compressed work schedules are available for use at GED.

- (1) In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for less than 10 workdays constitutes a compressed work schedule. The authorized compressed work schedules for GED are the 5-4-9 and 4-10 work schedules. The authorized days off under either of these work schedules is either Monday or Friday.
- (2) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day.

Section 4. Coverage. All bargaining unit employees are covered by the provisions of this Article. However, part-time and temporary employees must work the majority of their hours during the core time period.

Section 5. Definitions.

- A. Administrative Work Week. Administrative work week is defined as the calendar week 0001 hours Sunday through 2400 hours Saturday.
- B. Alternative Work Schedule. Flexible and compressed work schedules are jointly referred to as alternative work schedules.
- C. Basic Work Requirement. The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. The basic work requirement for GED for a full-time employee is 80 hours in a biweekly pay period. The administrative workweek will consist of a period of seven (7) consecutive calendar days. The administrative workweek will begin on Sunday. The basic (standard) workweek, except for employees on alternative work schedules, consists of five (5) eight-hour workdays, Monday through Friday, with a schedule of 7:30 a.m. to 4:00 p.m. (including a lunch period).
- D. Compressed Work Schedules (CWS). In the case of a full-time employee, an 80-hour biweekly basic work requirement that is scheduled for less than 10 workdays;
 - (1) In the case of a part-time employee, a biweekly basic work requirement of

less than 80 hours that is scheduled for less than 10 workdays and that may require the employee to work more than 8 hours in a day.

- (2) For GED, the only authorized CWS schedules are the 5-4-9 schedule, which consists of eight (8) days of nine (9) hours; one workday of eight (8) hours and one day off either on Friday or Monday and the 4-10 schedule which consists of 4 x 10 hour days each week with one day, either Monday or Friday off each week.

- E. Core Hours. The hours each day that a full-time employee must be present for work (except for an employee's scheduled day off under a compressed work schedule). Core hours for employees stationed in GED, Gulf Breeze, shall be 9:00 a.m. - 3:00 p.m., excluding a 30 minute non-paid lunch period, on Tuesdays through Thursdays.
- F. Flexitour. Flexitour means a type of flexible work schedule in which an employee is allowed to select set starting and stopping times within the flexible hours. Once selected, the hours are fixed. The starting times chosen can be in fifteen (15) minute increments between the hours of 6:00 a.m. and 9:00 a.m. The stopping times will depend on what start time is selected to ensure that a complete workday is performed.
- G. Maxiflex A type of flexible work schedule in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week.
- H. Official Business Hours. The period each day when EPA-GED offices and organizational units must be adequately staffed to provide service and assistance to the public and other client offices. Official business hours are 7:30 a.m. to 4:00 p.m.
- I. Overtime. Overtime hours, when used with respect to normal work schedules, refers to all hours in excess of 8 hours in a day or 40 hours in a work week that are officially ordered in advance, but does not include credit hours. With respect to CWS programs, overtime hours refers to any hours in excess of those specified hours for full-time employees that constitute the compressed work schedule. For part-time employees, overtime hours are hours in excess of the compressed work schedule for a day (but must be more than 8 hours) or, for a week (but must be more than 40 hours).

For employees on maxiflex schedules, overtime is any hours over 80 in a pay period officially ordered and approved in advance.

- J. Tour of Duty. Tour of duty under a flexible work schedule means the limits set within which an employee must complete his or her basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement. The daily tour of duty will begin no earlier than 6:00 a.m. and end no later than 6:00 p.m.

Section 6. Responsibilities.

A. Managers and Supervisors:

- (1) Shall ensure that the mission of the agency is not adversely impacted by alternative work schedules through a reduction in productivity; a diminished level of services provided to the public; or an increase in operations cost. The Employer may terminate an alternative work schedule under these conditions. However, such termination is subject to the negotiated grievance procedure.
- (2) Shall ensure that offices are adequately covered in terms of both the numbers and types of employees needed during official business hours. Office coverage includes answering phones; expeditious handling of inquiries from the public; maintaining clerical, technical, and professional support of office functions; providing representation at essential meetings; meeting deadlines and peak workload requirements or other program needs.
- (3) Shall approve/disapprove all work schedules, subject to provisions of this Article, prior to being worked, and also considering health and safety factors.
- (4) Shall determine who will be required to work particular schedules in order to meet coverage or other operational requirements. To the extent possible, however, personal preferences will be considered in making such decisions.

B. Employees:

- (1) Must submit a work schedule to immediate supervisors for approval;
- (2) Ensure that schedules are set to include eighty (80) hours of paid time in each biweekly pay period, and to not begin work days before 6:00 a.m. or end work after 6 p.m. and comply with all other work schedule requirements;

- (3) Request and obtain approval of leave as appropriate when leave is desired;
- (4) Request variances to chosen work schedules from supervisors as far in advance as possible; and
- (5) Ensure that the supervisor is properly briefed on the status of work assignments so that work of the unit is not affected when variances to approved work schedules occur.
- (6) Ensure that time is properly recorded in People Plus timekeeping system.

Section 7. Procedures.

- A. Compensatory Time Off. Compensatory time off is time off on an hour-for-hour basis in lieu of overtime pay.
- B. Night Pay. If an employee's tour of duty includes 8 or more hours available for work during daytime hours (i.e., between 6 a.m. and 6 p.m.), he or she is not entitled to night pay even though he or she voluntarily elects to work during hours for which night pay is normally required (i.e., between 6 p.m. and 6 a.m.).
- C. Holiday Pay.
 - (1) Flexible Work Schedules: Holiday premium pay for non-overtime work is limited to a maximum of 8 hours in a day for full-time or part-time employees. If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive Order, the employee is entitled to basic pay with respect to the holiday for the number of hours the employee is scheduled to work on that day, not to exceed 8 hours. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.
 - (2) Compressed Work Schedules:
 - a. If a full-time employee is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive Order, the

employee is entitled to basic pay for the number of hours of the compressed work schedule on that day.

