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## **PREAMBLE**

**Section 1:** This Master Agreement is made between the Department of Veterans Affairs (“the Department”) and the American Federation of Government Employees National Veterans Affairs Council of Locals (“the Union”).

**Section 2:** The Department and the Union agree that a constructive and cooperative working relationship between labor and management is essential to achieving the Department’s mission and to ensuring a quality work environment for all employees. The parties recognize that this relationship must be built on a solid foundation of trust, mutual respect, and a shared responsibility for organizational success.

Therefore, the parties agree to work together in partnership and through this Master Agreement to identify problems and craft solutions, enhance productivity, and deliver the best quality of service to the nation’s veterans.

## **INTRODUCTION**

### **ARTICLE 1**

## **RECOGNITION AND COVERAGE**

### **Section 1 - Exclusive Representative**

AFGE is recognized as the sole and exclusive representative for all of those previously certified nonprofessional and professional employees, full-time, part-time, and temporary, in units consolidated and certified by the Federal Labor Relations Authority (FLRA) in Certificate No. 22-08518 (UC), dated February 28, 1980, and any subsequent amendments or certifications. The parties agree that should the Union request the FLRA to include subsequently organized employees in the consolidated unit, such FLRA certification will not be opposed by the Department if the unit would otherwise be considered an appropriate unit under the law. Upon certification of FLRA, such groupings automatically come under this Agreement.

### **Section 2 - AFGE Role**

As the sole and exclusive representative, the Union is entitled to act for and to negotiate agreements covering all employees in the bargaining unit. The Union is responsible for representing the interests of all employees in the bargaining unit.

### **Section 3 - Employee Representation**

A. The Department recognizes that, as the exclusive representative of employees in the bargaining unit, the Union has the right to speak for and to bargain on behalf of the employees it represents. The Department will not bypass the Union by entering into any formal discussions or agreements with other employee organizations or bargaining unit employees concerning all matters affecting personnel policies, practices, or working conditions.

B. The Union will be given the opportunity to be represented at all formal discussions (including those held with other employee organizations) affecting personnel policies, practices, or working conditions. This is not intended to include routine work assignments.

### **Section 4 - Unit Clarification**

A. The Union will be predecisionally involved in bargaining unit determinations for position changes and establishment of new positions. When a position changes, and the parties do not agree over whether the position(s) is/are inside or outside the unit, the parties are encouraged to utilize the Alternate Dispute Resolution (ADR) process. If still unresolved, either party may file a Clarification of Unit (CU) petition with the FLRA. If the position previously has been in the bargaining unit, the employee and/or position will remain in the bargaining unit until a decision is issued on the petition.

B. If after predecisional involvement, Management determines that a new, unencumbered position is outside the bargaining unit, the parties are encouraged to first attempt to resolve any disagreements through ADR methods. If no agreement is reached, the Union may file a CU petition through the FLRA.

C. The Department and the Union are encouraged to mutually decide CU issues and develop a system to communicate these decisions.

**ARTICLE 2**

**GOVERNING LAWS AND REGULATIONS**

**Section 1 - Relationship to Laws and Regulations**

In the administration of all matters covered by this Agreement, officials and employees shall be governed by applicable Federal statutes. They will also be governed by Governmentwide regulations in existence at the time this Agreement was approved.

**Section 2 - Department Regulations**

Where any Department regulation conflicts with this Agreement and /or a Supplemental Agreement, the Agreement shall govern.

## **ARTICLE 3**

### **PARTNERSHIP**

#### **Section 1 - Purpose**

A. Partnership involves the design, implementation, and maintenance of a cooperative working relationship between Labor and Management through maximum pre-decisional involvement in order to achieve common goals. Management and Union leadership must be committed to the principles upon which Partnership is based in order for this effort to be successful.

B. The structure, nature, scope, and operation of partnerships will be jointly determined by Management and Union officials at the appropriate level in accordance with the principles in Section 2. All partnerships will use consensus decision making and will consist of equal numbers of Union and Management members. Top Management and Union leaders should fully participate in the activities of Partnership, preferably as members of the Partnership Council.

#### **Section 2 - Principles**

Management and Labor shall be committed to work at all appropriate levels to establish and improve effective Partnerships which are designed to ensure a quality work environment for employees, more efficient administration of VA programs, and improved service to veterans. The principles which guide this effort include:

- A. Pre-decisional involvement,
- B. Shared responsibility,
- C. Identification of problems,
- D. Sharing of information,
- E. Finding solutions,
- F. Reaching joint agreements and making joint recommendations,
- G. Use of alternate dispute resolution, interest-based problem-solving techniques, and facilitation,
- H. Integration of interests,
- I. Union and management working together on committees such as, but not limited to, Director's Staff, Administrative Executive Board, Clinical Executive Board, Strategic Planning, Resources, joint training programs, and work groups to address issues of mutual interest. The Union will have the right to select its representative for such committees and work groups,

- J. Cooperation,
- K. Mutual respect,
- L. Open communication,
- M. Trust,
- N. Minimizing or eliminating collective bargaining disputes, and
- O. Publicizing partnership successes at all levels.

### **Section 3 -Scope**

The scope of partnership will include issues raised by either party regarding:

- A. Matters involving personnel policies, practices, and working conditions.
- B. In accordance with Executive Order 12871, numbers, types, and grades of employees as well as methods, means, and technology of work.
- C. By mutual consent, the parties may fulfill the collective bargaining obligation through Partnership.

### **Section 4 - Training**

To achieve optimum results from Partnership, the best interests of both parties are served by continual and joint Labor/Management training. The need for and the type of training will be determined by the Partnership Council with costs incurred by the Department.

### **Section 5 - Duty Status**

While participating in Partnership activities, all bargaining unit members will be considered on duty status and not on official time. In the event these activities are conducted beyond normal duty hours, members will be compensated in accordance with applicable law.

### **Section 6 - Expenses**

It has been determined that partnership is in the best interest of the government; accordingly the Department of Veterans Affairs will be responsible for all Partnership Council members' appropriate travel and per diem expenses in connection with Partnership activities.

## **ARTICLE 4**

### **LABOR-MANAGEMENT TRAINING**

#### **Section 1 - Union Sponsored or Requested Labor-Management Relations Training**

A. The parties agree that Union sponsored labor-management relations (LMR) training is of mutual benefit when it covers appropriate areas (examples are: contract administration, grievance handling and information relating to Federal personnel/labor relations laws, regulations, and procedures). Training which relates to internal union business will not be conducted or attended on official time.

B. Scheduling arrangements for the use of official time for training will be determined locally. Management personnel responsible for work scheduling will be given appropriate and adequate notice, to include specific agendas, of scheduled LMR training for maximum attendance.

C. The amount and use of official time for labor-management relations training, other than joint labor-management relations training, is an appropriate subject for local negotiation.

#### **Section 2 - Joint Master Agreement Training**

The parties will jointly provide Master Agreement training. The cost of the Master Agreement joint training will be paid by the Department. Training will be done jointly; however, this does not preclude additional training by each party. Any training document will be prepared jointly.

#### **Section 3 - Joint Labor Management Training**

A. Each field facility will have a joint LMR training program. The ongoing program will have equal representation between labor and management and decisions will be made by consensus consistent with interest-based bargaining principles. The local joint LMR training activity will develop a local LMR training plan which could consist of Interest Based Bargaining, Alternate Dispute Resolution, Total Quality Improvement, Partnership, communication skills, local supplements, district or regional training, etc.

B. LMR training will be recorded in each employee's individual training record.

C. Participants in joint LMR training will be on duty time. LMR training will normally be presented jointly unless training is conducted by a mutually agreed upon third-party. The parties may develop a joint train-the-trainer/facilitator program.

D. Local facilities are encouraged to give recognition to individuals or groups who materially advance the process of LMR training.

E. Normally, local facilities will ensure that appropriate resources are made available at the local level for joint LMR training.

F. The parties are encouraged to share training materials or experiences to nurture better LMR training.

G. The provisions of this article apply to joint training at all levels from local through national.

**Section 4 - Third-Party Sponsored Training**

Third-party sponsored training may be considered duty time or official time, as appropriate.

## **ARTICLE 5**

### **LABOR MANAGEMENT COMMITTEE**

There shall be a joint Labor-Management Relations Committee which shall meet twice a year in Washington, normally approximately six (6) months apart, for up to a maximum of three (3) days. The Department will authorize official time (if otherwise in a duty status) and travel and per diem for the 5 Council officers, 15 District Representatives, National Safety Representative, and 8 National Representatives, or alternates, for participation in these meetings. The parties will exchange agenda items sufficiently in advance so that arrangements can be made for appropriate representation. The Union will provide management with the names of the union-designated representatives as far in advance as possible but no later than three (3) weeks in advance of the meeting so that official time, travel and per diem may be arranged.

## **ARTICLE 6**

### **ALTERNATIVE DISPUTE RESOLUTION**

#### **Section 1 - Commitment**

The Department and the National VA Council are committed to the use of Alternative Dispute Resolution (ADR) problem-solving methods to foster a good labor/management relationship. Union and Management at all levels should be committed to the use of ADR problem-solving methods as a priority to resolve disputed matters. Those involved in the development and use of an ADR system shall be trained in the principles and methods of ADR.

#### **Section 2 - Definitions and Intentions**

A. ADR is an informal process which seeks early resolution of employee(s), union, and management disputes.

B. Any ADR process must be jointly designed by Union and Management. ADR should be effective, timely, and efficient. It should focus on conflict resolution and problem-solving and foster a cooperative labor and management relationship. Participation in the ADR process must be voluntary.

C. ADR shall be a process available to Partnerships.

D. The parties agree to ongoing evaluation to improve the process.

#### **Section 3 - Rights and Responsibilities**

A. The parties have the responsibility of informing employees and management officials of the ADR option to resolve disputes. ADR should be undertaken in good faith and not circumscribed by formal rules and regulations.

B. Employees may utilize the ADR process to resolve individual concerns with the mutual consent of Union and Management. However, the parties agree to encourage the use of ADR except for the most egregious or frivolous matters.

C. Disputes resolved by ADR are final when written and signed. Union and Management will have the right to participate in all stages of the ADR process. This is in addition to an employee's right to union representation.

D. ADR resolutions shall not be precedential unless agreed to by the parties. Resolutions under ADR cannot conflict with or supersede agreements between the parties.

#### **Section 4 - Implementation**

A. ADR is an appropriate subject matter for local negotiations.

- B. ADR agreements must state the objectives of all parties as well as a commitment from all parties to resolve their disputes in a nonadversarial environment.
  
- C. The parties at all levels shall jointly adopt an ADR problem-solving method that will include mutually agreed upon third parties. ADR methods may include but are not limited to early neutral evaluation, mediation, interest-based problem solving, peer review, conciliation, facilitation, and neutral fact-finding.
  
- D. ADR methods may be used prior to or during a grievance/arbitration or statutory appeal. In the use of ADR processes, contractual time frames will be stayed by mutual agreement. Statutory time frames cannot be stayed.

## **ARTICLE 7**

### **TOTAL QUALITY IMPROVEMENT**

#### **Section 1 - Introduction**

A. Both parties recognize the importance of a strong commitment to a comprehensive Total Quality Improvement (TQI) program in the Department. Service to the veteran is the cornerstone of the relationship between the Department and employees.

B. Both parties agree that a successful Total Quality Improvement (TQI) program must empower all employees to fully participate in the development and implementation of Department programs and process. Management recognizes the Union as the exclusive bargaining unit representative in implementing this cultural change. Participation of bargaining unit employees in the TQI program is a matter left to the discretion of the Union in its role on the facility Quality Council.

#### **Section 2 - General**

A. The term Total Quality Improvement (TQI) is representative of all quality programs initiated by the Department (i.e., Total Quality Management (TQM), TQI, Process Action Teams).

B. Both parties agree that the commitment of the local facility Director and Union President is critical for success of the TQI program.

C. Union representative participation shall be considered duty hours without the need to use official time.

D. It is recognized that the TQI process is a journey and that all levels of management and union are responsible for successful implementation of the program. Therefore, the parties should strive for open communication, developing teamwork, sharing of information, integration and acceptance of the Union/Management role, reduced paperwork, improved work processes, etc.

E. Both parties recognize that an effective TQI program is critical to a successful Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) survey. It is in the interest of both parties that there be a sharing and communication of information regarding JCAHO requirements, processes, and results.

#### **Section 3 - TQI Charter**

The following is the TQI Charter of April 15, 1994, agreed to by the parties after a significant and dedicated effort:

**VA QUALITY COUNCIL**  
**CHARTER FOR**  
**TOTAL QUALITY IMPROVEMENT**

I. PURPOSE

This charter establishes a National Quality Council (NQC) and quality councils throughout the Department of Veterans Affairs (VA). Members of the Councils will demonstrate continuing commitment to the principles and practices of Total Quality Improvement (TQI) both as Council members and as participants in their respective organizations.

II. SCOPE

A. This charter applies to VA facilities where management has determined to implement TQI.

B. Both VA management and the AFGE National VA Council (NVAC) mutually agree that the scope of the TQI agreement will be limited to process related issues as covered by this charter. The Councils/Teams will not establish projects which are matters solely and properly subject to collective bargaining, matters currently covered by the Master Agreement, and individual/employee grievances and problems or other appeals/complaints processes as projects. The AFGE NVAC will communicate this requirement to their locally appointed TQI representatives. VA management will similarly communicate this requirement to its managers.

C. Neither the union nor management waives the right to bargain over TQI-developed recommendations which would otherwise be bargainable, nor do they waive any other legal, contractual, or past practice right.

D. The union does not give up its rights to pursue bargaining on any subject by participation in TQI. All rights to bargain are actively and affirmatively retained.

E. Management and the union recognize that, in order for TQI to be a successful tool in problem solving, a departure from the Federal Labor Management Relations Statute may be made in such areas as management's and union's rights and the negotiability of subjects.

F. No bargaining unit employees will be coerced or intimidated into participating in Quality Improvement Teams (QITs). Participation in the process is entirely voluntary.

G. Union and management will recognize each other as legitimate customers in their everyday dealings with each other.

III. GENERAL ROLES OF VA and AFGE

VA and the NVAC serve as champions of TQI throughout the organization. The NQC, Facility Councils, and component management will provide an environment that supports employee involvement, contribution, teamwork, and a positive atmosphere of trust/respect between management and employees.

#### IV. QUALITY COUNCILS - GENERAL

A. Purpose All QCs will foster TQI by providing visible leadership and encouragement through TQI techniques, by encouraging subordinate managers and employees to use TQI techniques, and by encouraging the integration of TQI with management support systems such as strategic planning, performance management, and awards and recognition.

B. Organization and membership The union may, at their discretion, select a number of employees equal to management's selections to serve on the Councils. There must be present at least one person from both management and union. In the event multiple unions participate in the program, the total number of union members on a council shall not exceed that of management and AFGE shall determine the union membership mix. All members will make every effort to attend the meetings. All quality council members must have had TQI awareness training. The union and management will endeavor to select employees who they feel best represent the various components of the organizational entity.

#### V. THE NATIONAL QUALITY COUNCIL

##### A. Purpose

1. Serves as the model for VA's TQI effort,
2. Provides leadership to foster TQI within VA, and
3. Supports the integration of TQI in the day-to-day operations of VA.

##### B. Membership

1. The NQC shall include up to 4 representatives each of both management and the NVAC, each with an equal voice. The NVAC President will make the selection of bargaining unit employees.
2. Each member of the Council will normally serve a minimum of 18 months. The Council will be co-chaired by the union and management.

##### C. Function

The NQC fosters implementation of TQI by:

1. Examining the National TQI Mission Statement and promoting the goals and principles established in it;
2. As necessary, establishing cross-functional and other projects designed to foster TQI throughout VA;
3. Providing assistance and support to other Councils;
4. Reviewing positive/negative TQI experiences from specific facilities as presented by National Council Members;

5. Establishing guidance, procedures, and format for implementing quality improvement projects at the NQC level:
6. Developing, or having developed, a system for facilities to access quality improvement projects; and
7. Operating under the rules and procedures specified in Appendix A.