- b. If a part-time employee is relieved or prevented from working on a day within the employee's scheduled tour of duty that is designated as a holiday by Federal statute or Executive Order, the employee is entitled to basic pay for the number of hours of the compressed work schedule on that day. When a holiday falls on a non-workday of a part-time employee, he or she is not entitled to an in-lieu-of day for that holiday.

- (3) Premium pay for holiday work for employees on compressed work schedules. An employee on a compressed schedule who performs work on a holiday is entitled to basic pay, plus premium pay at a rate equal to basic pay, for the work that is not in excess of the employee's compressed work schedule for that day. For hours worked on a holiday in excess of the compressed work schedule, a full-time employee is entitled to overtime pay under applicable provisions of law and a part-time employee is entitled to straight pay or overtime pay, depending on whether the excess hours are non-overtime hours or overtime hours.

D. Lunch Periods. Each daily tour of duty must include a minimum 30-minute lunch period which will be taken between the hours 11:00 a.m. -1:00 p.m. . However, the lunch period shall not be taken at the beginning or ending of the workday. Lunch periods which exceed 30 minutes may be made up the same day by working an equal amount of time after the end of the work schedule (providing the time does not go out of the tour of duty period).

E. Days Off. Days off shall be scheduled so as to minimize the number of employees in a work unit who are off on the same day. In scheduling days off, supervisor shall give due consideration to work requirements and the preferences of individual employees. Fridays and Mondays are the only permissible days off for compressed work schedules.

F. Excused Absences.

- (1) Flexible Work Schedules. When absences are granted, determinations regarding entitlement to an excused absence, the amount of the excused absence to be granted, and/or the time period during which an excused absence is granted shall be based on the employee's established basic work requirement in effect for the period covered by the excused absence.

(2) **Compressed Work Schedules.** The amount of excused absence to be granted to an employee working a compressed work schedule shall be based on the employee's scheduled tour of duty on the day on which the excused absence is granted. An employee shall not be entitled to an excused absence on his/her scheduled day off, regardless of whether excused absences are granted to other employees in the same work unit on that day.

G. **Leave.** Time off during an employee's scheduled work hours must be charged to the appropriate leave category unless the employee is authorized compensatory time off or an excused absence. For example: A full-time employee who takes one day off annual leave will be charged for 8 or 9 or 10 hours as scheduled.

H. **Work Schedule.** The work schedule will establish the starting and ending times, the day(s) off and the requirement that 80 hours of work be performed during each bi-weekly pay period. Variations to the schedule are allowed. On a monthly basis, an employee may request a change to their approved work schedule. Also the supervisor has the authority to temporarily change permanent work schedules to meet the needs of the unit. This would include changing an employee's work schedule to conform with work schedules where the Employee is on temporary duty.

ATTACHMENT 14

ARTICLE 12

CREDIT HOUR PROGRAM

Section 1. Credit hours means any hours, within a flexible work schedule, which are in excess of an employee's basic work requirement (the number of hours he/she is required to work or account for by leave or otherwise), and which the employee elects to work so as to vary the length of a workweek or a workday.

Section 2. Credit hours may be worked only by employees on flexible schedules. Wage grade employees or employees electing to remain on a compressed or regular work schedule are not eligible for participation in the credit hour program. Credit hours may be earned and used in fifteen (15)-minute increments.

Section 3. Credit hours are hours of work performed at the employee's option; they are distinguished from overtime and compensatory time off in that they do not constitute overtime work (that is, work in excess of 8 hours in a day or 40 hours in a week which is officially ordered in advance by Management). The employee receives no additional pay for credit hours and such hours are credited to his or her account for future use subject to the provisions of this Article.

Section 4. An employee must coordinate with their supervisor the pre-approval of credit hours. The credit hours worked will be recorded in the Employer's electronic time-keeping system.

Section 5. Leave requests based on documented credit hours are made in the same manner as other categories of leave; i.e., the employee submits the request (SF-71) to their supervisor for approval.

Section 6. A full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carry over from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

Section 7. An employee shall not be paid Sunday pay, holiday pay, or premium pay for night work for credit hours.

Section 8. A maximum of 24 credit hours may be carried over from one pay period to another. Hours in excess of the 24 hour maximum will be forfeited at the end of each pay period.

Section 9. Employees are eligible to work credit hours at an alternate work location including their regular Telework location.

ARTICLE 16

ANNUAL LEAVE

Section 1. The employee will earn and be granted annual leave in accordance with applicable regulations.

Section 2. No employee will be required to give an explanation for what purpose annual leave is requested unless he/she is requesting emergency leave.

Section 3. An employee whose personal religious beliefs require abstention from work during limited periods of time will be granted annual leave upon request for such periods, unless the presence of the employee is necessary for operation of the workplace. Under these circumstances, with the Employer's approval and in lieu of annual leave, the employee may earn and use compensatory time by working additional time in accordance with OPM regulations.

Section 4. Consistent with workload and staffing requirements and when the request is submitted with sufficient advance notice, the Employer agrees that an employee's request for annual leave generally will be granted. Approval of request for annual leave for unforeseen emergency reasons will be granted as the circumstances warrant if possible.

Section 5. Every effort will be made by the employee to schedule leave in a manner consistent with good practices that would preclude forfeiture of annual leave. When sickness, workload or other situations cause the Unit employee to lose approved annual leave, it will be subject to regulations for restoration of annual leave. Any use or lose leave must be scheduled and approved prior to the beginning of the third pay period prior to the end of the leave year in order to be eligible for restoration of leave.

Section 6. Requests for annual leave due to emergencies should be granted. An employee unable to report for duty because of a personal emergency must request annual leave by notifying the Employer (supervisor or designated individual) by designated call-in number and/or other method established by the supervisor, normally within two (2) hours after the start of the shift.

Section 7. Approval of leave is not to be presumed. It is the responsibility of the employee to ascertain that the request for leave has been approved. The Employer will act on the request for leave as soon as practicable following submittal and inform the employee of the decision. The employee can obtain a copy of the approved/disapproved Request for Leave from the automated timekeeping system.

Section 8. The Employer will make every reasonable effort to avoid calling an employee back from leave.

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ARTICLE 17

SICK LEAVE

Section 1. Employees will accrue sick leave in accordance with applicable Laws and regulations. The Union joins the Employer in recognizing the insurance value of sick leave and agrees to encourage employees to conserve such leave so it will be available to them in case of extended illness.

Section 2. Pursuant to 5 CFR 630.401, earned sick leave will be granted to employees when they are incapacitated for the performance of their duties provided that employees not reporting for work because of incapacitation for duty furnish notice to the supervisor or the supervisor's designee, as soon as possible prior to the start of the employee's shift, but not later than two hours after the start of the shift, unless emergency conditions preclude such notification. Request for sick leave for medical, dental, or optical examination or treatment will be submitted for approval in advance of the appointment, unless precluded by emergency conditions.

Section 3. Granting of Sick Leave. Pursuant to 5 CFR 630.401, the Agency must grant sick leave to an employee when he or she -- :

- A. Receives medical, dental, or optical examination or treatment;
- B. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
- C. Provides care for a family member -
 1. Who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;
 2. With a serious health condition; or
 3. Who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease;
- D. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
- E. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
- F. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

Section 4. Pursuant to 5 CFR 630.405(a): Sick leave is granted “only when the need for sick leave is supported by administratively acceptable evidence.” The Employer “may consider an employee’s self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence.”

Pursuant to 5 CFR 630.201(b), a “Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.” Medical certificates should contain, at a minimum, a statement that the employee is under the care of a medical professional, the nature of the incapacitation, the impact of the incapacitation on the employee's ability to perform his/her duties, and the expected duration of such incapacitation. If an employee provides administratively acceptable medical documentation, he/she will not normally be required to provide specific medical information such as diagnosis.

Section 5. Ordinarily, employees will not be required to furnish a doctor's certificate to substantiate a request for approval of sick leave. Exceptions to the above are as follows:

- A. In cases of sick leave abuse. Abuse of sick leave is not necessarily related to the frequency of sick leave. In cases where sick leave abuse is suspected, the employee will be advised in writing that all future requests for sick leave must be supported by a medical certificate. This requirement will be reviewed by the Employer at the end of six months to determine if it should be eliminated. The employee will be informed in writing of the decision to cancel the requirement. When the requirement for a medical certificate is to be continued, the employee will be informed orally and confirmed in writing of this decision by the Employer;
- B. To ensure an employee is capable of returning to duty after a long period of incapacitation; and
- C. When there is reasonable grounds to question the validity of a sick leave request, administratively acceptable evidence in addition to the employee's certification may be requested (i.e. when annual leave has been requested and denied, and the employee calls in sick).

Section 6. For the purpose of sick leave, the term “family member” under 5 CFR 630.201 shall mean an individual with any of the following relationships to the employee:

- A. Spouse and parents thereof;

- B. Sons and daughters, and spouses thereof;
- C. Parents and spouses thereof;
- D. Brothers and sisters, and spouses thereof;
- E. Grandparents and grandchildren, and spouses thereof;
- F. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (B) through (E) of this definition; and
- G. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Section 7.

A. The amount of sick leave granted to an employee during any leave year for the purposes described in Section 3(C)(1), 3(C)(3) and 3(D) of this article may not exceed a total of 104 hours (or for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year.

B. The amount of sick leave granted to an employee during any leave year for the purpose of 3(C)(2) of this Article may not exceed a total of 480 hours (of, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week), subject to the limitations of 5 CFR 630.401(d).

Section 8. An employee may participate in the Voluntary Leave Transfer Program (VLTP) to care for a family member or for a personal medical emergency pursuant to 5 CFR 630.901. While on a temporary VLTP, an employee may accrue up to a maximum of forty (40) hours annual leave and sick leave. Such leave will only become available after medical emergency terminates or the employee terminates his participation in the leave transfer program.

Section 9 Bone Marrow or Organ Donation. In accordance with 5 U.S.C. Section 6327, an employee may use up to seven (7) days of paid leave every calendar year to serve as a bone-marrow donor. An employee may also use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave. Except in emergency cases, such absences must be requested by the employee in advance of the absence. The request must state the nature of the donation and the amount of time requested. Official documentation from the medical center/provider must be submitted along with the request.

Section 10. Sick Leave for Adoption:

- A. Employees will be authorized sick leave for purposes related to the adoption of a child. Accordingly, sick leave may be used for appointments with adoption agencies, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed. Additionally, sick leave may be granted for any periods during which an adoptive parent is ordered or required by the adoptive agency or by the court to be absent from work to care for the adopted child. Adoptive parents who voluntarily chose to be absent from

work to bond with or care for an adopted child may not use sick leave for this purpose. Parents may use annual leave or leave without pay for these purposes.

- B. The same limitations apply in the case of adopted children, once adopted, as in the case of biological children with regard to the use of sick leave.

Requests for sick leave for adoption purposes must be submitted as far in advance as possible and be supported by documentation that is administratively acceptable.

Section 11. When a medical official has certified that an employee has physical restrictions that preclude the full performance of the duties of his/her assigned position, the Employer agrees to attempt to assign duties that the employee can perform within the given restrictions for a reasonable period of time. If no such duties are available within the employee's work unit, the employer will attempt to find an assignment in another work location.

Section 12. An employee who is pregnant will be allowed to work as long as her doctor certifies in writing her ability to continue work and not place either the employee or child at risk. Reasonable amounts of leave in the form of sick leave, annual leave, and leave without pay will be granted prior to, during delivery and for a reasonable period after delivery, as specified by a doctor. The employee will be returned to her position at the end of the leave. The employee may be assigned to light duty or another position prior to leave if her regular position is considered inappropriate by her doctor.

Article 19: Employee Performance Evaluation

Section 1 OVERVIEW

The Employer will administer the performance management program in accordance with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430. The will not prescribe a distribution of levels of ratings for employees covered by this CBA. Each employee's performance will be judged solely against their performance standards.