## VI. REGIONAL/AREA COUNCILS

Regional/Area Councils may be established at management's discretion. If such councils are established they shall comply with the guidelines for facility councils and/or national councils as appropriate.

## VII. FACILITY QUALITY COUNCILS

A. Where practicable, based upon the size of the activity, each activity will establish a Facility Quality Council (FQC). Each FQC will operate under a charter which includes at a minimum a statement of purpose, organization, membership, responsibilities, and functions. This National/Local TQI agreement is not covered by E. O. 12871. However, if the parties mutually agree, they may combine the functions of the FQC and facility partnership council into one partnership council, otherwise they will have two separate councils.

B. Membership The membership shall be personnel who work at the facility. Each council will have a chairperson selected by consensus of the membership. The chair may be rotated periodically.

C. Service/Division Quality Councils (S/DQCs) may be established at the discretion of the FQC. The membership shall be personnel who work in the respective service/division.

### D. Responsibilities

1. Promote TQI goals and principles,
2. Identify quality improvement opportunities,
3. Ensure all Council members are appropriately trained in the TQI process, and
4. Recognize participation and accomplishments in the TQI process.

### E. Procedures

1. Each QC will establish its own operating procedures, deciding such issues as frequency of meetings, communication processes, and membership tenure. All QCs have the option to invite additional people to their meetings when the need for additional expertise arises. All QCs will make decisions based on consensus.
2. QCs are encouraged to use an experienced facilitator for conducting Council meetings for the first year.
3. All quality council meetings will be conducted during normal duty hours with the following exception: meetings may be held during normal/regular lunch or break periods

with consensus of the council or team. Any overtime related to Quality Council work will be paid in accordance with governing directives and law. Union representative participation shall be considered duty Hours without the need to use official time.

4. Quality Councils sponsor QIT activities. The Councils:

- a. Determine the scope of processes to be examined (e.g., is it a local or cross-component issue?);
- b. Prioritize and select processes for team action in their scope of authority (office staffing needs and workloads will necessarily be considered in making these decisions);
- c. Solicit volunteers and select team members, based on the particular skills and expertise needed by the team;
- d. Monitor and support teams and individuals working on quality efforts, including obtaining or providing necessary training;
- e. Obtain periodic reports from active teams; and
- f. Obtain administrative support as necessary.

5. QCs receive recommendations from the QITs they have sponsored. They:

- a. Review all recommendations from their teams;
- b. Determine whether each recommendation is within their scope of authority to implement; and
- c. Determine whether a recommendation should be referred to a higher level within the facility because of scope.

6. Implementation of recommendation from QITs will be handled as follows:

- a. The S/DQCs will recommend to appropriate management quality improvement changes which can be implemented at the local level.
- b. When practicable based upon the size of the facility, the FQC will receive recommendations from QITs they have sponsored and from the S/DQCs. The FQC will recommend to the appropriate senior management official those quality improvement changes that can be implemented at the Facility level.
- c. The QIT recommendations may be adopted and implemented, returned to a QIT for reconsideration, or rejected. On a timely basis, reconsidered or rejected recommendations will be accompanied by a clear, reasoned explanation to the QIT.
- d. Quality councils at the facility can approve projects within their scope and authority for QIT consideration. Projects involving cross-functional areas must be approved by the appropriate quality council. (national, facility, or service/division).

## VIII. QUALITY IMPROVEMENT TEAMS

### A. PURPOSE

The purpose of QITs is to conduct quality improvement projects which will result in improved VA operations.

#### B. SCOPE OF PROJECTS

1. The Sponsoring Council will define the purpose and scope of each quality improvement project.
2. TQI initiatives will not focus on or result in loss of grades pay, or bargaining unit positions (i.e. reduction in staffing).

#### C. MEMBERSHIP

1. QIT members will be appointed by the appropriate Quality Council and may be drawn from employees in a VA component and representatives of outside groups, such as VA customers and partners who are closely associated with a particular process. The union may, at its discretion, designate a representative to fully participate as a member on each QIT without the need to use official time. The union representative will be appointed at the same time as other members of the QIT.
2. Employee participation in TQI is voluntary. Employees may resign from the team at any time by notifying a Team Leader in writing. Employees will be fully informed concerning TQI objectives and processes before their participation is requested. Employees will not be disadvantaged if they choose not to volunteer to serve on a team.
3. Prior to serving on a team, employees will be trained on TQI techniques.

#### D. TEAM LEADERS

1. Are selected by the QIT, or QC;
2. May be any member of the team; and
3. Are responsible for calling meetings, communicating resource needs (e.g., personnel, training, funding, and equipment) and keeping the Council informed.

#### E. TEAM FACILITATORS

Team facilitators will be chosen by the Sponsoring QC and should be from outside the team. The facilitator must be trained in TQI problem solving methods and group dynamics. The facilitator may help in selecting and using problem-solving tools, train members of the team in their use, and help guide discussions.

#### F. UNION PARTICIPATION AND OFFICIAL TIME

1. The union has the right to be present at all QIT Meetings. The union will determine who the representative will be at the team meetings, and in the event that he/she cannot be released from duty, the union may designate another representative or request the meeting be postponed until they are available.
2. The union will be provided the same advance notice of meetings that team members receive. Official time to attend such meetings, not to exceed a total of 5 hours

week/facility, shall be in addition to any official time presently allowed by local agreements.

## G. PROCEDURES

1. Descriptions of improvement projects will be accessible to all facilities and QITs via computer, where practicable, based upon the size of the facility.
2. All QIT meetings will be conducted during normal duty hours with the following exception: meetings may be held during normal/regular lunch or break periods with consensus of the team. Any overtime related to QIT work will be paid in accordance with governing directives and law. Union representative participation shall be considered duty hours without the need to use official time.
3. Quality improvement projects will be selected by Quality Councils and/or QITs. When a QIT has selected a quality improvement project, the project will be submitted to the Quality Council for approval. Each QIT member will be trained in TQI techniques and will apply those techniques towards the successful completion of the improvement project(s) on which the team is working.
4. To the extent possible, teams will receive the support they need for projects. Projects not self-generated will be defined and presented to the team. Team members who happen to be Union representatives will serve on the team as employees, not as the Union's representative.
5. QIT meetings are to be scheduled on a regular basis. Management will make every effort to insure that bargaining unit team members are released from normal duties to attend meetings.
6. The Sponsoring Council and/or management are responsible, to the extent possible, for providing teams access to data, staff, and contractors and with resources (training, travel funds, equipment, office supplies, facilities, time, etc.) necessary to carry out the quality improvement project.

## H. PERFORMANCE APPRAISALS

No adverse inference will be made in performance appraisals for professionally expressed opinions or positions taken on QIT issues by employees serving on QITs, or by employees not serving on QITs. Time spent performing QIT activities will not be evaluated in relation to performance standards of the employees' regular positions.

## I. AWARDS

Any awards provided to TQI teams will be group awards. Monetary awards for employees not participating on TQI teams will not be adversely affected due to non-participation.

## IX. TRAINING

A. Every effort will be made to provide TQI awareness training to all employees. The union's on-site representatives located in each local facility will be trained at the same time as other bargaining unit employees in the facility. If multiple sessions are required, the union representative will be offered attendance in the first session held at his/her facility.

B. VA management agrees to provide facilitator training courses for those employees selected to serve as facilitators.

C. Management and union/bargaining unit employees will receive training appropriate to their TQI task or responsibility.

## X. COMMUNICATION/PUBLIC RELATIONS

A. All existing "Mission Statements" will be jointly examined by the appropriate Quality Council with changes made as necessary. All new "Mission Statements" will be jointly developed by the appropriate Quality Council.

B. All TQI publications, memoranda, circulars, directives, etc., unique to AFGE will be identified by both the official VA and union logos.

## XI. MANAGEMENT RESPONSIBILITIES

### A. Local Management

1. Local management will reimburse employee authorized travel and other authorized expenses related to TQI training and Council/Team participation.

2. The impact of TQI Council/Team meetings and workload/tasking will be recognized by supervisors as valid work and appropriate/necessary adjustments will be made to employees' normal work loads, concerning due date extensions, workload counts, and deadlines.

B. Central Office (CO) management will provide administrative support to the NQC. Specifically, CO will:

1. Provide overall staff support to the NQC.

2. Record, disseminate and modify/amend the minutes of all meetings of the NQC.

3. Compile, distribute, and maintain a TQI bibliography. Share expertise in the quality field with the Facility Councils.

4. Maintain an inventory of TQI courses and serve as liaison with the training coordinators of the Department.

5. Support the NQC in issuing the newsletter and in other communication efforts.

6. Provide support and assistance to quality councils, as necessary.

## XII. NOTICE

A. Any local TQI agreement(s) in conflict with this charter will be superseded by this charter in those specific areas where the conflict exists.

B. It is understood that TQI now exists at some facilities and that it will require an expeditious transition period to implement all features of this TQI national agreement. The transition period will be no more than one hundred twenty (120) days from receipt of this program at the local station or conclusion of local bargaining, whichever is later, and less than one hundred twenty (120) days where possible.

The composition of QITs in existence prior to the effective date of this agreement shall not be affected by this agreement. Each facility will notify the local union of the QITs in existence prior to the effective date of this agreement.

C. It is recognized by both parties that TQI projects are initiated at all levels. VA management must pay special attention to its obligation to provide union notification before implementation of QIT recommendations where appropriate. VA management will closely monitor TQI activities at all levels to assure that managers do not bypass the union.

### XIII. DURATION

Both the union and management recognize that to achieve cultural transformation, many changes in the operating process have to occur; therefore, either party may give written notice to reopen this charter 30 to 60 calendar days prior to the first annual anniversary of this charter. The request for renegotiating the provision(s) of this charter shall be in writing and submitted 30 days prior to beginning the negotiations. If reopened, all provisions of this charter shall remain in effect until conclusion of negotiations unless otherwise mutually agreed. Participation by an individual employee in the TQI effort remains voluntary despite any opposing position by management or the union.

Participation in the TQI effort remains voluntary. While either party may withdraw from the agreement at any time after 1 year, the parties are committed to utilizing TQI for 1 year from the conclusion of their transition period or the establishment of a program. Both union and management will consider withdrawal as the option of last resort only after extensive discussion and consultation fail to resolve a problem. The union maintains that participation in TQI is a union permissive right.

### XIV. TRAINING

The Department will provide joint training to the parties prior to implementation of the TQI Program at the facility. The parties agree that the Department will provide the necessary resources and training to ensure a successful program.

## **ARTICLE 8**

### **CHILD CARE**

#### **Section 1 - Policy and Purpose**

The parties recognize that working parents may have special child care needs during working hours. The parties recognize the need for such parents to secure appropriate child care arrangements. The Department will continue its efforts to secure adequate funding in order to support and foster child care services for its employees.

#### **Section 2 - Child Care Activities**

A. The Department will continue to provide and/or support various activities in order to meet ongoing child care needs. These may include, but are not limited to, such things as child care and parenting information, child care resource and referral information, workshops, and counseling as available through the Employee Assistance Program.

B. It is the Department's intention to utilize available funds nationwide to foster local solutions to child care needs. These may include construction of on-site facilities or near-site facilities, participation in shared facilities with other federal agencies, establishment of mini-centers, or other child care services.

C. In accordance with PL 101-509 of the 1991 GSA Appropriations Act, the Department agrees to pay legally permissible expenses for training, conferences, or other meetings in connection with the provision of child care services for persons employed to provide child care services if the Department determines that such training, etc., is relevant and necessary. The Department also agrees to pay similar expenses for Department employees who have oversight responsibilities for the operation of child care facilities, i.e., members of local child care committees and boards of directors, if it is determined such training is relevant and necessary.

D. The head of each facility or appropriate designee will provide inquiring employees with current listings of the qualified, licensed child care centers in the immediate area. Recognizing that a broad range of child care needs exists in compiling such listings, management will request specific information i.e., age groups served, types of program offered, and special needs program.

#### **Section 3 - Local Child Care Committees**

A. When a site for a VA Child Care Center is selected, the parties will establish a local committee comprised of one management representative, one Union representative, parents, and other parties as appropriate. The Department will have subject matter experts available to meet with the Committee on an as-needed basis. The Committee will guide development of the local child care program, including development of marketing strategies, operating procedures, and admission priorities.

B. The Committee will have the opportunity to review and make recommendations which will be considered in the design of the facility. The Committee will participate in the selection of the child care provider.

C. Once the Center becomes operational, the Committee will be replaced by a Board of Directors which the Committee will assist in establishing. The Union will designate one representative to serve on the Board of Directors.

D. Committee members will be on duty time when performing Child Care Committee functions.

#### **Section 4 - Employee Needs**

A. It is agreed that the responsible official will grant emergency annual leave requests and consider emergency requests for leave without pay brought about by unexpected changes in child care arrangements, contingent upon operational exigency.

B. The Department agrees to utilize programs which may assist employees with child care needs; for example, part-time employment, job sharing, leave, flextime, etc.

C. The Department recognizes that it may be necessary for employees to contact child care providers during duty hours.

#### **Section 5 - Facilities**

In accordance with 40 USC 490(b), the Department will provide space, equipment, furnishings, and other services necessary to support the operation of each child care facility on federal property.

#### **Section 6 - Miscellaneous**

The parties agree that this Article will not delay or impact on any pending child care initiatives. The Union will be kept informed of the child care initiatives.

## **ARTICLE 9**

### **CLASSIFICATION**

#### **Section 1 - General**

A. Each position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, code, and grade.

B. Title 5 position descriptions must clearly and concisely state the principal and grade controlling duties, responsibilities, and supervisory relationships of the position.

C. Employees will be furnished a current, accurate copy of the description of the position to which assigned at the time of assignment and upon request.

D. Position descriptions will be kept current and accurate, and positions will be classified properly. Employees shall be properly compensated for duties performed on a regular and recurring basis. Changes to a position will be incorporated in the position description to assure that the position is correctly classified/graded to the proper title, series, and grade. Incidental changes may be made in the form of pen and ink notations on the position description as requested by management. The Local will be provided the opportunity to review proposed changes in position descriptions and copies of updated position descriptions. Current position descriptions will be provided to Locals, upon request.

E. Employees dissatisfied with the classification of their positions should first discuss the problem with their supervisors. If a supervisor is unable to resolve the issue to the employee's satisfaction, the employee can discuss the matter with the Human Resource Manager or appropriate staff member who will explain the basis for the classification/job grading. An employee and/or the Local, upon request, will have access to the position description, evaluation report, if available, organizational and functional charts, and other pertinent information directly related to the classification of the position. This informal classification review process should be completed in a reasonable period of time. When a desk audit is conducted it will be completed within 90 days of the Union or employee request. This time frame may be extended by mutual consent. As appropriate, desk audits will be performed at the employee's work station. If the employee still believes there is an inequity, an appeal may be filed with the Department or OPM as appropriate. An employee may file a classification/job grading appeal at any time through appropriate channels whether or not this informal classification review process was followed.

F. Management will meet and confer with AFGE locally on procedures pertaining to systematic position classification and special maintenance reviews.

G. Vacant positions will not be posted until the appointing authority assures that they are authorized, properly described, evaluated, and classified according to series, title, and grade.

H. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations.

I. Delegations of authority for the classification of positions will be specified in Department policies and regulations.

### **Section 2 - Classification Standards**

A. Title 5 positions will be classified by comparing the duties, responsibilities, and supervisory relationships in the official position description with the appropriate classification and job grading standard.

B. The Department will apply newly issued OPM classification and job grading standards within a reasonable period of time. The Local will be provided with copies of new standards. Current standards will be provided upon request.

C. The Department will provide the National VA Council with copies of any Department guidance provided to OPM in connection with any classification standards.

### **Section 3 - Classification Appeals**

A. The Department will provide employees and Locals with copies of procedures for filing classification appeals through the Department or OPM channels upon request.

B. Employees or their representatives are encouraged to submit their classification/job grading appeals through the local Human Resources Management (HRM) office. The HRM office will forward the appeal to the Department or OPM as appropriate no later than fifteen (15) days from receipt and will provide the Local with two (2) copies of the employee's appeal request. However, this does not preclude an employee from filing a classification/job grading appeal directly to the Department or OPM as appropriate.