Section 2 DEFINITIONS

Terms used in this article that relate to the performance management system, such as "appraisal," "critical element" or "performance rating" will have the same meaning as in 5 C.F.R. Part 430.

Section 3 CRITICAL ELEMENTS AND PERFORMANCE STANDARDS

Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

- a. The Employer will comply with 5 C.F.R. Part 430 when making its decision as to the number of levels of performance for each critical element and when determining whether a rating level will have a written performance standard.
- b. Application of all performance standards shall be fair, equitable and consistent with 5 C.F.R. Part 430.

Section 4 COMMUNICATIONS

Within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The supervisor will present the employee a copy of the draft performance plan, which contains the critical elements and performance standards.

- a. As required by 5 C.F.R. 430.206(b)(1): "Agencies should encourage employee participation in establishing performance plans." However, the employee does not need

to agree with the final plan. The supervisor will give the employee a copy of the final performance plan and ask the employee to sign and date to acknowledge receipt.

b. During the rating period, the supervisor will discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan.

c. Performance discussions:

1. Each appraisal period, the following must take place:

a. Establishment of new performance standards for the new appraisal period

b. Mid-cycle performance discussion

c. Closeout of the current appraisal period

2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.

3. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and resolve problems.

Section 5. PROCEDURES

a. Within thirty (30) days of appointment, reassignment or change in supervision, the employee will be issued a new performance plan.

b. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings are issued in writing to the employees within thirty (30) days following the end of the rating period.

- c. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.

Section 6. PERFORMANCE FEEDBACK. The communication of a significant performance-related problem with an employee will occur as soon as possible and definitely in advance of the formal appraisal interview. The supervisor will meet with the employee to advise him/her of the problem and to work collaboratively to identify ways to correct the issue.

Section 7. INDIVIDUAL DEVELOPMENT PLANS. The Individual Development Plan (IDP) identifies developmental needs and career objectives and is a useful tool for career development that benefits both the employee and the organization. The IDP process may include conducting a self-assessment; obtaining assessments from peers, superiors, and customers; and identifying opportunities and other options for career growth. All employees and their supervisors are encouraged to make the IDP part of the performance management process. An IDP is required when the employee requests one. Even if an IDP is not done, the employee is entitled to at least one informal assessment and development discussion with the supervisor. If a supervisor requires training or an IDP, he/she will notify the employee and, if applicable, appropriately annotate the IDP.

Section 8. PERFORMANCE ASSISTANCE. Continuous, informal feedback between the supervisor and the employee is essential to ensure an atmosphere that maintains successful performance. However, if at any time during the appraisal year, the supervisor identifies a significant performance-related problem with an employee or the employee's performance falls from Fully Successful to Minimally Satisfactory, he or she will meet with the employee in an informal meeting to work collaboratively to develop a plan to correct the problem. However, if the employee feels that additional assistance is needed, and if the supervisor concurs, then a union representative may be requested to participate in part or all of the collaborative process to develop a plan to correct the problem. This counseling session will be documented in writing and a copy provided to the employee. In order to ensure that a supervisor communicates on a regular basis with an employee that has performance problems, the PAP must be developed at least 30 days prior to any end of year performance review and a rating of record will not be assigned until the PAP is completed.

- A. The PAP will afford the employee an opportunity of at least 45 days to resolve the identified performance-related problem. A written PAP indicates that the employee's performance is below level S.
- B. The PAP will be tailored to the specific needs of the employee and may include formal training, on the job training, counseling, assignment of a journeyman, mentor, or other assistance as appropriate.
- C. The purpose of the period of assistance is to help the employee improve his/her performance. The supervisor will provide assistance to the employee to facilitate the employee reaching the Fully Successful level.

- D. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary and that improved, sustained performance has risen to at least a fully successful level. The supervisor will notify the employee of this determination in writing.
- E. Notwithstanding the above, if at any time during the assistance period the employee's performance is determined to have fallen to an Unacceptable level in one or more critical elements, a formal opportunity to demonstrate successful performance (i.e., PIP) should be initiated in accordance with Section 9.

Section 9. PERFORMANCE IMPROVEMENT PLAN. A Performance Improvement Plan (PIP) and a reasonable opportunity to improve are required as soon as employee performance falls to an Unacceptable level on any critical element. Programs will provide assistance to help employees improve performance to the successful level. Such assistance may include, but is not limited to: formal training, on-the-job training, counseling and closer supervision.

- A. Purpose of a PIP. A PIP is a document intended to identify an employee's performance deficiencies, the actions that must be taken by the employee to improve performance, and provisions for counseling, training, or other assistance to bring performance up to a Fully Successful level. Placement on a PIP for Unacceptable performance triggers the formal opportunity period as required by 5 U.S.C. 4302(b)(6).
- B. Timing of a PIP. A supervisor may initiate a written PIP as soon as employee performance on a critical element (CE) and consequently, overall performance becomes Unacceptable. The employee's performance rating must be based on at least 90 days under the CE where performance is considered Unacceptable. PIPs must be in place within fifteen (15) working days after the employee is formally informed of Unacceptable performance in one or more CEs. The PIP is to be developed in consultation with the employee. The supervisor will make the employee aware of the potential consequences of not improving performance. The Human Resources Office must be consulted and the Union informed before a PIP is implemented.
- C. Format of a PIP. A PIP should be in the form of a memorandum from the immediate supervisor to the employee. A specified beginning and ending date should designate the length of time the PIP will be in effect (not less than a 120-calendar-day period); however, the length of the period will depend on the nature of the position, the performance deficiencies involved, and how long it will take to demonstrate a fully successful level of performance consistent with the rating of S.
- D. Content of a PIP. Each PIP should be geared to the needs and circumstances of the situation. The tone of the PIP should be factual and constructive. The following information should be included:

- (1) The employee's name, position title, series, grade, and organization location.
- (2) The basis for the PIP, e.g., reasons why performance on one or more Critical Elements is Unacceptable;
- (3) Restatement of the critical element(s) the employee is failing to perform satisfactorily and a description of how performance was determined to be deficient in relation to the applicable performance standards;
- (4) Reference(s) to previous counseling sessions, if the supervisor has documented these meetings.
- (5) A specific description of the requirements that must be met, in terms of quality, quantity, timeliness or manner of performance, for work to be judged Fully Successful. Numerical criteria or benchmarks used by the supervisor to interpret the performance standard must also be stated.
- (6) A similar explanation of what will be considered as Unacceptable work.
- (7) Examples of ways the employee can improve performance and a description of the assistance the employee will receive from the supervisor.
- (8) A schedule of periodic performance reviews that will be held during the performance improvement period.
- (9) A list of assignments with due dates, or completion dates, if appropriate.
- (10) A statement that the employee is expected to maintain Fully Successful performance on the remainder of the CEs.
- (11) Notification that failure to improve performance to a Fully Successful level on the CE(s) may result in a change to a lower grade, removal, or reassignment.

E. Implementation of a PIP.

- (1) The supervisor signs and dates the PIP and sends it to the next highest level of supervision for approval.
- (2) The supervisor discusses the approved PIP with the employee. The employee signs the PIP and is given a copy. The employee's signature on the PIP indicates that he/she received a copy, and does not signify concurrence. If the employee refuses to sign, the supervisor should so note on the PIP and date the annotation. In addition to the above, the Union shall be notified of the PIP and provided with a copy of the approved document.

- (3) The immediate supervisor sends a copy of the PIP to the servicing Human Resources Office along with the original performance agreement and rating package. The PIP will be filed in the Employee Performance File (EPF), and will be removed if the employee's performance improves to Fully Successful or higher and remains at that level for one year from the beginning of an opportunity to demonstrate acceptable performance.

F. Canceling or Extending a PIP. A PIP may be canceled or extended in situations such as those described below. In each case, the action should be documented by a memorandum. The memorandum must be sent to the servicing Human Resources Office and the Union, if designated as the employee's representative, to provide notification of the cancellation or extension. If extended, the memorandum will be added to the Employee Performance File and will become part of the PIP. If canceled, the PIP, memorandum, and all related documents, will be removed from the EPF and destroyed if the employee remains at S or above for one year from the beginning of an opportunity to demonstrate acceptable performance.

- (1) A PIP should be canceled if the employee is reassigned to a different position at the same or different grade. The PIP is not continued in effect in the new position.
- (2) A PIP may be canceled if the employee's performance improves to a Fully Successful level or above prior to the expiration of the PIP.
- (3) A PIP should be removed from the Employee's Performance File if the employee leaves the Agency.
- (4) A PIP may be extended at any time with the approval of the second-level supervisor.

G. Expiration of a PIP. If a PIP is not extended or withdrawn by the designated expiration date, the supervisor must notify the employee in writing of the status of his or her performance and take any of the following applicable steps.

- (1) If the employee's performance has improved to level S, the supervisor must prepare a new rating of record. The new rating will be sent to the appropriate Human Resources Office. The supervisor and the employee each keep a copy. The servicing Human Resources Office will substitute the new appraisal for the previous rating of record.
- (2) If the employee's performance remains Unacceptable and a summary rating level of U is assigned, the supervisor may take action to reduce-in-grade, reassign, or remove the employee from Federal service. The servicing Human Resources Office must be consulted before taking any action that is based on unacceptable performance.

- (3) An employee will be reassigned, reduced in grade, or removed based on a performance rating of record of U in accordance with the procedures contained in EPA Order 3110.16, Reduction in Grade and Removal Based on Unacceptable Performance; 5 CFR Part 432; and 5 U.S.C. 4303.

Section 10. PERFORMANCE-BASED ACTIONS. If an employee fails to improve her/his performance to a Fully Successful level after a reasonable opportunity period, the supervisor of record must take one or more of the following actions: deny the employee's within grade increase; reassign the employee; reduce the grade of the employee; or remove the employee from Federal service. The supervisor of record must consult with the Human Resources Office before taking any action based on unacceptable performance. All such actions shall be taken in accordance with the provisions of 5 CFR Part 432.

Section 11. EMPLOYEE OBJECTION TO RATING OF RECORD. An employee who disagrees with his/her final rating of record may file a grievance beginning at Step 2 of the negotiated grievance procedure.

Section 12. COPIES OF PERFORMANCE PLANS. The Union, upon request to the Division Director, shall be provided sanitized copies of individual bargaining unit employee performance plans and referenced documents.

ARTICLE 21

DISCIPLINARY ACTIONS

Section 1. For the purpose of this Article, disciplinary actions may be formal or informal. Formal disciplinary actions are defined as letters of reprimand and suspensions without pay of 14 days or less. Informal disciplinary actions include letters of caution and/or requirement when they are issued for disciplinary reasons to correct an employee. All disciplinary actions are grievable under the negotiated grievance procedure. Copies of letters of requirement and/or caution that are of a disciplinary nature will not be placed in an employee's official personnel folder.

Section 2. Disciplinary actions taken against Unit employees shall be for just and sufficient cause and will be taken in keeping with applicable rules, regulations, and instructions. All disciplinary actions must be supported by a preponderance of evidence.

Section 3. It is the Employer's policy to impose penalties consistent with the severity of the offense and U.S. EPA guidelines for disciplinary actions.

Section 4. In the event of a written proposed disciplinary action, the employee will be advised of his/her right to representation. Employees against whom formal disciplinary action is taken will be informed of their right to grieve through the negotiated grievance procedure.

Section 5. Letter of Reprimand. A letter of reprimand will be sufficiently specific to indicate why the letter is being issued and what the employee can do to improve or take needed corrective action. The employee will be advised of his/her grievance rights. The letter will advise the employee that the reprimand will be retained in the Official Personnel Folder for a period of up to two (2) years.

Section 6. A notice of proposed disciplinary action will contain the employee's rights. The employee will be provided upon request a copy of the evidence that supports the charges. The employee will be granted a reasonable amount of official time to prepare an answer to any proposal.