C. An employee who files a classification appeal is entitled to a copy of the classification appeal file. The Union is entitled to the same material upon request.

D. General Schedule and Federal Wage System employees who file appeals with the Department concerning the title, series and grade, and/or coverage of their position will have their appeal decided within a reasonable period of time with a goal of sixty (60) days from the date the Appeals Office receives a completed application. Classification appeal decisions will be forwarded to the Local.

### **Section 4 - Effective Date**

The effective date of a personnel action taken as a result of an appeal should not be later than the beginning of the fourth pay period following the date of the decision.

**ARTICLE 10**

**COMPETENCE**

- A. Employees shall be trained on all new equipment, technology changes, and clinical procedures needed to perform the duties of their job.
- B. Employees' competencies shall be written and communicated.
- C. In the event that an out of the ordinary duty is assigned, employees shall be encouraged to state if they feel that this is an area that they need to review. The request should not be used punitively against them and the review shall be authorized by management.
- D. The Union shall have input into the training of employees who are expected to cross cover areas.
- E. If problems arise with employees' competencies, remedial training shall be afforded.
- F. Competencies should be within the scope of licensure, if applicable.
- G. Copies of competencies will be provided to the Union.
- H. For the purposes covered by this Agreement, competencies as such shall not be used for performance evaluations, as replacements for or additions to performance standards, or as qualification standards.

## **ARTICLE 11**

### **CONTRACTING OUT**

#### **Section 1 - Periodic Briefings**

Periodic briefings will be held with AFGE officials at the local and national levels to provide the Union with information concerning any VA decisions that may impact unit employees in implementing OMB Circular A-76.

#### **Section 2 - Site Visits**

The Department will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by unit employees. A union representative may attend such a site visit.

#### **Section 3 - Union Notification**

When the Department determines that unit work will be contracted out, the Department will notify the Union to provide them an opportunity to request to negotiate as appropriate.

#### **Section 4 - Employee Placement**

When employees are adversely affected by a decision to contract out, the Department will make maximum effort to find available positions for employees. This effort will include:

- Giving priority consideration for available positions within the Department,
- Establishing an employment priority list and a placement program, and
- Paying reasonable costs for training and relocation that contribute to placement.

#### **Section 5 - Inventory of Commercial Activities**

The Department will maintain an inventory of all in-house commercial activities performed by the Department and will update this inventory annually. The inventory will include information on all completed cost comparisons and will be made available to the Union upon request.

#### **Section 6 - Reopener**

The parties agree that any agreement reached in Mid-Term Bargaining regarding Contracting Out may be incorporated in this Agreement.

## **ARTICLE 12**

### **DETAILS, REASSIGNMENTS, AND TEMPORARY PROMOTIONS**

#### **Section 1 - General**

A. A detail is the temporary assignment of an employee to a different position for a specified period of time with the employee returning to his regular duties at the end of the detail. Details are intended only for the needs of the Department's work requirements when necessary services cannot be obtained by other desirable or practicable means.

B. Details of one (1) week or more shall be recorded and maintained in the Official Personnel Folder.

C. The following procedures shall apply when offering noncompetitive details of ten (10) consecutive workdays or more to both classified and unclassified positions:

1. The Department will canvass the qualified employees to determine if anyone wishes to be detailed. If the same number of volunteers as vacancies exist, they shall be selected.

2. If more employees volunteer than vacancies exist, the Department will select from the qualified volunteers. Seniority will be the selection criterion.

3. If there are no volunteers, then the least senior qualified employee(s) will be selected.

4. If there are fewer volunteers than vacancies, then the volunteers will be selected and additional persons will be selected as in Paragraph C3 in this Section.

5. Seniority shall be defined locally.

6. The Department will notify the Union of all details.

D. The procedures in Paragraph C in this Section shall apply except in the following circumstances:

1. When management can demonstrate that the position to which an employee must be detailed requires unique skills and abilities that are not possessed by any other qualified employee,

2. When a bona fide medical or operational emergency requires or precludes the detail of a particular employee, and

3. When the Department makes a detail to accommodate a substantiated medical or health problem.

E. Details of less than ten (10) consecutive workdays shall be on a fair and equitable basis, and procedures for such details will be subject for local negotiations.

F. For details outside of the duty station, a case-by-case analysis must be done comparing the distance from the old duty station to the employee's residence versus the distance from the new duty station to the employee's residence. When a significant difference exists, the employee should be given duty time for travel commensurate with the new duty station.

### **Section 2 - Temporary Promotions -Title 5**

A. Employees detailed to a higher grade position for a period of more than ten (10) consecutive work days must be temporarily promoted. The employee will be paid for the temporary promotion beginning the first day of the detail. The temporary promotion should be initiated at the earliest date it is known by management that the detail is expected to exceed ten (10) consecutive work days. The ten (10) consecutive work day provision will not be circumvented by rotating employees into a higher-grade position for less than ten (10) days in order to avoid the higher rate of pay. For the purposes of this section, a General Schedule employee who performs the grade-controlling duties of a higher-graded position for at least 25% of his time, or a Wage Grade employee who performs higher-graded duties on a regular and recurring basis, shall be temporarily promoted.

B. Temporary promotions in excess of sixty (60) calendar days shall be filled through competitive procedures. Temporary promotions of less than sixty (60) days shall be made in accordance with Section 1 among qualified employees.

### **Section 3 - Restriction on Lower-Graded Duties**

Should the requirements of the Department necessitate a detail to a lower-level position, this will in no way adversely affect the detailed employee's salary, classification, or position of record.

### **Section 4 - Representatives**

Management will make every effort to avoid placing a Union representative on a detail that would prevent that official from performing her representational functions. The Department agrees to notify the appropriate Union office prior to placing any designated Union representatives on detail away from the representative's normal duty station.

### **Section 5 - Voluntary Reassignment**

Employees seeking voluntary reassignments shall be entitled to prompt and fair consideration.

### **Section 6 - Shift Change and Relocation**

The parties recognize that giving consideration to seniority promotes improved employee morale and productivity. However, the parties also recognize the paramount importance of effectively accomplishing the work. Employees may request to relocate from one area of the local installation to another (or from one shift to another) in the same position (PD#) within the same service with the same advancement potential. In filling such a vacancy,

seniority will be considered and the request will be granted if the employee has the requisite skills and abilities, provided such relocation would be consistent with effective and efficient staffing. Management reserves the right to make the assignments based on other good faith considerations in assuring effective management of the work force.

#### **Section 7 - Relocation Expenses**

An employee whose duty station changes either involuntary or due to promotion shall be entitled to relocation expenses in accordance with regulations.

#### **Section 8 - Voluntary Demotion/Downgrade**

Prior to acting on an employee's request for a voluntary reduction in grade, the Department will assure that:

- A. The employee has been fully apprised in writing about the effects of such an action, and
- B. The employee has been given an explanation of other alternatives relevant to the particular case.

#### **Section 9 - Assignments of Duties for Medical Reasons**

Employees recuperating from serious illness or injury and temporarily unable to perform their assigned duties as certified by a physician may voluntarily submit a written request to their supervisor for temporary assignment to duties commensurate with the disability and the employee's qualifications. The Department may require that such requests be reviewed by a Federal medical officer for appropriate recommendations. The Department will consider such requests in accordance with applicable rules and regulations and medical recommendations. The Department will, to the extent feasible, temporarily assign the employee to an appropriate vacancy or duties and responsibilities within his own service/section commensurate with the employee's disability and qualifications. Employees will continue to be considered for promotional opportunities for which they are otherwise qualified.

#### **Section 10 - Reassignments**

- A. Reassignments shall not be used as punishment, harassment, or reprisal.
- B. The parties agree that reassignment is a subject more appropriate for local bargaining. General areas which should be addressed include but are not limited to: posting of job notices, submitting voluntary requests, consideration of requests, and notification of reassignments.
- C. All leave previously requested and approved will be transferred with the employee.

#### **Section 11 - Local Negotiations**

The parties at the local level may negotiate additional procedures for details and reassignments.

**Section 12 - Rotations**

When the rotation of employees through higher-graded positions has the effect that compensation at the higher grade is avoided, the Department will comply with governmentwide regulations.

## **ARTICLE 13**

### **DISCIPLINE AND ADVERSE ACTION**

#### **Section 1 - General**

The Department and the Union recognize that the public interest requires the maintenance of high standards of conduct. No bargaining unit employees will be subject to disciplinary action except for just and sufficient cause. Disciplinary actions will be taken only for such cause as will promote the efficiency of the service. Actions based upon substantively unacceptable performance should be taken in accordance with Title 5, Chapter 43 and will be covered in Article \_\_\_\_\_.

#### **Section 2 - Definitions**

For purposes of this Article, the following definitions are used:

##### **A. For Title 5 employees:**

1. A disciplinary action is defined as admonishment, reprimand, or suspension of fourteen (14) calendar days or less and
2. Adverse actions are removals, suspensions of more than fourteen (14) calendar days, reduction in pay or grade, or furloughs of thirty (30) calendar days or less.

##### **B. For Title 38 employees:**

1. A disciplinary action is defined as an admonishment or reprimand taken against an employee for misconduct and
2. A major adverse action is a suspension, transfer, reduction in grade, reduction in basic pay, or discharge taken against an employee for misconduct.

#### **Section 3 - Removal of Disciplinary Actions**

Admonishments and reprimands may be removed from an employee's files after a six- (6) month period. If an employee requests removal of such actions after six (6) months, they should be removed if the purpose of the discipline has been served. In all cases, an admonishment should be removed from an employee's file after two (2) years and a reprimand will be removed after three (3) years.

#### **Section 4 - Administrative Reassignment**

Administrative reassignments will not be used as discipline against any employees, unless appropriate procedures are followed.

### **Section 5 - Alternative and Progressive Discipline**

The parties agree to a concept of alternative discipline which shall be a subject for local negotiations. The parties also agree to the concept of progressive discipline, which is discipline designed primarily to correct and improve employee behavior, rather than punish.

### **Section 6 - Fairness and Timeliness**

Disciplinary actions must be consistent with applicable laws, regulations, policy, and accepted practice within the Department. Discipline will be applied fairly and equitably and will not be used to harass employees. Disciplinary actions will be timely based upon the circumstances and complexity of each case.

### **Section 7 - Processing Admonishments and Reprimands**

A. An employee against whom an admonishment or reprimand is proposed is entitled to a fourteen (14) days advance written notice, unless the crime provisions are invoked. The notice will state the specific reasons for the proposed action. Management agrees that the employee shall be given up to eight (8) hours of time to review the evidence on which the notice of disciplinary action is based and that is being relied on to support the proposed action. Additional time may be granted on a case by case basis. Upon request, one copy of any document(s) in the evidence file will be provided to the employee and/or his designated representative.

B. The employee or his representative may respond orally and/or in writing as soon as practical but no later than ten (10) calendars days from receipt of the proposed disciplinary action notice. The response may include written statements of persons having relevant information and/or appropriate evidence.

C. Extensions for replying to proposed disciplinary actions may be granted for good cause. The management official will issue a written decision at the earliest practicable date. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. The decision shall also include a statement as to whether any sustained charges arose out of "professional conduct or competence," and a statement of the employee's appeal rights. In responding to a proposed disciplinary action, the employee will be entitled to union representation.

### **Section 8 - Processing Suspensions, Adverse Actions, and Major Adverse Actions**

A. An employee against whom a suspension, adverse action, or major adverse action is proposed is entitled to thirty (30) days advance written notice, except when the crime provisions have been invoked. The notice will state specific reasons for the proposed action. Management agrees that the employee shall be given the opportunity to use up to eight (8) hours of time to review the evidence on which the notice is based and that is being relied on to support the proposed action. Additional time may be granted on a case-by-case basis. Upon request, one copy of any document(s) in the evidence file will be provided to the employee and his/her designated representative.

B. The employee and/or representative may respond orally and/or in writing as soon as practical but no later than fourteen (14) calendar days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Management has the right to restrict the response time to seven (7) days when invoking the crime provision.

C. Extensions for replying to proposed adverse actions and suspensions may be granted when good cause is shown. The appropriate management official will issue a written decision at least five (5) days prior to the effective date. The written decision shall include the reason for the disciplinary action and a statement of findings and conclusions as to each charge. The decision shall also include a statement if any sustained charges arose out of "professional conduct or competence" and a statement of the employee's appeal rights. In responding to a proposed disciplinary action, the employee will be entitled to union representation.

D. These provisions do not apply to probationary or trial employees.

### **Section 9 - Notice of Disciplinary Actions**

A. Notice of a final decision to take disciplinary action shall be in writing and shall inform the employee of appeal and grievance rights and his/her right to representation. The employee will be given two (2) copies of the notice; one (1) copy may be furnished to the Union by the employee. Management will inform the Union when it takes a disciplinary action against a unit employee.

B. Notices shall explain in detail the reasons for the action taken and all evidence relied upon to support the decision. The notice will also advise the employee how long the action will be maintained in his/her file. The supervisor shall discuss the notice with the employee. If the employee elects to have a union representative present, the discussion will be delayed until the Union has an opportunity to furnish a representative.

### **Section 10 - Investigation of Disciplinary Actions**

A. Management will investigate an incident or situation as soon as possible to determine whether or not discipline is warranted. Ordinarily this inquiry will be made by the appropriate line supervisor. The employee who is the subject of the investigation will be informed of his/her right to representation before any questioning takes place or signed statements are obtained. Other employees questioned in connection with the incident who reasonably believe they may be subject to disciplinary action have the right to Union representation upon request.

B. Disciplinary investigations will be conducted fairly and impartially, and a reasonable effort will be made to reconcile conflicting statements by developing additional evidence. In all cases, the information obtained will be documented. Supervisory notes may be used to support an action detrimental to an employee only when the notes have been shown to the employee in a timely manner after the occurrence of the act and a copy provided to an employee as provided for in Article \_\_\_\_.

## **ARTICLE 14**

### **EMPLOYEE ASSISTANCE**

#### **Section 1 - Program Purpose**

The Department agrees to implement and promote the VA Employee Assistance Program (VAEAP) which is a program for troubled individuals with alcoholism, drug abuse, emotional, or other personal problems that may affect job performance. Employees and supervisors will be informed about the program.

#### **Section 2 - Record of Participation**

A. The Department will assure that no employee will have job security or promotion opportunities jeopardized by a request for counseling or referral assistance. The Department will ensure that the confidentiality of medical records of employees with alcohol or drug problems will be preserved in accordance with current public laws and Office of Personnel Management regulations.

B. After an employee is no longer participating in the program, records will be maintained confidentially and preserved in accordance with applicable laws and regulations.

#### **Section 3 - Voluntary Participation and Employee Responsibility**

Although the existence and functions of counseling and referral programs will be publicized to employees, no employee will be required to participate or be penalized for merely declining referral to counseling services.

#### **Section 4 - Confidentiality**

A. The parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations.

B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program. Information obtained with the employee's authorization from such counseling programs may not serve as the basis for disciplinary or adverse actions.

#### **Section 5 - Disciplinary Action**

It is agreed that no employees who enroll and participate in good faith in the VAEAP will be subject to disciplinary or adverse action as a result of their problem in the first instance so long as no criminal action is involved and until the employee has been given reasonable time and opportunity to be rehabilitated. However, this will not prevent discipline in the event of severe or egregious action.

#### **Section 6 - Excused Absence**

Employees undergoing a prescribed program of treatment under the Employee Assistance Program will be excused without charge to leave for a brief period of time of less than one hour.

**Section 7 - Leave Associated with VAEAP**

It is the policy of the Department to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under the Employee Assistance Program as would be granted for employees with any other health problem.

## **ARTICLE 15**

### **EMPLOYEE AWARDS AND RECOGNITION**

#### **Section 1 -- Background and Purpose**

Recognition of employees through monetary and nonmonetary awards reflects the parties' efforts to promote continuous improvement in Department performance. The employee recognition program provides a positive indication of the parties' commitment to providing quality public service. The employee recognition program, as described in this Article, has the following characteristics:

- A. It is an incentive program; that is, employee recognition is based on achievement and improvement. Achievements are linked to the Department mission of providing high quality care and service to veterans and the public. The program is intended to motivate employees to strive for excellence. Strong emphasis is placed on recognition of efforts to improve service to veterans and the public.
- B. It recognizes the accomplishments of employees both as individuals and as members of groups or teams. Because of the interrelationship of work performed by employees, enhanced Department performance is sought through teamwork, not through competition among individuals. This program is based on the concept that individual employees who, through personal efforts and accomplishments support the goals of their teams, work units and, thus, the Department deserve recognition. It is also based on the concept that groups or teams which improve Department performance deserve recognition. It recognizes that management, the Union, and employees have important roles in identifying and recognizing employees deserving of awards and praise. The intent of this program is to promote a positive work environment and to link awards to employee contributions that enhance Department performance.
- C. Further, it is the intent of this program to ensure that employees will be appropriately rewarded regardless of changes in the Department's organizational structure, work processes, or work initiatives.

#### **Section 2 - Policy**

- A. There is no limit on the number of awards that employees may receive or the frequency with which they may receive awards unless otherwise stated in this Article.
- B. When employees are considered for awards, the relative significance and impact of their contributions will be considered in determining which type of award would constitute appropriate recognition and, for monetary awards, in determining the amount of money to be granted. Funding availability must also be considered in the granting of monetary awards.
- C. Awards will be processed in a timely and expeditious manner.

D. The Department will provide an award recipient with written documentation that clearly articulates the specific reason(s) that the employee received the award. Employees are encouraged to relate this information to specific evaluation criteria when completing applications for merit promotion.

### **Section 3 - Types of Awards**

Awards which employees may be eligible to receive include but are not limited to:

- A. Special Contribution Award
- B. Instant Award
- C. Suggestion Award
- D. Time-off Award

### **Section 4 -- Award Panels**

Each facility will establish awards panels consisting of management and bargaining unit employees. The composition and membership of each panel will be decided jointly by union and management. The union will designate the bargaining unit panel members. Panel decisions will be made by consensus and will then be forwarded to the Director of the facility. Award panels will be formed at the beginning of assessment period. Panels will perform the following functions, maintaining the strictest confidentiality and avoiding even the appearance of conflicts of interest:

Establish fair and equitable mission-related criteria for awards.

Operate within parameters as negotiated locally.

### **Section 5 - Monetary Awards**

- A. Special Contribution Awards

The special contribution award is a special act or service award which recognizes individuals or group for major accomplishments of contributions which have promoted the mission of the organization. Award amounts should be linked to the significance and impact of the accomplishment or contribution. A special contribution award may be made to an individual employee or to a group. A group may consist of individuals from a single organization or multiple components/office/units.

- B. Instant Awards

This is a special act or service award given to an employee for noteworthy contributions or accomplishments in the public interest which are connected with or related to the recipient's official employment. The distinction between a special contribution

award and an instant award rests in the relative significance of contribution or accomplishment.

### C. Suggestion Awards

The Department will encourage employees to file suggestions under the Department's Suggestion Program. Suggestions will be considered in a fair and equitable manner. Suggestion awards will be appropriate for tangible suggestions, intangible suggestions, and problem identification, as defined in the Department Suggestion Program.

1. In the event no decision is made regarding adoption or nonadoption of a suggestion within ninety (90) days of submission, the employee, upon request, will be given a written or oral status report.

2. Nonadoption of employee suggestions are to be written and contain specific reasons for nonadoption.

3. If the idea set forth in a rejected suggestion is later adopted, the appropriate suggestion coordinator will reopen the case for award consideration if the matter is brought to his attention within two (2) years after the date of rejection notice.

### **Section 6 - Time-Off Awards**

Time-off awards may be granted to an individual or group of employees for contributions that benefit VA. These awards may be granted for contributions such as, but not limited to; the following:

1. A significant contribution involving completion of a difficult project or assignment of importance to the mission of the Department,

2. The completion of a specific assignment or project in advance of an established deadline and with favorable results,

3. Displaying unusual initiative, innovation, or creativity in completing a project or improving the operation of a program or service,

4. Displaying unusual courtesy or responsiveness to the public which clearly demonstrates performance beyond the call of duty and which produces positive results for the Department, and

5. Exemplary work by an employee as a canvasser for special campaigns or programs such as the Combined Federal Campaign, US Savings Bonds, or blood donor program. (An award for such an effort may not exceed one (1) work day per activity.)

### **Section 7 - Award Nomination Procedures**

A. Employees and management officials are encouraged to identify individual employees whom they believe should be recognized for high quality accomplishments or contributions.

B. Nominations of individual employees should be submitted, in writing, to the appropriate manager or award panel. The nominations should include a description of the accomplishments or contributions of the nominee(s) and an explanation of their significance, as well as the name and telephone number of the employee submitting the nomination. Nominations should not include suggestions for the type of award or the amount of money to be granted. Information provided in the nominations will be considered in determining appropriate recognition.

## **ARTICLE 16**

### **EMPLOYEE RIGHTS**

#### **Section 1 - General**

In an atmosphere of mutual respect, all employees shall be treated fairly and equitably and without discrimination in regard to their political affiliation, Union activity, race, color, religion, national origin, gender, sexual orientation, marital status, age, or non-disqualifying handicapping conditions. Employees will also be afforded proper regard for and protection of their privacy and constitutional rights. It is therefore agreed that Management will endeavor to establish working conditions which will be conducive to enhancing and improving employee morale and efficiency.

A. Instructions will be given in a reasonable and constructive manner. Such guidance will be provided in an atmosphere that will avoid public embarrassment or ridicule. If an employee is to be served with a warrant or subpoena, it will be done in private without the knowledge of other employees to the extent it is within Management's control.

B. No disciplinary or adverse action will be taken against an employee upon an ill-founded basis such as unsubstantiated rumors or gossip.

C. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor be used as an example to threaten other employees.

D. When employees receive conflicting orders, they have a right to follow the last order given as long as they advise the Management official who issued the latest order that there is a conflict.

#### **Section 2 - Rights to Union Membership**

Each employee shall have the right to form and join a Union; to act as a designated Union representative, and to assist the Union without fear of penalty or reprisal. This right shall extend to participation in all Union activities including service as officers and stewards.

#### **Section 3 - Rights to Union Representation**

Management recognizes an employee's right to assistance and representation by the Union, and the right to meet and confer with Union representatives in private during duty time, consistent with Article \_\_\_ and local supplemental agreements. If the employee cannot be released immediately, the employee will normally be released two (2) hours before the end of her tour of duty. If such release is not made, appropriate relief from time frames will be afforded. The Department agrees to annually inform all employees of the right to Union representation under 5 USC 7114 (a)(2)(B) by postings on official bulletin boards and other appropriate means.

#### **Section 4 - Use of Recording Devices**

No electronic recording of any conversation, between a bargaining unit employee and VA official may be made without mutual consent except for Inspector General investigations or other law enforcement investigations. When a recording is made, the employee will be given the opportunity to review the transcript for accuracy and will be provided with a copy of the tape and transcript if one is made. Information obtained in conflict with this Section will not be used as evidence against any employee.

#### **Section 5 - First Amendment Rights**

Employees have the right to present their views to Congress, the Executive Branch, or other authorities and to otherwise exercise their First Amendment rights without fear of penalty or reprisal.

#### **Section 6 - Access to Documentation**

Employees have a right to be made aware of and receive copies of any information specific to them personally maintained under their name and/or social security number. This includes any documentation which is not covered by official records referenced in Article \_\_\_ of this Agreement.

#### **Section 7 - Personal Rights**

Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination by the Employer so long as such activities do not conflict with job responsibilities.

#### **Section 8 - Dignity and Self Respect In Working Conditions**

Employees, individually and collectively, have the right to expect, and to pursue, conditions of employment which promote and sustain human dignity and self-respect.

#### **Section 9 - Whistle-Blower Protection**

Employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law or Executive Order which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences mis-management, a waste of funds, an abuse of authority, or danger to public or employee health or safety.

#### **Section 10 - Unlawful Orders**

An employee has the right to refuse orders that would require the employee to violate the law. This refusal to obey an unlawful order will not subject the employee to disciplinary or adverse action.

## **Section 11 - Counseling**

A. Counseling shall be reasonable, fair, and used constructively to encourage an employee's improvement in areas of conduct and performance. It should not be viewed as disciplinary action. At any counseling session where an employee has the right to Union representation, the employee shall be advised of that right at the beginning of the session.

### B. Oral Counseling

When it is determined that oral counseling is necessary, the counseling will be accomplished during a private interview with the concerned employee and Union representative if requested and appropriate. If after such a meeting, the employee is dissatisfied and wishes to pursue a grievance, the employee may proceed to either Step 1 or to Step 2 of the grievance procedure. If there is to be more than one Management official involved in a counseling session with an employee, the employee will be so notified in advance and the employee may have a Union representative at the session.

### C. Written Counseling

1. Written counseling will be accomplished in the same manner as specified above, except that two copies of a written statement will be given to the employee.

2. A written counseling for misconduct may only be kept or used to support other personnel actions for up to six months unless additional related misconduct occurs, and then it may be retained up to one year.

3. A written counseling for performance may only be retained and used beyond the appeal period of the annual performance rating to support a timely personnel action related to that rating or any timely action taken during that period.

4. In the case of probationary employees, written counselings may be kept up to the time a decision is made whether or not the employee will be continued beyond the probationary period.

## **Section 12 - Group Meetings**

The Department agrees that group meetings of employees serve as a useful means of communication and agrees that regular and periodic (preferably monthly) group meetings will be held within each service, department, or unit to discuss concerns of both the Department and employees. The Union shall be notified of such meetings and given the opportunity to attend.

## **ARTICLE 17**

### **EQUAL EMPLOYMENT OPPORTUNITY**

#### **Section 1 - Policy**

The Department and the Union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex (including sexual harassment), sexual orientation, national origin, age (40 years of age and over), or disabling condition.

#### **Section 2 - Equal Employment Opportunity Program**

The Department's Equal Employment Opportunity (EEO) Program shall be designed to promote equal employment opportunity in every aspect of the Departmental personnel policy and practice in accordance with applicable law and Government-wide rules and regulations. The program shall include, but not be limited to, the following:

- A. Providing reasonable job accommodation for qualified disabled employees,
- B. Reviewing selection processes and staffing procedures to identify those which are inconsistent with governing Federal EEO rules and regulations and taking corrective actions consistent with such rules and regulations in those instances where adverse EEO impacts are found,
- C. Procedures that allow for the redesigning of jobs, where feasible and desirable, and which do not create an undue hardship to achieve the Department's mission to utilize to the maximum extent possible the present skills of qualified disabled employees,
- D. Making reasonable accommodations for the religious needs of employees when such accommodations can be made without undue hardship to the conduct of Department programs,
- E. Commitment to the prevention of sexual harassment, and
- F. Affirmative Employment Plan(s).

#### **Section 3 - Reasonable Accommodations for Employees with Disabilities**

- A. In accordance with Section 501 of the Rehabilitation Act of 1973, as amended, Section 403 of the Vietnam Veterans Readjustment Assistance Act of 1974, as amended, and other Governmentwide rules and regulations pertaining to the employment of individuals with disabilities, the Department is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans.
- B. The Department will offer reasonable accommodation to known physical or mental limitations of qualified individuals with a disability regardless of type of appointment,

unless the Department can demonstrate that the accommodation would impose an undue hardship on the operation of the Department's program as defined in 29 CFR Section 1614.203.

C The parties recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's specific disability, the employee's suggestions for reasonable accommodations, existing limitations, the work environment, and undue hardship imposed on the operation of the Department's program as defined above. Qualified employees with disabilities may request specific accommodations. However, the Department is not required to provide the employee's accommodation of choice as long as the Department provides a reasonable accommodation.

D. The parties agree that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the essential duties of that position. The Department will promptly consider requests for reasonable accommodations for employees with disabilities. Such accommodations will be evaluated on a case-by-case basis with regard to the merit of the request.

E. Should a nonprobationary employee become unable to perform the essential functions of her position even with reasonable accommodation due to a disability, the Department shall offer to reassign the employee when a funded vacant position for which the employee qualified is available, subject to all conditions in 29 CFR Section 1614.203(g) being met.

F. For employees with disabilities, job restructuring is one of the principal means by which some qualified workers with disabilities can be accommodated. The principal steps in restructuring jobs are:

1. Identify which factor, if any, makes a job incompatible with the worker's disability.
2. If a barrier is identified in a nonessential job function, the barrier may be eliminated so that the capabilities of the person may be used to the best advantage.
3. Job restructuring does not alter the essential functions of the job; rather, any changes made are those which enable the person with a disability to perform those essential functions.

G. The parties agree that in many cases, changes in the work environment and other accommodations enable persons with disabilities to more effectively perform their job duties. Alterations and accommodations may be, but are not limited to, the following:

1. Rearranging files or shelves,
2. Widening access areas,
3. Maintaining hazard-free pathways,
4. Raising or lowering equipment,

5. Moving equipment controls from one side to the other, or modifying them for hand or foot operations,

6. Installing special holding devices on desks, benches, chairs or machines, and

7. Providing qualified interpreters for the hearing impaired.

8. With respect to the modernized systems environment, examples of accommodations are:

a. The surface that holds the terminal will be adjusted to a level suitable to the employee's needs.

b. The keyboard will have "light touch," guards, and other adaptive devices that will be considered.

c. Visually impaired employees will be permitted to label "home" keys.

d. Operational and training materials will be available in Braille.

e. Lap trays will be considered.

f. Computer based voice-output systems or VDT screen enlargers or other appropriate devices will be provided for visual impaired employees.

g. Hardware and software will be configured to accommodate color blindness (blinking cursor, highlighting).

h. Printer switches will be available in "light touch" and located in an easily accessible location.

H. An employee may be provided assistive devices if the Department determines that the use of the equipment is necessary to perform official duties. Such equipment does not cover personal items which the employee would be expected to provide such as hearing aids or eye glasses.

I. The Department facilities shall be accessible to employees with disabilities.

J. The Department will be liberal in granting leave to accommodate the handicapping condition of employees. For example:

1. Leave without pay may be granted for illness or disability, and

2. Sick leave can be appropriately used by a handicapped individual (who uses prosthetic devices, wheel chairs, crutches, guide dog, or other similar type devices) for equipment repair or guide dog training or medical treatment.

K. The Department will provide handicapped employees full consideration for all training opportunities. Once an employee is selected for training, the Department will provide reasonable accommodations to the employee to attend and complete the training. It is the intent of the Department to provide on-the-job training opportunities to qualified handicapped employees on the same basis as nonhandicapped employees consistent with operational needs.

L. For the purpose of continuing to provide reasonable accommodations for hearing-impaired employees, management agrees to provide interpreter services for those employees who seek Union assistance and/or representation for their individual concerns. To the extent possible, interpreter services should be arranged in advance unless the employee wants to retain confidentiality.

M. To provide employees with disabilities equal opportunity to perform official business travel, certain additional travel expenses necessarily incurred to reasonably accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.

N. Employees with disabilities may, where appropriate as a reasonable accommodation, utilize work-at-home accommodations or flexiplace work setting.

#### **Section 4 - Affirmative Employment Plans**

The Department's Affirmative Employment Plan shall be designed to promote positive opportunities for all employees to contribute to the Department's mission to the maximum extent possible, consistent with EEO principles. The Department shall ensure that where there are situations of under representation, aggressive recruitment and development plans will be implemented. The parties are encouraged to develop Affirmative Employment Plans through partnership with the Union.

A. Affirmative Employment Plans should include, where appropriate, provisions for reviewing individual services to ensure that affirmative employment policy is apparent within the service and making more use of bridge positions and cross-training.

B. The Department will fulfill any labor/management obligation, as appropriate, under law, rule or regulation, with AFGE at the national level prior to submitting the National Affirmative Employment Plan to EEOC for approval. The parties recognize that the National Affirmative Employment Plan must be submitted to EEOC.