Section 7. Suspension of fourteen (14) days or less: In addition to Section 6 above, an employee is entitled to:

- A. At least fifteen (15) days advanced written notice stating the specific reasons for the proposed suspension;
- B. A reasonable time, not less than seven (7) days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

- C. Be represented by a NAIL representative, an attorney or other representative;
- D. A written decision and the specific reasons therefore, at the earliest practicable date; and
- E. Grieve the decision, if adverse and once effected, through the negotiated grievance procedure contained in Article 23. The written decision will advise the employee of this right.

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ARTICLE 22

ADVERSE ACTIONS

Section 1. As defined in 5 U.S.C. 7512, adverse actions are removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

Section 2. Employees, against whom adverse actions are taken, will be informed of their right to appeal such actions in keeping with the appellate provisions of 5 U.S.C. 7701.

Section 3. For removal, suspension for more than fourteen (14) days, furlough without pay for thirty (30) days or less, or reduction in pay or grade, an employee is entitled to:

- A. At least thirty (30) days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, or in the event of a furlough due to unforeseeable circumstances as provided for by law, stating the specific reason for the proposed action;
- B. A reasonable time, not less than fourteen (14) days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer, except where the crime provision has been invoked, or in the event of a furlough due to unforeseeable circumstances as provided for by law;
- C. Be represented by a Union representative, an attorney or other representative;
- D. A written decision and the specific reasons, therefore, at the earliest practicable date; and
- E. The decision letter will inform the employee of his/her right to appeal the action to the Merit Systems Protection Board.

Section 4. A duplicate of the notice of proposed action and/or decision will be furnished to the employee.

ARTICLE 23

GRIEVANCE PROCEDURE

Section 1. Except for matters excluded in this Article, a grievance is defined as a complaint: (1) by any unit employee concerning any matter relating to the employment of the employee; (2) by the Union concerning any matter relating to employment of unit employees; (3) by any unit employee, the Union or the Employer concerning (a) the effect or interpretation, or a claim of breach of this Agreement, or (b) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. The parties agree to approach grievances as a resolution process and will not withhold issues or evidence during the grievance process.

Section 2. The expeditious settlement of grievances at the lowest possible level is in the best interest of the government service. This procedure is designed to provide an ethical, orderly, and equitable means for resolving complaints and grievances. The Union will ensure that, when representing employees of the unit, no complaint or grievance will be taken or pursued without first having been brought to the attention of the Employer for coordination and possible resolution. Grievances and complaints should be resolved in an orderly, prompt and fair manner that will maintain the self-respect of the employee and managers and be consistent with the principles of good management and public interest.

Section 3. Unit employees covered by this Agreement may present a grievance which may be adjusted with or without Union representation at the grievant's discretion. However, the Union will have the right to have its representative present at the meetings concerning the grievance. This right to individual representation does not include the right to take the matter to arbitration, unless the Union agrees to do so.

Section 4. The following matters are excluded from coverage of the Grievance Procedure:

- A. Any claimed violation relating to prohibited political activities.
- B. Retirement, life insurance, health insurance, or matters under the auspices of the Office of Worker's Compensation Programs and the U.S. Department of Labor.
- C. A suspension or removal for National Security reasons.
- D. Any examination, certification or appointment.
- E. The classification of any position which does not result in the reduction in grade or pay of an employee.

- F. Matters appealable to the Merit System Protection Board (MSPB) and Office of Special Counsel.
- G. Equal Employment Opportunity (EEO) complaints.
- H. Non-selection for promotion from a group of properly ranked and certified candidates.
- I. Allegations of mismanagement.
- J. Termination of temporary employees, probationary employees or term, trial, or excepted-service employees except an employee so terminated may grieve for the expungement of any derogatory comments on the SF-50 or SF-52 (or successor forms) which document the termination; and
- K. The adoption or non-adoption of a suggestion except where an employee submitted a suggestion which was rejected and within one year another employee subsequently submitted the same suggestion which was adopted and an award granted.

Section 5. Grievances may be initiated by employees, either singly or jointly, the Union or by the Employer. An employee or group of employees in the Unit may be represented only by the exclusive Union, or by a person approved by the Union, in filing a grievance under the negotiated procedure.

Section 6. Grievances over disciplinary actions (suspensions of 14 days or less, etc.) will be initiated at the deciding official's level.

Section 7. When several employees have an identical grievance, Management and the Union will call the employees affected together and request them to select one individual case for processing. The Union agrees to encourage the processing of only one grievance in place of numerous identical grievances. The employees will be told that, if they agree, decision on the case selected will be binding on all other identical cases. If any employee refuses to participate in the Agreement, his refusal shall not affect his right to process his grievance individually. This procedure is not applicable to any situation where individual difference exists or when evaluation of the individual qualifications of the aggrieved employees would be required to decide the issues.

Section 8. A reasonable amount of official time will be granted an aggrieved employee to prepare and present a grievance on the Employer's premises through this Grievance Procedure; however, no overtime will be paid to any such employee. An employee desiring official time for either of the foregoing purposes will inform his/her immediate supervisor if available, or the next higher level of line supervisor who is available, of the reason he/she desires to absent himself/herself from his/her designated work station and of the anticipated duration of the absence, and must obtain the supervisor's permission before absents himself/herself from his/her work station.

Section 9. The Employer and the Union expect employees and supervisors to make a sincere effort to reconcile their differences. When such efforts fail, however, the following procedures are established for settlement of grievances:

Step 1. A grievance must be taken up with the employee's immediate supervisor within ten (10) workdays after the occurrence, or becoming aware of the event or occurrence, of the matter which precipitated the grievance. An employee filing after ten (10) workdays of the occurrence has the burden of showing he/she could not have been aware of the event at the time of occurrence. The grievance will first be discussed informally by the aggrieved employee and his/her representative, if any, and the immediate supervisor involved. The aggrieved employee or his/her representative, if any, must inform the supervisor a grievance is being filed. If the matter is not settled within ten (10) workdays from the time of this meeting, the grievance may be moved to the next step.