C. Local management will fulfill any labor/management obligation, as appropriate under law, rule, or regulation, with AFGE at the local level prior to submitting local Affirmative Employment Plans to the next organizational level where required (for example, to the Department or EEOC). The parties recognize that the local plans must be submitted to headquarters in sufficient time for the Department to meet the EEOC requirement in B above.

#### **Section 5 - Information, Data, and Reports**

- A. The Department agrees to provide employees access to written information describing the discrimination complaints procedures and their installation's Affirmative Employment Plan(s).
- B. The Department agrees to the timely posting of names, pictures, and office telephone numbers of EEO Counselors on designated installation bulletin boards. Management will also provide the local with a current list of its facility EEO Counselors and will update the list as necessary.
- C. The Department agrees to provide the Union with copies of the National Affirmative Employment Plan and any other reports submitted to EEOC, including statistical data, in a timely manner.
- D. Each installation preparing an Affirmative Employment Plan and any other reports will provide a copy of the same, including statistical data, to the appropriate local union representative in a timely manner.

#### **Section 6 - EEO Counselors**

- A. The parties agree that proper training will be provided to designated EEO counselors consistent with appropriate EEOC regulations.
- B. The Department will assure that EEO counselors are available and accessible to employees who may have a discrimination complaint.
- C. The Union, at the local level, may recommend employees for EEO counselor positions.
- D. Training on the subject of sexual harassment will be included in the Department's training programs provided to EEO counselors.

#### **Section 7 - EEO Review Committee**

A. The parties agree to establish a two- (2) year joint pilot program to assess and improve the Department's EEO Program with the formation of a National EEO Review Committee. The Union and the Department will each appoint a comparable number of representatives to serve on this Committee which will meet during the semi-annual National Labor/Management meetings and other mutually agreed upon times. The Department will provide official-time status, travel, and per diem for up to three (3) Department employees appointed by the Union to serve on the Committee and participate in Committee meetings.

1. The National EEO Review Committee will:

a. Bring to the attention of the Department any trend, problems, issues, or circumstances that upon the Committee's review should be changed to improve the Department's EEO Program.

b. Review EEO and Affirmative Employment Plans and Programs and recommend actions which would contribute to the success or improvement of these programs.

c. Provide advice and assistance regarding specific personnel management practices and problems of an EEO nature which adversely affect employees and/or the Department's mission (e.g., merit promotion procedures, selection for training, distribution of awards, and disciplinary actions).

d. Provide recommendations concerning the communication and promotion of the Department's EEO Program and goals.

e. Serve as a forum for the consideration of ideas submitted by the Union and/or the Department to improve the EEO Program or presented in response to Committee recommendations.

B. At the end of the initial two- (2) year pilot program, the parties agree to evaluate the merits of continuing the Committee's existence using as a principal criterion whether its functions have added value to the Department's mission and improved EEO functions and programs.

C. The membership and operation of the local EEO Advisory Committee is an appropriate subject for local bargaining. Bargaining unit members will be selected with the concurrence of the Union.

#### **Section 8 - Special Emphasis Program Managers**

Management will request nominations from the local Union when management is considering individuals to serve as Special Emphasis Program Managers on a collateral duty basis.

#### **Section 9 - Complaints**

A. Any employee who wishes to file or has filed an EEO complaint shall be free from coercion, interference, dissuasion, and reprisal.

B. Employees shall choose from available designated EEO counselors for the facility to pursue their complaint.

C. EEO counselors will fully advise employees who seek their assistance of the procedures (including time limits) involved in processing an EEO complaint under the statutory EEO appeals procedure. The EEO counselor will also advise the complainant of the right to file a grievance under the negotiated procedure (See Article 17, Grievance Procedures, Section 3.C). If the employee elects to file a complaint, the employee must choose to file the complaint under the negotiated grievance procedure or the statutory EEO process but not under both. If there is an established dispute resolution procedure, and the aggrieved has agreed to participate in the procedure, there will be an extension of no more than sixty (60) days of the EEO counseling period.

D. The complainant may elect to use an existing Alternative Dispute Resolution (ADR) process; however, the complainant's rights to pursue an EEO complaint are not waived

during the ADR process. At the same time, the complainant's responsibilities to comply with all requirements of the EEO process (for example, time limits and points of contact) must be adhered to. In the event that ADR is terminated for any reason, the complainant may continue to pursue an informal resolution of the matter with the EEO counselor or may request a Notice of Final Interview from the EEO counselor. Guidance on the requirements of discrimination complaint appeals will be available in the appropriate administrative office or from an EEO counselor.

E. The representative designated in writing by the EEO complainant will have the same access to information as the complainant.

F. Upon request, the Department agrees to provide the Union current statistics concerning discrimination complaints filed by employees.

## **ARTICLE 18**

### **FITNESS FOR DUTY**

#### **Section 1 - Scope**

The Department may direct an employee to undergo a fitness for duty examination only under those conditions authorized by this Article or in accordance with Title 38 procedures, as appropriate.

#### **Section 2 - Prerequisite Conditions**

When there are reasonable grounds to believe that a health problem is causing performance or conduct problems of an employee, the employee shall be given an opportunity to provide medical evidence documenting the health problem affecting his performance or conduct and/or an opportunity to voluntarily initiate an application for disability retirement on his own behalf.

#### **Section 3 - Medical Determination**

A. The Department may require an employee receiving worker's compensation benefits or assigned to limited duties as a result of an on-the-job injury to report for medical evaluation when the Department has identified an assignment or position (including the employee's regular position) which it reasonably believes the employee can perform consistent with the medical limitations of her condition.

B. The Department may offer a medical examination when an individual has made a request for medical reasons for a change in duty status, assignment, or working conditions or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) and the Department, after it has received and reviewed medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.

1. When the Department orders or offers a medical examination under the provisions of the prevailing regulations, it shall inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate. The Department shall designate the examining physician but shall offer the employee the opportunity to submit medical documentation from his personal physician which the Department shall review and make part of the file.

2. The Department shall provide the examining physician with a copy of any approved medical evaluation protocol, applicable standards and requirements of the position, and/or a detailed position description of the duties of the position including critical elements, physical demands, and environmental factors.

3. The Department shall order or offer a psychiatric evaluation to an employee only when the employee first provides results of a general medical or psychiatric examination or the Department has first conducted a nonpsychiatric medical examination and, after review

of the documentation or examination report, the Department's physician concurs that a psychiatric evaluation is warranted for medical reasons.

C. All medical examinations ordered or offered pursuant to Paragraphs 3A and 3B in this Section shall be at no cost to the employee and performed on duty time at no charge to leave.

#### **Section 4 - Procedures**

In seeking a fitness-for-duty examination which may or may not lead to a disability application, the following rules and procedures shall apply:

A. In all discussions with any management official, the employee shall be entitled to union representation. Prior to any discussion, the employee shall be notified of this right, given an opportunity to contact and discuss the matter with his union representative, and permitted the right of representation in such discussion.

B. During these procedures, the employee will be apprised of his rights and, where supported by appropriate medical evidence, given the opportunity for suitable interim adjustments in his work assignments.

C. When the results of the medical examination reveal that the employee:

1. Cannot satisfactorily perform useful and efficient service in his regularly assigned job,

2. Retains the capacity to do other work at the same grade or pay level within the work location or the commuting area, and

3. Otherwise meets the minimum qualifications for an available position that the Department seeks to fill; the Department will ordinarily offer the employee a reassignment to this position.

D. When the Department determines that the medical evidence reveals:

1. The employee is totally disabled for service in his current position, and

2. Reasonable accommodation for another position cannot be made, the Department will so advise the employee and provide appropriate counseling.

#### **Section 5 - Counseling**

When a disabled employee meets existing disability retirement requirements, the Department will counsel him concerning disability retirement and explain the procedure for voluntarily applying for disability retirement. In the event that such an employee is unable to file on his own behalf, the Department may initiate, with notice to the employee, an application for the employee in accordance with applicable laws and regulations.

A. The Department shall provide the employee proper notice, in accordance with 5 CFR Section 831.1203(b), and shall permit the employee thirty (30) days in which to respond in writing.

B. If the medical evidence and performance records establish that the employee retains the capacity to perform satisfactorily in a vacant lower grade position which the Department seeks to fill within the employee's commuting area, the employee will be informed of her option to request such a demotion.

#### **Section 6 - Confidentiality of Records**

All records pertaining to the employee's examination and any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or specifically authorized by the employee. There will be a written statement to the employee of the disclosure .

## **ARTICLE 19**

### **FLEXIPLACE**

#### **Section 1 - General**

The Department and the National VA Council jointly recognize the mutual benefits of a flexible workplace program to the Department and its employees. Balancing work and family responsibilities, assistance to the elderly or disabled employees, and meeting environmental, financial, and commuting concerns are among its advantages. In recognizing these benefits, both parties also acknowledge the needs of the Department to accomplish its mission. The Department Flexiplace Program will be governed by applicable law, governmentwide rules and regulations, and this Article.

Any Flexiplace Program established under this Article will be a voluntary program which permits employees to work at home or at other approved sites away from the office for all or a part of the workweek.

#### **Section 2 - Definitions**

A. “Flexiplace” is defined as a voluntary program which enables employees to periodically or permanently perform specific assignments at an Alternate Duty Station (ADS) with supervisory approval.

B. “Alternate Duty Station” is defined as a specific room or area within an employee’s primary residence or an established Department satellite location.

#### **Sections 3 - Criteria**

All employees who meet the criteria below are eligible to participate in the Program:

A. The employee volunteered (or concurred with the supervisor’s recommendation) to perform work at the ADS.

B. The employee has a fully successful rating of record.

C. The employee has work space and utilities at home suitable for performing work.

D. The employee is willing to sign and abide by the Flexiplace Program Agreement concerning participation in the Flexiplace Program (see Section 4 of this Article for details).

#### **Section 4 - Flexiplace Program Agreement**

A. Prior to participating in the Flexiplace Program, employees will be required to complete, on a one-time basis, a Flexiplace Program Agreement. However, a new Flexiplace Program Agreement must be completed if significant changes occur (e.g., change in ADS address/location, change in supervisor, and/or change in official duty

station). This Agreement will provide employees with sufficient information concerning the Flexiplace Program so as to make an informed decision as to whether or not they wish to participate. This information will include:

1. Privacy Act/security provision,
2. Personal and financial liability,
3. Leave rules and overtime,
4. Time and attendance requirements, and
5. Project guidelines and related material.

B. Employees will signify that they have volunteered to participate in the Flexiplace Program and will abide by the Flexiplace provisions by signing and dating the Flexiplace Program Agreement.

#### **Section 5 - Flexiplace Program Work Assignment Request**

A. The employee will submit a separate request for each specific assignment to be performed at the ADS. The request will describe the nature of the duties to be performed and the specific day(s) involved. The request will be submitted to the supervisor for approval. The supervisor will document approval or denial of the request as soon as possible. Supervisory documentation will be provided prior to the time requested away from the worksite. Employees must make the request to work at the ADS at least one workday in advance; however, this time frame may be waived at the discretion of the supervisor. If the assignment is initiated by the supervisor, and the employee concurs, the employee is still responsible for submitting a Flexiplace Program Work Assignment Request in addition to signing the Flexiplace Program Agreement described in Section 4 of this Article.

B. The criteria for approving a request to work at the ADS shall be based on the following:

1. The work is portable, may be performed away from the official worksite either in whole or part, and can be evaluated by the supervisor, and
2. The employee's absence from the worksite would not unduly interrupt facility operation.

#### **Section 6 - Removal from Program**

The Department may remove an employee from the Flexiplace Program based on the employee's failure to adhere to the requirements specified in the Flexiplace Program Agreement and/or a decline in overall performance below fully successful level. Normally, employees will not be removed from participation for single, minor infractions of Flexiplace Program requirements. Supervisors will make a bona fide effort to counsel

employees about specific problems before effecting removal. When a decision is made to remove an employee from the Flexiplace Program, the employee must be given written notice indicating the reason(s) for removal. The employee may reapply for Flexiplace Program participation thirty (30) calendar days after removal from the Program, provided that his performance is at least fully successful.

#### **Section 7 - Problems Affecting Work Performance**

Employees will promptly inform supervisors whenever any problems arise which adversely affect their ability to perform work at the ADS. Examples could include situations such as equipment failure, power outages, telecommunications difficulties, etc.

#### **Section 8 - Hours of Work and Leave**

Employees performing work at the ADS are subject to the same maximum workday limits as they would be if they were performing work at official duty station, consistent with Article \_\_\_\_ of this Agreement. Employees performing work at the ADS are not authorized to work overtime or official compensatory time, except in special circumstances for example, to meet priority needs of the Department. In these situations, prior approval must be obtained from the facility Director (or equivalent). Employees are not authorized to work credit hours at the ADS.

Employees performing work at the ADS will follow established procedures for requesting and obtaining approval of leave, consistent with Article \_\_ of this Agreement.

#### **Section 9 - Emergency Closing/Late Openings/Early Dismissals**

On a day when an employee is scheduled to work at the ADS and their official duty station facility is closed for all or part of a day, the following rules apply:

A. Full Day Closing. The employee is not *required* to perform work at the ADS. However, if the employee *voluntarily* chooses to perform any work at the ADS, she is not entitled to additional compensation such as overtime, compensatory time, or credit hours.

B. Late Openings. On a day when an employee is scheduled to work at the ADS and his official duty station facility opens late, the employee is entitled to the exact amount of excused absence the employee would have received if scheduled to work at the official duty station consistent with Article \_\_\_\_ of this Agreement. In this situation, the voluntary work provisions in Paragraph A of this Section apply.

C. Late Arrivals and Early Dismissals. On days when a late arrival or early dismissal occurs, the employee is required to perform his/her full ADS schedule if located at home.

#### **Section 10 - Telecommuting Centers**

The parties agree to discuss the feasibility of telecommuting centers.

### **Section 11 - Emergency Situations**

In the event of a local emergency situation such as a transit strike or a natural disaster which adversely affects an employee's ability to commute to the workplace, the parties agree to meet immediately to discuss possible temporary Flexiplace arrangements for affected employee(s).

### **Section 12 - Evaluation of Program**

The parties agree to meet six (6) months after the implementation of this Agreement to assess any concerns relevant to employees working at their residence such as availability of lap-top computers.

### **Section 13 - Union Notification**

The local Union will be notified when employees are placed in Flexiplace and taken off Flexiplace.

## **ARTICLE 20**

### **HOURS OF WORK AND OVERTIME**

#### **Section 1 - General**

A. A change in the administrative workweek and changes in the regularly scheduled administrative workweek are considered changes in conditions of employment for purposes of the notice requirement of Article \_\_\_\_ of this Agreement. There are laws and governmentwide regulations specific to certain groups of employees such as physicians, dentists, personnel covered by the Baylor Plan, and firefighters. Where there is a conflict with this Article, those laws and governmentwide regulations shall apply.

B. A rest period of fifteen (15) minutes duration will be allowed each employee twice during each eight (8)-hour day, normally one in the first half and one in the second half of the shift. A rest period of ten (10) minutes duration will be allowed each employee during each period of extended shift overtime of at least 2 hours duration. On days when all work is overtime, or in the case of extended shifts, a rest period of fifteen (15) minutes will be allowed for each period of four (4) hours worked. Rest periods will not be added to periods of leave or the beginning or end of the employee's work shift. Management will not restrict employee mobility during rest breaks except for those positions which require employees' constant presence.

C. "Basic work requirement" means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

#### **Section 2 - Work Schedule Options (AWS and Credit Hours)**

A. General - This section sets forth the procedures to be followed for Alternative Work Schedule (AWS) including flextime, compressed work schedules, and credit hours. This section also provides a menu of options for local bargaining/partnership for employees to participate in these plans. AWS means a schedule other than the traditional eight (8) hours fixed shift. Flexible work schedules and compressed work schedules are included within the definition of an alternative work schedule. Other variations of AWS may be negotiated locally to expand opportunities for bargaining unit employees.

#### **B. Flextime**

1. "Flexible work schedule" means an eight (8)-hour work day in which the employee may vary the time of arrival and/or departure. A flexible work schedule includes core time and a flexible band. "Flexible time" and "flexible bands" mean the specific periods of the workday during which employees may opt to vary their arrival and departure times. Whenever possible, the flexbands shall be 6 a.m. to 6 p.m.

2. "Modified Flextour" is a type of flextime where an employee selects a starting time within the established flexible time band. This establishes the employee's assigned schedule; however, the employee is allowed fifteen (15) minutes flexibility on either side of the selected arrival time. For example, an employee selecting 7:30 a.m. as a starting time

under modified flextour may report for work any time between 7:15 a.m. and 7:45 a.m. Changes in starting time must be approved by the supervisor.

3. "Flex-in/flex-out" - Employees working a flexible schedule will be allowed to flex out and in during the workday, subject to supervisory approval. If a combination of an employee's starting time and the amount of time the employee is away from the worksite precludes the completion of a full workday prior to 6 p.m., the employee will be placed in the appropriate leave category at his/her request or charged AWOL, as appropriate.

4. "Core hours" means that period of time when all employees on a particular shift are expected to be at work.

### C. Compressed Work Schedule (CWS)

1. "Compressed Work Schedule" (CWS) means, in the case of a full time employee, an eighty- (80) hour biweekly basic work requirement that is scheduled for less than 10 workdays; and, in the case of a part time employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled for less than ten (10) workdays and that may require the employee to work more than eight (8) hours in a day.

a. "5-4-9" is a work schedule that includes eight (8) workdays of nine (9) hours each plus one (1) workday of eight (8) hours within the biweekly pay period.

b. "4-10" is a work schedule that includes eight (8) workdays of ten(10) hours in each biweekly pay period.

c. "6-12-8" is an eighty- (80) hour bi-weekly basic work schedule that includes six (6) twelve- (12) hour workdays and one (1) eight- (8) workday.

#### 2. Requests for CWS

a. Each employee desiring to work under a CWS plan should submit a written request to his supervisor for a decision. The employer will act upon these requests as soon as possible, but in no case later than thirty (30) days after the request is made. Employees already established in a CWS will not be required to file a new request for each new requesting period.

b. All new employees or re-hires will be given the opportunity of requesting participation in the CWS plan.

c. Once operational needs are taken care of, any other conflicts in scheduling that result will be resolved in favor of the employee who has seniority as defined locally.

d. Employees who wish to terminate or change their participation in a CWS may do so at the beginning of any pay period after notifying their supervisor at least one pay period in advance or as negotiated locally. Hardship situations will be considered.

e. Employees currently participating in a CWS arrangement may continue at their option.

f. Conflicts in scheduling that involve more requests for a particular day off than can be accommodated will be handled in accordance with the provision of subsection c above. Hardship situations will be considered.

g. Existing policies and practices remain in effect unless in conflict or inconsistent with this Article.

#### D. Credit Hours

##### 1. Definition

Those hours in excess of the employee's daily tour of duty which are performed at the employee's option with approval of his/her supervisor so as to vary the length of a succeeding workday or workweek.

##### 2. Procedures

a. Participating employees, including flextime/flextour participants and part-time employees, will be authorized to earn up to three (3) credit hours per day, provided that there is work available for the employee and it can be performed at the requested time(s).

b. Credit hours may be earned in 1/4-hour increments and may be used in 1/4-hour increments.

c. The maximum number of credit hours which a full-time employee may carry over from pay period to pay period is twenty-four (24) hours. A part-time employee may not carry over more than one quarter of the hours in her basic bi-weekly work scheduled from pay period to pay period.

##### 3. Request to Work Credit Hours

a. Normally, the employee will request to work credit hours during the workday preceding the day he wishes to work. This request will be submitted to the immediate supervisor. In the supervisor's absence, the request will be submitted to the next level supervisor. The request will be documented as approved or denied by the supervisor as soon as possible on the same day submitted.

b. The above procedure does not preclude the working of same day credit hours upon mutual agreement of the supervisor and the employee.

#### E. Exceptions

##### 1. CWS and Fixed Shift Employees

The parties agree that there are situations that may not readily accommodate a plan described in this section. Consideration and disposition of such situations will be made on a case-by-case basis, subject to partnership/local bargaining.

## 2. Adverse Impact

If a facility experiences adverse impact pursuant to 5 USC 6131 with either the AWS or credit hours, negotiations in accordance with Article \_\_\_ of the Master Agreement will begin immediately to attempt to resolve the impact to both parties' satisfaction.

## 3. Temporary Suspension of AWS and/or Credit Hour Plan

Temporary suspension of AWS and/or Credit Hours may be made for up to fourteen (14) days by a facility director, for a bona fide emergency, subject to immediate partnership discussions or negotiations.

## F. Special Provisions for Suspension of CWS

1. CWS may be suspended when employees are attending and/or conducting training beginning and ending times which would conflict with their CWS schedule.

2. An employee will continue to participate in the CWS plan while in travel status unless there is a need to change the work schedule, for example, the hours of operation at the travel site differ from those of the employee.

## G. Miscellaneous

1. If the Department proposes to make any change to the AWS Plan (including the CWS Plan and Flextime Plan) or the Credit Hour Plan of bargaining unit employees or to restrict the application of the Plans to any new position, the Union will be notified and given an opportunity to bargain.

2. In the performance of labor-management activities, employees who are AFGE representatives will be given the opportunity to work the AWS Plan and/or the Credit Hour Plan in accordance with the provisions of this Agreement.

3. The parties understand and agree that credit hours or compressed work schedules will be initiated by the employee and will be subject to approval by the supervisor. In contrast, the parties understand and agree that overtime and compensatory time (with the exception of religious compensatory time) are initiated by the Employer. Flextime will be requested and bargained locally for employee groups or organizational entities.

4. In maintaining adequate staffing coverage, it is agreed and understood that management will approve CWSs in a fair and equitable manner. In order to maintain appropriate resources by positions, management will approve employee requests for specific schedules.

5. The Department will provide the Union with advance written notice of any survey or study concerning AWS and/or credit hours in which information is sought from bargaining unit employees.

6. This Agreement does not preclude an employee from requesting an altered tour of duty for specific personal reasons.

#### H. Lunch Breaks

The Department will continue the existing lunch and break arrangements. If the Department determines that an adjustment to lunch and/or breaks is necessary to solve any significant public service or operational problems caused by the AWS Plan, the Union will be given the opportunity to bargain on such changes in working conditions.

### **Section 3 - Tours of Duty/Scheduling**

A. For the purpose of this section, these definitions of terms are used:

1. Established Tour - A tour of duty approved with a specific beginning and ending time.

2. Work Shift - 1st (days), 2nd (evenings), 3rd shift (nights) within twenty-four- (24) hour period.

B. An employee's workweek will usually not extend over more than five (5) days of the period Sunday through Saturday.

C. Employees will not be scheduled to work more than two (2) of the established work shifts (days, evenings, and nights) within any seven (7) consecutive day period unless the parties locally agree to a period longer than seven (7) consecutive days.

D. Except in emergencies, employees will not be required to report to work unless they have had at least twelve (12) hours off-duty time between work tours. Exceptions may be made with the approval of the employee and supervisor. This will not preclude work on an overtime basis.

E. Rotation - Scheduled off-tours will be rotated fairly and equitably among affected employees, i.e, day/evening, day/night.

F. Rotation of weekends and holidays will be on a fair and equitable basis within a group and may be a subject for local bargaining. The weekends are defined as Saturday and Sunday and may be expanded to include Friday or Monday when scheduling permits.

G. Records of weekend and off tours will be kept by management to ensure fair and equitable treatment of employees. These records will be readily available for review.

H. Seniority among employees with comparable qualifications will be the determining factor for access to a preferred tour. Seniority will be defined locally.

I. Excessive use of overtime in any area will be evaluated by the Union and Management to review staffing options.

J. Shift schedules and areas of assignment will be posted at least fourteen (14) days in advance. Every effort will be made to assure that work schedules will not be for more than six (6) consecutive days for eight hour tours, three (3) consecutive days for twelve (12) hour tours, and four (4) consecutive days for ten hour tours with no less than two (2) consecutive days off. Changes in the above procedures will not be made without consultation with the Union.

K. When change of uniform is required or permitted, the Department will provide ten (10) minutes at the beginning and ending of tour for the employees to change clothes.

L. The Department will permit reasonable clean-up time at the end of each shift for the purpose of returning tools, clean up the work areas and machinery as necessary in each work area. No employee shall be required to remain after the end of his/her shift for the purpose of cleaning up his designated area.

#### **Section 4 - General Overtime Provisions**

A. Overtime shall be distributed in a fair and equitable manner.

B. When an employee works overtime, whether covered by the Fair Labor Standards Act or exempt, such overtime will be paid in increments of fifteen (15) minutes.

C. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulations.

D. It is agreed that nonbargaining unit employees shall not be scheduled on overtime to perform the duties of bargaining unit employees for the sole purpose of eliminating the need to schedule bargaining unit employees for overtime.

E. When employees in a voluntary situation indicate in advance that they will work overtime, the Employer should have an expectation that they will keep their commitment. It is understood that employees occasionally may be unable to report for assigned overtime work. Therefore, an employee who volunteers for overtime work and fails to report as scheduled without good cause may have his or her name placed at the end of any overtime roster.

F. Employees who are called back to work for a period of overtime unconnected to their regularly scheduled tour or who work overtime on their day(s) off are entitled to a minimum of two (2) hours overtime pay. Employees called in for emergency work outside their basic workweek shall not normally be required to perform nonemergency functions. This does not preclude employees from being called in to provide coverage in nonemergency situations.

G. Rosters of employees will be utilized to determine overtime, voluntary or mandatory. The mechanics and eligibility of the rosters are subjects for local negotiations, and seniority will be a criterion. The Department will make available to the Union, upon request, current records of overtime assignments.

H. Employees required to work through their nonduty meal period shall be paid for such time.

I. In the event of an extension of a regular work shift into an evening or night work shift for more than a three- (3) hour overtime work period, reasonable time will be allowed, when possible, for procurement and eating of food no later than three (3) hours after the overtime starts. Responsibilities while eating will be the same as regularly scheduled employees.

J. Those employees eligible by Title 5 or Title 38 can accrue and use compensatory time when approved by Management.

#### **Section 5 - Paid On-Call/Standby**

A. Normally, volunteers will be used to perform on-call or standby duty before assigning such duty to nonvolunteers.

B. Scheduled on-call will be rotated among all qualified staff. Records of on-call shall be kept by management and made available to the Union upon request. If funding permits, employees scheduled for on-call duty shall be issued pagers or other mobile technology which will be used to notify them of a need for their return to duty.

C. On-call employees shall not be expected to work more than sixteen (16) consecutive hours, except in rare and unusual circumstances.

D. If on-call employees are called back to the station, they shall receive a minimum of two (2) hours of pay.

E. Employees will not be required to stay at home or wear and respond to beepers/pagers unless they are in a pay status.

F. Employee participation in nonpaid, on-call status shall be voluntary.

G. Employees shall not be scheduled on-call while on annual leave.

H. On-call employees will normally not be utilized for nonemergency work. (NOTE: Supervisors should not require the employee to perform "busy work" just to keep the employee at work for a full two hours. This Section was not intended to open for debate whether or not the official who called the employee in for work was correct in his determination that an emergency need was present.)

I. If an on-call or standby tour of duty is terminated in a work unit, the decision and reason shall be specific and in writing and forwarded to the Union to fulfill bargaining obligations.

J. Those employees currently in a standby pay retention status will continue to be paid under the provisions of 38 USC 7457(c).

K. Those facilities having locally negotiated agreements will continue to honor those agreements so long as they do not conflict with the Master Agreement. A conflict shall be resolved in favor of the Master Agreement.

## **ARTICLE 21**

### **INVESTIGATIONS**

#### **Section 1 - General**

A. As exclusive representative, the Union shall be given the opportunity to be present at any examination of an employee in the bargaining unit(s) by a representative of the Department in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee, and

2. The unit employee requests representation.

B. The right to union representation is not intended to interfere with the routine interaction between supervisors and employees in the normal course of a workday.

C. The Department shall annually inform its employees of their right to union representation under 5 USC 7114(2)(B) by posting notice of such rights on bulletin boards and through other appropriate means.

D. If any supervisor or management official of the Department, in advance of or during the questioning of an employee, contemplates the likelihood of disciplinary action, the employee shall be informed of his/her right to union representation prior to further questioning. If an employee in the bargaining unit requests Union representation, management will reschedule the meeting as soon as possible, and the Union will be given the opportunity to be present.

#### **Section 2 - Investigations**

A. The Department agrees that before employees conduct a formal investigation, they shall be properly trained.

B. The Department will inform the local union in advance of a formal administrative investigation when a bargaining unit employee is the subject of the investigation or inquiry.

C. Investigations should consider all facts, circumstances, and human factors. An investigation shall be conducted in an expeditious and timely manner.

D. Employees have the right to be represented by the Union while being questioned in a formal investigation or while being required to provide a written or sworn statement. Before such questioning begins or a statement given, employees will be informed of the reasons they are being questioned or asked to provide a statement.

E. If an employee is the subject of an investigation, he or she will be informed of the right to union representation prior to being questioned or asked to provide a statement. The employee will also be informed of the nature of the allegation(s). Once an employee

requests union representation, except in very rare and unusual circumstances, no further questioning will take place until the Union is present.

F. Supervisors, employees, and union representatives will not, except as specifically authorized, disclose any information about an investigation. A copy of the statement of the employee will be given to the employee and/or the employee's representative upon request. If no action was taken as a result of this investigation, the employee who was the subject will receive the findings in a timely manner.

G. Upon request, the subject of the investigation and the Union will be furnished a copy of the complete investigation file (not just the evidence file) and all other relevant and pertinent information which would be provided under Freedom of Information Act (FOIA) or 5 USC Section 7114, which would normally include the Administrative Investigation Board (AIB) report findings.

H. The statement of employee rights and obligations will be consistently applied throughout the AFGE bargaining unit. That statement will be consistent with this Agreement and include the following:

1. The employee's right to representation by AFGE,
2. The right of an employee to a copy of his/her personal statement or testimony, and
3. The right of employees not to incriminate themselves.

I. When an employee has requested union representation in an investigative proceeding, the union representative may fully and actively represent the employee and is not limited to the role of an observer.

J. An employee's representative shall receive a complete copy of all evidence used to support the Department's action. This includes, but is not limited to, copies of all tapes, testimony/transcripts, recommendation and/or findings, and photographs. The Department will make every effort to provide additional information requested by the employee's representative. The Department will provide a written explanation of any denial of information requested in a timely manner.

K. The participation of bargaining unit employees on an administrative investigating board will be with the consultation of the Union.

## **ARTICLE 22**

### **MERIT PROMOTION**

#### **Section 1 - Purpose and Policy**

The parties agree that the purpose and intent of the provisions contained herein are to ensure that promotions are made equitably and in a consistent manner. Promotions shall be based solely on job-related criteria, and without regard to political, religious, labor organization affiliation or nonaffiliation, marital status, race, color, sex, national origin, nondisqualifying disabling condition, or age. This article sets forth the merit promotion system, policies, and procedures applicable to bargaining unit positions in the Department.

#### **Section 2 - Development of Career Pathways**

A. The parties will explore various means of enhancing career opportunities including but not limited to career ladders, administration movement, broad banding, etc.

B. The parties are committed to establishing career ladder positions within the organization in those situations where positions and functions can be grouped in a way compatible with program and work considerations.

C. The parties agree to develop and implement career ladder positions through joint labor-management involvement. Labor and management will work together as follows:

1. Participation will include bargaining unit representatives appointed by the Union.
2. The parties will have appropriate personnel and classification support.
3. Review will consider existing positions and work functions within the respective component in all job categories (i.e., professional, technical, administrative, clerical, wage grade).
4. Consolidate/Revise existing positions and develop career ladder positions where appropriate. The parties will attempt to design career ladders which provide opportunities for both lateral movement between career ladder positions and promotion to higher grade career ladder positions.