Step 2. If no satisfactory settlement is reached in Step 1, the grievance will be reduced to writing, stating the issue(s) involved and the corrective or remedial action sought, and submitted to the Director or designee within ten (10) workdays after Step 1 decision. The employee will be advised of the Director's or designee's decision in writing within ten (10) workdays after receipt of said grievance. A meeting will be held to discuss the grievance, if requested by either party.

Section 10. Once a grievance has been accepted for processing under this Grievance Procedure, failure of the aggrieved employee or the Union to comply with any applicable time limit terminates further consideration of the grievance. Failure of a management official of the Employer to comply with any applicable processing time limit will entitle the grievant to advance to the next step. Any time limits specified in this Article may be extended by mutual written agreement between the parties.

Section 11. Employer grievances will be filed in writing by the Director, or designee, with the President of the Union or designee. The grievance will specify the basis for the grievance and the corrective relief sought. The President or designee will issue a written decision within ten (10) workdays of receipt of the grievance. A meeting will be held to discuss the grievance, if requested by either party.

Section 12. Union grievances will be filed in writing with the Director or designee by the President or designee of the Union. The grievance will specify the basis for the grievance and the corrective relief sought. The Director or designee will respond within ten (10) workdays of receipt of the grievance. A meeting will be held to discuss the grievance, if requested by either party.

Section 13. Grievances not resolved through the provisions of this Article may be referred to arbitration by either the Union or Employer.

Section 14. Grievability/Arbitrability issues must be raised in writing not later than the final step decision of the grievance procedure, except the timely invoking of arbitration. Grievability/ Arbitrability issues, if unresolved, will be handled as threshold issues at arbitration.

ARTICLE 24

ARBITRATION

Section 1. When a matter pursued through the Negotiated Grievance Procedure is not satisfactorily resolved, the grievance may be referred to arbitration upon written request of the Employer or the Union. The request to invoke arbitration must be submitted within ten (10) workdays of receipt of the decision completing the negotiated grievance procedure. Only the parties to this Agreement may invoke arbitration.

Section 2. Within the ten (10) workday limit, the moving party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) arbitrators and will deliver a copy of the request to the other party. The moving party will initially pay the FMCS fee. The FMCS fee will be paid by the losing party. In the case of a split decision, the FMCS fee will be split equally. Representatives of the parties will confer within ten (10) workdays of receipt of the list of arbitrators to select one to hear the grievance. One party will strike a name from the list and then the other party will strike a name. This process will be repeated until there is but one name left, that of the person who will be requested to arbitrate the matter. A flip of a coin will decide which party strikes first.

Section 3. Upon mutual agreement of the parties, a transcript will be made of the hearing. A copy will be furnished to the arbitrator, and each party will be furnished a copy. Any additional copies will be paid for by the requesting party. The cost of a transcript requested by one Party for its exclusive use and not shared will be borne by the requesting party. If it is mutually agreed to request a transcript, the cost will be borne equally.

Section 4. The cost of the arbitrator's fees and expenses will be paid by the losing party. In cases of a split decision, such costs will be borne equally by the parties. A decision to uphold a decision to take disciplinary action but reduce the penalty is an example of a split decision, except where the severity of the penalty is the sole issue.

Section 5. Arbitration hearings will normally be held on the Employer's premises during the regularly scheduled workweek. Employees in a duty status that have a relevant role in the proceedings will be excused from duty for the time necessary to participate in the hearing without loss of pay or charge to leave.

Section 6. The arbitrator's authority is limited to the adjudication of issues which were raised in the grievance procedure. The arbitrator will not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto.

Section 7. The arbitrator will be requested by the parties to render his/her award as soon as possible and, if at all possible, to do so within thirty (30) calendar days after close of the hearing.

Section 8. The arbitrator's decision will be final and binding, except that either party may appeal the decision and award in accordance with Statute.

ARTICLE 32

DRUG-FREE WORKPLACE

Section 1. The parties recognize that accomplishment of the Employer's mission requires the highest standards of competence, reliability and integrity. The illegal possession or use of drugs is inconsistent with the maintenance of those standards.

Section 2. Employees found to illegally use drugs shall be referred to the Drug-Free Workplace Coordinator for assessment, counseling and referral for treatment or rehabilitation as appropriate.

Section 3. The Parties adopt EPA's DRUG-FREE WORKPLACE PLAN that implements the requirements of Executive Order 12564 and Section 503 of the supplemental Appropriations Act of 1987 and amendments thereto with the following GED specific provisions:

- A. The Employer shall provide training to bargaining unit employees and Union representatives concerning the drug testing program. The training shall address implementation of the EPA Drug-Free Workplace Plan; inform employees of available drug abuse counseling and referral services; and provide a list of medications and substances that could result in false positive test results. The training shall be done on official time. The Union shall be provided a copy of all training manuals/materials.
- B. The Employer shall conduct all drug testing in accordance with the mandatory guidelines promulgated by the Department of Health and Human Services and to use methods and equipment that meet the requirements set forth in the guidelines.
- C. If an employee believes his/her position has been wrongly classified as a testing-designated position, that employee may grieve the classification within 45 days of notification.
- D. The Employer may not take any action against an employee based on unfinalized drug testing.
- E. Medical documentation that demonstrates legal drug use by an employee shall be presumed to be a valid explanation for a positive test result unless rebutted.
- F. An employee selected for testing will be granted necessary administrative leave to have the sample collected.