#### **Section 3 - Career Ladder Plans**

A. Career ladder positions help employees develop to successfully perform higher level duties through training and incremental assignment of more complex work. The responsibilities assigned to the entry levels of career ladder positions will involve more basic skills and knowledge compared to journey-level responsibilities. The responsibilities at each level of the career ladder position will be communicated to employees through the position description and career ladder plan.

Career ladder plans will be tailored to the complexity of the job duties and will permit individuals to learn and assume the fuller range of duties.

B. A Career Ladder Plan will be established for each career ladder position. The Career Ladder Plan will outline the objective criteria for each grade level which an employee must meet in order to be promoted. A copy of the plan will be given to each employee upon entry into the career ladder and when she is promoted to a new level of the career ladder. The employee will also be advised of her earliest date of promotion eligibility.

When career ladder plans are established and/or revised, the Department will provide notice to the Union in accordance with Article \_\_\_ of this contract. The employee will be provided with a copy of any revised career ladder plan within 30 days of such revision.

#### **Section 4 - Career Ladder Advancement**

A. At the time the employee reaches his earliest date of promotion eligibility, the Department will decide whether or not to promote the employee.

1. If an employee is rated as successful and is meeting the promotion criteria in the career ladder plan, the Department will certify the promotion which will be effective at the beginning of the first pay period after the requirements are met.

2. If an employee is not meeting the criteria for promotion, the employee will be given a written notice at least sixty (60) days prior to earliest date of promotion eligibility. The written notice will state what the employee needs to do to meet the promotion plan criteria. Should a Career Ladder Plan require only a three- (3) month training period, the above notice shall be a reasonable period prior to the earliest date of promotion eligibility.

a. If the employee is making progress, the supervisor will ensure that he has the opportunity to acquire pertinent skills and knowledge and to demonstrate that he meets promotion requirements as soon as is feasible.

b. If the employee is experiencing problems, the provisions in Paragraph B of this Section are applicable.

3. In the event that the employee met the promotion criteria, but the appropriate management official failed to initiate the promotion timely, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.

B. At any time a supervisor and/or employee recognizes an employee's need for assistance in meeting the career ladder advancement criteria, the supervisor and employee will develop a plan tailored to assisting the employee in meeting the criteria. The plan should include all applicable training, as well as any other appropriate support. At the request of the employee, the Union may provide assistance.

If a nonprobationary employee fails to meet the promotion criteria after the appropriate assistance, the Department may:

1. Provide the employee with additional time to meet the promotion criteria or
2. Assign the employee duties commensurate with his/her current grade.

The career ladder plan may end, and the employee will remain at the level he attained within the career ladder. The employee may be reinstated back into the career ladder plan non-competitively if the employee remains in the position covered by the Career Ladder Plan.

or

3. The employee may be assigned to another position at the same grade and step.

C. If an employee is denied a career ladder promotion because of the unavailability of enough work at the next grade, management agrees that, if an employee performs the work of the higher-graded position for the required amount of time during a pay period to qualify for reclassification to the higher grade, she will be temporarily promoted for that entire pay period.

#### **Section 5 - Definitions**

For the purpose of this Article, the definitions contained in Part 335 and other related parts of Title 5 Code of Federal Regulations shall be incorporated as a part of this Agreement except as otherwise defined in this Agreement.

#### **Section 6 - Applicability of Competitive Procedures**

A. Promotions - Any selection for promotion must be made on a competitive basis unless it is excluded by Section 7 below.

B. Reassignments/Changes to Lower Grade - Any selection to a position that provides specialized experience (Job Qualification System for Trades and Labor Occupations, Handbook X-118C) that the employee does not already have and is required for subsequent promotion to a designated higher grade position and/or to a position with known promotional potential must be made on a competitive basis.

C. Details - Competitive procedures will be applicable to any selection for detail of more than 60 days to a higher grade position, to a position with known promotional potential, or a position which provides specialized experience (Job Qualification System for Trades and Labor Occupations, Handbook X-118C) required for subsequent promotion to a designated higher grade position.

D. Training - Competitive procedures will be applicable to selections for training when eligibility for promotion to a particular position depends on whether the employee has completed that training.

E. Appointments - Competitive procedures apply to the transfer of a Federal employee or to the reinstatement of a former Federal employee to a position above the highest grade previously held permanently (unless the position is a higher-graded successor position as described in Paragraph 7 D5 of Section 7 of this Article) or to a position at or below that grade if the position has promotional potential above the highest grade previously held permanently. The employee must not have been demoted or separated for cause from the higher grade(s) and, when competitive procedures apply, be identified as a well-qualified candidate with eligible VA employees to be eligible for appointment. To the extent feasible, the same qualification standards and the same methods of evaluation will be applied to both VA employees and persons being considered for appointment to higher graded positions above the highest grade previously held permanently by transfer or reinstatement. If it is determined that these methods are not feasible, the parties will meet and confer on the methods to be utilized.

F. The procedures for vacancies filled under competitive actions are described in this Article.

### **Section 7 - Applicability of Noncompetitive Actions**

A. Promotions - The following promotions may be taken on a noncompetitive basis unless otherwise provided:

1. Promotion of the incumbent in a position that is reclassified at a higher grade due to the accretion of additional duties and responsibilities and not as the result of a planned management action.

2. Promotion of an incumbent or an individual entitled to re-employment rights to a position that is reclassified to a higher grade without significant change in duties or responsibilities either on the basis of a new classification standard or as the result of correction of an original classification error. When the incumbent of the upgraded position meets the legal requirements and qualification standards for promotion to the higher grade, the incumbent will be promoted.

3. Promotion of an employee previously selected competitively for a lower step of a career ladder.

4. Promotion after receiving priority consideration.

5. Promotion of an employee when directed by authorized authorities (i.e., judges, arbitrators, FLRA, and other appropriate authorities).

6. Agencies may noncompetitively reinstate, transfer, promote an employee up to the highest grade previously held on a permanent basis under career or career-conditional appointment, provided the employee was not demoted or separated from that grade for cause.

7. Temporary promotions to a higher grade totaling sixty (60) days or less during any twelve- (12) month period. If a temporary promotion which was not expected to exceed

sixty (60) days was originally made on a noncompetitive basis, any extension beyond 60 days must be made under competitive procedures.

8. Career ladder promotions following noncompetitive conversion of a cooperative education student in accordance with the requirements of applicable OPM policy.

9. Promotion of an employee covered by an approved training agreement.

10. Promotion of an employee placed competitively in a trainee position.

11. Any other noncompetitive action authorized by law or existing government-wide regulation.

B. Reassignments/Changes to Lower Grade - A reassignment or change to lower grade to a position that does not provide specialized experience (Job Qualification System for Trades and Labor Occupations, Handbook X-118C) that the employee does not already have and is required for subsequent promotion to a designated higher grade position or to a position having no known promotional potential may be taken on a noncompetitive basis.

C. Details - The following details may be made on a noncompetitive basis:

1. Details of sixty (60) days or less to a higher grade position (see Article 31, Details, Reassignments and Temporary Promotions).

2. Details of sixty (60) days or less to a position at the same or lower grade with known promotional potential or to a position which provides specialized experience (Job Qualification System for Trades and Labor Occupations, Handbook X-118C) required for subsequent promotion to a designated higher-graded position.

3. Details to a position at the same or lower grade with no known promotion potential or to a position which does not provide specialized experience (Job Qualification System for Trades and Labor Occupations, Handbook X-118C) required for subsequent promotion to a designated higher graded position.

4. Details to unclassified duties.

D. Other Noncompetitive Actions:

1. Conversion of an employee from a temporary promotion to a permanent promotion in the same position and duty station provided the vacancy announcement for the temporary promotion indicated that the promotion could later become permanent.

2. Selection from an OPM-approved register.

3. Transfer of a Federal employee or reinstatement of a former Federal employee (including conversion to reinstatement from a temporary appointment) to a position at the same or lower grade than the highest permanent grade held under a career or career-conditional appointment provided the candidate was not demoted or separated for personal

cause from a higher grade and also provided that the position does not have known promotional potential to a grade higher than the highest permanent grade held.

4. Reinstatement to the same career ladder position for which an employee was previously selected competitively or to a similar career ladder position having similar qualification requirements and having no greater known promotional potential.

5. Reinstatement of a former VA employee to a position which is the higher-graded successor to a position he/she previously held. Such reinstatements may be made non-competitively when classification of the successor position is based on the establishment of a new position classification standard or the revision of a position classification standard.

6. A position change permitted by reduction-in-force regulations.

7. Consideration or selection of :

a. Disabled veterans under 5 CFR 315.604

b. Disabled veterans under 5 CFR 315.707

c. Cooperative education students (FPM Chapter 308)

d. Veterans Readjustment Appointments under 5 CFR 307.

e. Severely handicapped appointments under 5 CFR 213.3102 (u) and (t).

f. Schedule A & B Excepted Appointments

g. Any other noncompetitive action authorized by law or existing government-wide regulation.

E. Additional procedures for noncompetitive details and reassignments are described in Article \_\_\_\_\_.

### **Section 8 - Vacancy Announcements and Areas of Consideration**

A. All positions to be competitively filled in the bargaining unit by actions covered by this Article shall be posted unless filled under Section 7 which provides for exclusions from coverage. For the same type of vacancy (title, series, and grade), a certificate may be used for up to ninety (90) days to refer candidates without re-announcing the vacancy.

B. Prior to considering candidates from outside the AFGE bargaining unit, the Employer agrees to first consider internal candidates for selection.

C. Areas of Consideration:

The areas of consideration will be:

FIRST - Facilitywide (including satellites) except:

1. This area may be made more narrow or expanded through mutual agreement.
2. Where evidence suggests that the area of consideration is not expected to produce at least three qualified candidates, it may be expanded. The vacancy announcement will identify the expanded area of consideration.
3. For VA Headquarters unit positions, GS-12 and above, the area of consideration may be expanded.

However, in all cases, (1, 2, and 3 above), first and full consideration shall be given to any best qualified candidates within the facility (or more narrow area).

SECOND - Any other promotion candidate - or candidate required to compete - from other VA facilities.

THIRD -

1. Reassignments/demotions to positions with higher known promotion potential.
2. Reinstatements to positions at a higher grade or with higher known potential.
3. Transfers to positions at a higher grade or with higher known potential.

D. Consideration of VA employees as promotion or promotion-potential candidates outside the normal area of consideration for positions covered by this article will be considered as follows:

The employee can submit an application and supporting attachments, designated on the form, to the appropriate Human Resources Management (HRM) Office. The applicant should indicate thereon the specific position or types of positions, and location(s) for which he wants to be considered. To ensure full consideration, employees should include on their applications information relevant to the assessment criteria for the position in which they may be interested. In order to be considered for a particular vacancy, the employees must have the form on file with the HRM Office prior to closing of the announcement.

E. Consideration of VA Candidates for Reinstatement. When consideration is given to a former VA employee applying for reinstatement, noncompetitive referral will initially be made for: (a) positions at the last grade, (b) a position which is the higher-graded successor to a position he/she previously held, and (c) positions at any higher grade(s) the employee held permanently if the employee was not demoted or separated for cause from the higher grade. However, if vacancies do not exist at these grades, if requested by the employee, referral may be made to a lower-graded position. Last grade is defined as the grade of the last position held under a non-temporary appointment for reinstatement candidates. If applicants accept referral to the lower-level position, they must sign a statement that they fully understand and accept the referral. However, employees will also be informed that they do not have to accept a lower position in order to be reinstated.

Consideration for bargaining unit positions above the last grade permanently held must be competitive.

F. Information on Vacancy Announcements.

Vacancy announcements will include, at a minimum:

1. Statement of nondiscrimination;
2. Announcement number and opening and closing dates;
3. Position number(s), title(s), series, and grade(s);
4. Number of vacancies to be filled;
5. Promotional test to be used, if any; and, where applicable, positions in the “same-line-of-work”;
6. Geographic and organizational location;
7. Time-in-grade requirements, if any;
8. Area of consideration;
9. Summary of qualification requirements and duties for the position;
10. Hours of work and/or the availability of alternative work schedule options;
11. If appropriate, a statement that the vacant position is a trainee position leading to a noncompetitive promotion and conditions for promotion;
12. Permanent or temporary nature and duration, if temporary;
13. Filing instructions;
14. Name and telephone number of the personnel specialist or other individual to contact for specific assessment criteria and other information relating to the announcement; and
15. The HRM office or the address where the application is to be submitted.

The Department agrees to standardize VA vacancy announcements to the extent feasible.

G. Announcing Career Ladder Vacancies and Vacancies Covered by Training Agreements.

Career ladder vacancies and vacancies covered by training agreements may be announced at any or all grades. The Union will be provided with written notice of any changes in the posting of these announcements, prior to being posted.

#### H. Posting and Distribution of Vacancy Announcements.

The Department agrees to provide a copy of vacancy announcements to the appropriate Union the time of or prior to postings: vacancy announcements will be provided to the appropriate Union. In addition, the job analysis, without the rating guide, will be provided to the Union within the area of consideration. The Department agrees to post vacancy announcements within the area of consideration and to make copies available to employees, upon request, in accordance with the following:

1. Individual vacancy announcements will remain open and posted for fifteen (15) workdays.

2. Open continuous announcements will remain posted at all times. When it has been determined that an open continuous vacancy will be filled, the cut-off notice will be posted in order for all interested employees to apply.

3. Scheduled Employee Absence of three (3) Weeks or Less: Employees temporarily absent on approved leave, detail, at training courses, or on official business, for periods not to exceed three (3) weeks may, upon their return, review position vacancies announced and closed during their absence, and make application for such vacancies in which they are interested. Such late applications must be submitted within three (3) workdays after return to duty and must be accompanied by a statement prepared and signed by the employee and also signed by his/her supervisor explaining the dates and reason(s) for the employee's absence. Employees filing delayed applications under this provision will be considered only for those vacancies for which a best-qualified list has not yet been prepared.

#### I. Amending Vacancy Announcements.

If a vacancy announcement has been posted and is later found to contain a substantial error concerning items listed in Section 8F then the announcement will be amended if the selecting official still intends to fill the position under the competitive process. The amendment should cite the change(s) and indicate whether or not the original applicants need to refile in order to be considered.

#### J. Vacancy Announcement/Locating Candidates.

The Union and each applicant will be notified in writing if an announcement is canceled and will be provided with a reason for the cancellation. However, such cancellations will not be used to compromise merit promotion principles.

### **Section 9 - Knowledge, Skills, Abilities, and Other Characteristics**

#### A. Definition:

KSAO stands for knowledge, skill, ability and other characteristics.

B. The parties agree that KSAOs developed for all current and future unit positions, and changes and modifications thereto, will be fair, job-related, applied equitably and uniformly, and established in accordance with law, higher authority rules and regulations, and this Agreement.

C. Changes to Established KSAOs:

KSAOs will be established by a panel which will conduct job analysis and other prescribed duties. The panel will normally include a bargaining unit employee chosen with the concurrence of the Union. Absent mutual agreement, Management will appoint panel members following discussions with the Union and informing the Union of the reason for its decision. Informational copies will be provided to the Union as part of the vacancy announcements. If KSAOs for specific positions (i.e., position numbers) are changed after their initial establishment and used in a promotion action, the newly developed KSAOs will be sent to the Union in advance of any future vacancy announcements and handled by the parties in accordance with their bargaining obligations under Chapter 71, Title 5 USC.

D. Procedures:

1. KSAOs will be developed by:

a. Identifying the major tasks/duties of the position through a job analysis based on information contained in the position description, Career Ladder Plan, qualification standards, and/or classification standards and

b. Identifying the worker characteristics and demonstrated abilities (KSAOs) needed to perform the job.

2. KSAOs are defined as follows:

Knowledge: A body of learned information used directly on the job.

Skill: A present competence to perform a skill, unlike an ability, involves observable, quantifiable, and measurable performance parameters such as typing and pipefitting.

An ability is the power to perform an activity at the present time. An ability is evidenced by the performance of some activity or work and should not be confused with an aptitude which is only a potential for performing an activity. An aptitude cannot be determined or measured by information in applications.

Other Characteristics must be directly observable or measurable and job-related.