- G. When reasonable suspicion is suspected, the supervisor will promptly detail for the record and in writing, the circumstances which formed the basis to warrant the testing, including, at a minimum, the dates and times of reported drug-related incidents, reliable/credible sources of information, and the rationale for the test. After the test is completed, the Employer will write a report, including the results of the test and any action taken. The Employer will provide written documentation to the employee articulating their belief that the employee uses illegal drugs, drawn from actions specifically linked to drug usage, before any disciplinary action is proposed.
- H. Bargaining unit employees are entitled to Union representation, upon request, during the collection of urine samples. The Union representative may observe all actions of the collection site monitor. However, the representative may not impede the timely collection of the sample. Union representatives shall suffer no loss of pay or benefits when performing drug testing responsibilities.
- I. The Employer may not randomly test an employee for illegal drug use when the employee has previously undergone drug testing because of accident or reasonable suspicion and the analysis of the prior test is incomplete.
- J. An employee shall not be subject to a search, frisking or disrobing (with the exception of coats, jackets, or outer garments) before a drug test.
- K. The Employer will separate out a reserve sample (a sample consisting of urine in excess of the required volume). At the employee's request, the Employer will test the reserve sample if the original sample tests positive for drugs.
- L. Employees, if detained beyond scheduled work hours, shall be given the choice of overtime or compensatory time.
- M. If Agency officials visit the testing Lab for an inspection, the Union will be entitled to designate an observer to attend the inspection. The observer will be on official time and authorized travel and per diem.
- N. The Employer will continue employment of an employee who voluntarily admits to drug abuse and demonstrates continuing successful participation in a rehabilitation program consistent with the protection of public health and safety and with national security.
- O. Employees who successfully complete rehabilitation and thereafter test negative for drug use will not be eliminated from competition for sensitive positions within the bargaining unit, if they are otherwise qualified for such positions.

- P. Information concerning drug tests will be released only to the Medical Review Officer, or other personnel with an absolute need to know who are required to be informed. These include physicians responsible for medical certification of the donor, Federal agency officials as required by regulation or designated employer representatives.

- Q. Employees who visit the EAP, voluntarily or by referral, shall be granted administrative leave for participation in such counseling and/or treatment sessions. Scheduling of such leave will be approved absent exigencies of business.

- R. Employees will be informed of the consequences should they refuse counseling or rehabilitation.

ARTICLE 43

MISCELLANEOUS AND GENERAL PROVISIONS

Section 1. The Employer agrees to provide the Union a copy of the Employer's regulations and directives affecting conditions of employment, personnel policies and regulations, and working conditions and proposed changes thereto.

Section 2. The U.S. Environmental Protection Agency Manuals and Handbooks are to be made available for use by the President of the Union and its members.

Section 3. The parties agree that employees will abide by the Agency policy concerning Personal Use of Agency Equipment, dated August 19, 2019. Employees will exercise common sense and good judgment in the personal use of Agency office equipment and ensure that this use does not take precedent over government business.

Section 4. The parties agree to abide by the Memorandum of Agreement between the U.S. Environmental Protection Agency and the National Association of Independent Labor concerning the Office of Research and Development's Policy and Procedures Manual, Sections 9.14 (Scientific Data Management), 13.3 (Implementing Quality Assurance Under ORD Research Action Plans) and 13.7 (Use of the Graded Approach for Quality Assurance of Research), dated January 11, 2017.

Section 5. The parties agree to abide by the Memorandum of Agreement between the U.S. Environmental Protection Agency and the National Association of Independent Labor concerning the Office of Research and Development's Policy and Procedures Manual, Section 14.3 (Clearance Policy), signed July 12, 2017.

Section 6. The parties agree to abide by the Plan for Preventing Violence in the Workplace at the Gulf Ecology Division, signed November 6, 2007.

Section 7. The parties agree to abide by the Memorandum of Agreement between the U.S. Environmental Protection Agency and the National Association of Independent Labor concerning GEMMD Office Space Selection, signed October 11, 2019.

Section 8. Employees who desire to review their Official Personnel Folder (OPF) will email their request to the designated HRMD, RTP Point of Contact (POC). The HRMD, RTP, will Express Mail the OPF within three (3) work days of the employee's email request to the designated POC. The

POC will notify the employee upon receipt of the OPF.

Section 9. Unless stated otherwise, day means calendar day. When a due date falls on a Saturday, Sunday or Holiday, the next official work day will be considered the due date.

ARTICLE 44

USE OF EMPLOYER FACILITIES

Section 1. The Union President, officers and stewards may use their offices for representational purposes. The Employer will furnish the Union, on a loan basis, a lockable file cabinet in a secure area.

Section 2. Union representatives are authorized use of Employer office support items (e.g. telephone, copier, fax machine, printer and computer with internet and email access). Files, (electronic and physical), drawers, etc., used by Union representatives for representational purposes will be confidential. The Employer will establish for the Union such space as necessary for files, etc., for which the Union will have exclusive access. The Union will be allowed to use telecommunications. Use is for gathering and sharing information. All usage will be in compliance with applicable laws.

Section 3. Meeting and conference rooms are available by reservation through the electronic system.

Section 4. A bulletin board will be made available for use by the Union for the posting of notices and literature for the Union.

ARTICLE 46

DURATION OF AGREEMENT

Section 1. This Agreement shall remain in full force and effect for a period of three (3) years from the date of approval. The Agreement shall be renewed automatically for additional periods of one year unless either Party gives written notice of its desire to amend or renegotiate the Agreement.

Section 2. Should one of the Parties choose not to extend the Agreement but rather renegotiate a new Agreement, the following shall apply:

- A. No earlier than 105 nor less than 60 days prior to the scheduled expiration date of this Agreement, the Party wishing to renegotiate the Agreement shall inform the other Party of its desire to do so.
- B. The Party desiring to renegotiate the Agreement (moving party) shall provide two copies of its proposed contract along with its request to renegotiate to the responding Party.
- C. The Party receiving the request to renegotiate shall submit counter proposals/proposals to the moving Party within 45 days of the receipt of the request to renegotiate.
- D. The parties shall meet to begin negotiations at a mutually convenient time, but normally within 30 days of the receipt of the counter-proposals submitted by the responding party.

Section 3. The Parties may reopen the Agreement at any time by mutual consent and amend when required by changes in law. Before reopening, the Party wishing to reopen will submit to the other Party at least thirty (30) days prior to the desired reopening date, an agenda stating the reasons for reopening and the changes that are desired.

Section 4. This Agreement will remain in full force and effect during the renegotiation or reopening of the said Agreement and until such time as a new Agreement takes effect.