3. For each announced vacancy in the bargaining unit, not less than three (3) and not more than eight (8) KSAOs will normally be identified.

a. KSAOs shall be measurable (degree of possession can be discerned) and reasonable (some candidates can be expected to possess them). Any KSAOs which do not meet these criteria will be dropped.

b. The KSAOs developed will be reviewed to determine which ones are critical to successful job performance. These KSAOs (at least two) will be designated as selection factors.

c. Task examples shall be developed for each KSAO. The task examples shall be derived from, and consistent with, the official position description of record. Task examples shall be identified in the vacancy announcement and fully documented and made part of the merit promotion package.

### **Section 10 - Panel for Competitive Action**

A. Panel Membership Requirements - Subject to Section 10C., panels will be established for all competitive actions. Panel members shall be instructed in the tasks necessary to perform the panel's function.

Panels for bargaining unit positions will include two (2) bargaining unit employees chosen with the concurrence of the Union. Absent mutual agreement, Management reserves the right to appoint panel members following discussions with the Union and informing the Union of the reasons for its decision.

The parties recognize that some competitive actions may require larger or smaller panels. The Department may determine the necessary panel size.

Panel members will not be in competition for the vacancy(s) and must be at least the same grade or higher, if possible, than the vacancy to be filled.

A relative of an applicant may not serve on the panel.

Members of the panel should be familiar with the job requirements of the position(s) being filled.

B. Panel Information - The Department will provide the promotion panel with all of the necessary information for completing its function.

C. Panel Responsibilities - The Panel will:

1. Apply evaluation criteria to ensure that a well-qualified candidate is selected:

a. When there are eight (8) or fewer (nine (9) for two (2) vacancies, ten (10) for 3, etc.) or fewer qualified promotion candidates, they will be referred in order of entry on duty date at the current VA facility to the selecting official for consideration without rating and ranking.

b. When there are more than eight (8) qualified promotion candidates in the first area of promotion consideration, a Panel shall be convened.

c. Promotion candidates from outside the first area of promotion consideration shall be rated by the Panel if the candidates from the first area were rated and ranked.

d. The panel will evaluate each application in order to ascertain the relevancy of the candidate's background (including but not limited to work experience, awards, training, outside activities, etc.) to the KSAOs. Candidates will be evaluated on the extent to which they possess the KSAOs relevant to the position being filled. This assessment will be based on the applicant's description of the proportion of time spent performing relevant activities, the complexity of the activity, identifiable results, level of contacts involved in performing the work, or the scope of responsibilities and duties performed.

In making this evaluation, the task examples should not be taken as the only types of evidence which demonstrate possession of a KSAO.

## 2. Determining the Best Qualified List for Referral:

### a. First Area of Promotion Consideration.

(1) The evaluation panel will review the listing of ranked promotion candidates to determine whether a meaningful break is present. The meaningful break is where:

(a) The lowest ranking candidate above the break should be able to perform the job with substantially equal success as all candidates with higher scores, and

(b) The highest ranking candidate below the break should not be able to perform with substantially equal success as those above the break.

(2) Promotion candidates above the break will be placed on the best qualified list for referral. If there is no break and/or there are too many candidates above the break, the eight (8) highest ranking candidates will constitute the best qualified list and be referred in order of their entry on duty date at the facility.

b. In order to be referred, candidates who have to compete under the procedures of this Article and who are outside the facility shall have a rating equal to or better than the meaningful break or cutoff established by the promotion candidates within the first area of promotion consideration.

c. Length of service with VA shall serve as a tie breaker where one is necessary.

d. A copy of any referral list forwarded to a selecting official will be provided to the Union.

## D. Multiple Grade Levels or Locations

If an announcement pertains to more than one grade level or geographic location, a separate list of eligible persons will be developed for each grade level and location.

E. Documentation - The panel will document working notes. Notes may be annotated on worksheets used by the panel. The notes will serve as reference material to document the process by which the decision was made.

F. Confidentiality - The results of the panel's actions will be treated confidentially and in accordance with provisions of the Privacy Act.

G. Decisions - The panel will make its decision(s) by consensus

### **Section 11 - Sources of Information on Candidates**

A. Any awards the applicants have received must be considered by the selection panel but only to the extent they are relevant to the rating factors/job elements for the position being filled.

B. Once applications are received and the selecting panel convened, no other information on a candidate may be gathered unless with the approval of the panel.

C. VA Form 5-46-76a, Employee Supplemental Qualifications Statement, is to be used, and it will be the primary source document used to evaluate qualifications and to rate and rank candidates.

1. Employees are responsible for giving complete and accurate information and for submitting VA Form 5-4676a by close of business on the seventh calendar day after the closing date of the vacancy announcement. If the panel has not yet been convened, late supplementals will be accepted for bona fide reasons. If the form is not submitted within that time, the panel will consider only the information available from other sources described in this section.

2. The SF-171, Personnel Qualifications Statement, may also be reviewed if available.

D. Interviews - If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, all candidates must be interviewed if reasonably available, in person or by telephone where circumstances warrant. If more than one management official are conducting the interview, a union representative may be present upon the employee's request.

### **Section 12 - Selection**

A. In the event of unanticipated vacancy(s) in the same position and location as the posted vacancy occurring within ninety (90) days of the selection, the selecting officer may make additional selections from the well-qualified candidates selected from the original vacancy announcement.

B. When a selection has been made, the Department will arrange a release date, notify the employee, and ensure that the appropriate personnel forms are processed. The effective date of a promotion action, other than promotion within a career ladder, will be the first day of the pay period in which the employee is scheduled to report. If an employee has been selected for promotion, has accepted the offer, and a reporting date has been established, and the resultant request for personnel action (SF-52) is not timely received and/or acted upon by the appointing official, the action shall be made retroactive to the reporting date.

C. Employees selected for career ladder positions will be promoted to the next higher grade level at the beginning of the first pay period after selection, provided time in grade and any other legal promotion requirements are met.

D. Management recognizes that it is important for maintaining high morale to try to select from within the facility when the candidates are equally qualified to those candidates available from outside sources. Thus, management will agree to look closely at the relative qualifications of candidates from outside and within and shall exercise good faith in the selection.

E. If the vacancy is one for which an under-representation exists and is a targeted occupation as identified in the Affirmative Employment Plan, and there are well qualified candidates whose selection would reduce the under-representation, then the selection official will give serious consideration to those individuals.

Upon request, the Union will be provided with a written reason for selecting an outside candidate.

### **Section 13 - Priority Considerations**

A. Definition - For the purpose of this article, a priority consideration is the bona fide consideration for noncompetitive selection given to an employee as the result of a previous failure to properly consider the employee for selection because of procedural, regulatory, or program violation. Employees will receive one priority consideration for each instance of improper consideration.

B. Processing - The procedures for processing a priority consideration shall be:

1. Employees will be notified in writing by the authorized management official of entitlement to each priority consideration. Such notice will advise employees that if a vacancy is announced and posted and the employee wishes to exercise his/her priority consideration, the employee should submit the necessary application to HRMS with a written request that he/she wishes priority consideration for the vacancy.

2. Priority consideration is to be exercised by the selecting official at the option of the employee for an appropriate vacancy. An appropriate vacancy is one for which the employee is interested, is eligible, and which leads to the same grade level as the vacancy for which proper consideration was not given.

3. Prior to the evaluation of other applicants, the name(s) of the employee(s) requesting to exercise priority consideration will be referred to the selecting official. The selecting official will make a determination on the request prior to evaluating other applicants.

4. The fact that the employee chooses to exercise a priority consideration does not preclude that employee from also filing an application through the regular posting process.

C. Union Notification - In order to assure compliance with this section, the Union will be furnished statistics on priority considerations granted and exercised and the results. Statistics will be kept and provided to the Union on a quarterly basis. The Union will also be notified in writing of each individual priority consideration completed.

#### **Section 14 - Special Consideration**

Employees who were downgraded without personal cause (i.e., where the downgrade was not due to misconduct, inefficiency, or at the employee's own request), may be eligible for special consideration. Re-promotion may be made to a grade previously held on a non-temporary basis or to an intervening grade. This applies only when the employee was downgraded in the Department and the re-promotion is to a grade formerly held in the Department.

Employees under this provision will receive a special consideration for each grade for which they were demoted or downgraded.

#### **Section 15 - Keeping Employees Informed**

A. Employees who apply for and inquire about a specific promotion action will be given the following information by the personnel office or the selecting official:

1. Whether they met the minimum qualification requirements,
2. Whether they were in the group from which selection was made,
3. Who was selected, and

4. Upon request, the selecting official shall provide a verbal statement of the reason(s) why the employee was not selected and/or a written statement regarding what areas, if any, he/she should improve to increase his/her chances for future selection.

B. Upon request, an employee will be shown any record of production or any supervisory appraisal of past performance which has been used in considering him/her for promotion. An employee is not entitled to see records on another applicant unless he/she is the selecting official, a member of the selection panel, or otherwise officially involved in the promotion process, or he/she has the written consent of the subject of the record or is an agency official with a need to review the record.

However, an employee and/or the Union shall have access, consistent with law, governmentwide rule, or regulation, to all pertinent records used in the process of filling

vacancies which are requested for the purpose of process or filing a grievance, EEO complaint, or other appeal.

**Section 16 - Union Review of Competitive Actions**

A. The Union will be permitted to conduct audits of promotion packages for all bargaining unit positions when it has reason to believe a discrepancy exists or when requested to do so by an employee.

B. The Union will provide the Department with the names of the Union representatives who are responsible for conducting audits. Any changes to the list of designated representatives will be sent to the Department in writing. The representative designated to conduct the audit will not have been an applicant for the promotion package being audited.

C. If the employee chooses to use the Union procedure, he/she must make a written request to the Union within 15 working days after the selection is posted on the biweekly promotion listing. A Union request under Subsection (A) above must be made within the same time limits.

D. The designated management official responsible for the package will make the pertinent records from the package available to the Union auditor within seven (7) working days of receipt of the audit request. An auditor shall treat information confidentially and review it in HRMS in the presence of a management official.

E. If, during the course of the audit, additional information is determined to be necessary, such information shall be secured from HRMS.

F. Employees who elect to use the grievance procedure rather than the Union audit procedure must initiate action in accordance with Article \_\_\_\_\_, Grievance Procedure.

**Section 17. Reopener:** The parties agree to a reopener of this article due to pending PAY VA issues. This reopener applies only to those sections which would be directly affected by the PAY VA issue unless mutually agreed upon by the Parties. Either party wishing to reopen must give written notice thirty (30) days prior to bargaining.

## **ARTICLE 23**

### **OFFICIAL RECORDS**

#### **Section 1 - Official Records and Files**

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

#### **Section 2 - Access to Records**

A. During normal duty hours, employees and/or their representative(s) designated in writing, shall have the right to examine records personally identified to the employee (i.e., OPF, EEO, evidence files, appeal and grievance records), position descriptions, and classification standards during normal duty hours. Employees, or their representative(s) designated in writing, may receive at no cost copies of personally identified records which have not been previously furnished. Additional copies will be provided; however, there may be a charge in accordance with the Department fee schedules in effect at the time of request.

B. Employees' access to their own medical records maintained by the Department may be refused only if, in the sole judgment of a health care professional, their disclosure would be harmful to the mental or physical health of the individual. In such cases, the medical record(s) may be released only to an employee's representative designated in writing. There may be instances where the Department health care official may encourage the release of medical information to another health care professional.

C. The employee shall have the right to prepare and enter a concise statement of disagreement with any document filed on the left (temporary) side of the OPF. Nothing in this Section shall negate an employee's right to grieve any matter.

D. Access to personnel records of the employee by the employee and/or the designated representative will be granted when requested if such records are maintained on the facility where the employee is located. If the records are not so maintained, the appropriate Administrative Office will immediately initiate action to obtain the records from their location within three (3) working days of the request and make them available to the employee and/or designated representative.

#### **Section 3 - Outdated Records**

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

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

C. Each facility will maintain a system of follow-up to assure that any written counseling, disciplinary, or similar action with a time limit on it is removed on the proper date and returned to the employee.

D. If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the employee.

#### **Section 4 - Supervisory Notes**

A. Individual files on each employee not approved by the Department as an official system of records will not be kept by management officials at any level.

B. Subject to Paragraph C, if supervisors make a personal decision to keep notes on employees, the notes or files: (1) must be absolutely uncirculated-- they cannot be reviewed by anyone else (this includes secretaries, other supervisors, or management officials) and (2) must be maintained in secure fashion in order to prevent disclosure.

C. Supervisory notes may only be used to support any action detrimental to an employee if such note(s) have been shown to the employee at the earliest available time after the entry was made and a copy provided to the employee. Once an employee has received a copy of the supervisory note(s), the note(s) can be provided to an appropriate management official with a legitimate need to know for the performance of their duties.

D. The time frames for retaining supervisory notes will be up to six (6) months, unless used in a personnel action.

## **ARTICLE 24**

### **OFFICIAL TRAVEL**

#### **Section 1 - Compensation and Travel**

To the maximum extent practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Department within the normal working hours. Where it is necessary that travel be performed during nonduty hours, the employee will be paid overtime or may opt for compensatory time when such travel constitutes hours of work under Title 5 of the U.S. Code or the Fair Labor Standards Act, if applicable.

#### **Section 2 - Change from Per Diem Allowance to Actual and Necessary Subsistence Expenses**

A. Advance Authorization - An employee scheduled to travel in an area for which a per diem allowance is prescribed may request advance authorization for travel on the basis of actual and necessary subsistence expenses. Any such request will normally be approved when the supporting justification showing that the unusual and exceptional circumstances for the request meets Departmentwide guidelines.

B. Post Approval - Reimbursement for actual and necessary subsistence expenses allowable under law and/or rules and regulations issued above, the Department will normally be authorized on a post-approval basis if the employee can justify that prudent expenses required by the ordered travel exceeds (as defined by Departmentwide guidelines) the prescribed per diem rate. This provision applies only to travel involving assignments of thirty (30) calendar days or less.

#### **Section 3 - Continuation of Approved Travel Expenses**

Employees who are unable to arrive at or return from their destination as scheduled will be reimbursed for authorized travel expenses provided the inability to arrive or return is due to arduous travel conditions beyond the employee's control resulting from natural calamity, unavailability of transportation, or severe weather.

#### **Section 4 - Advancement of Expenses**

Employees required to travel shall have the option of requesting a travel advance. Such request shall be filed by the employee as soon as possible and processed by the Department as expeditiously as possible. Normally, the Department will not require an employee to travel over night prior to receiving a travel advance. If an employee does not have adequate funds, the Department will make every effort to make alternative arrangements.

The Department shall process all claims for travel expenses as expeditiously as possible.

#### **Section 5 - Use of POV Vehicles**

Employees shall not be required to use privately owned vehicles (POVs) for Government business, nor shall they suffer any loss of pay, reprisal, or adverse action on account of refusal to use a POV for Government business. In the event the use of POVs is authorized, mileage for such use shall be compensated at the prevailing rate published in the Federal Register.

**Section 6 - Document and Property Loss/Theft**

An employee is accountable for Government documents or property in their possession and/or custody. Employees exercising reasonable care will not be held responsible for documents or property damaged, lost, or stolen from their possession and/or custody.

**Section 7 - Protective Assistance**

The Department recognizes that some travel job assignments present a threat to the personal safety of employees. When such circumstances are brought to the attention of the supervisor by employees or the Union, appropriate measures will be taken to assure the safety of the employee. The parties agree to jointly review existing employee protective procedures from time to time to assure that employees receive the maximum feasible protection from such dangers.

**Section 8 - Return to Duty Station**

An employee on a long-term assignment may be authorized occasional return trips to his permanent duty station at Government expense on nonworkdays. Approval for such return trips are at the administrative discretion of the authorizing official and may be authorized in accordance with published travel policy of the Department.

## **ARTICLE 25**

### **PARKING AND TRANSPORTATION**

#### **Section 1 - Local Negotiations**

The parties agree that parking is a substantive subject for local supplemental negotiations to the extent not specifically covered in this Agreement.

#### **Section 2 - General**

Where employees are not being charged for parking that is available at the time this Agreement becomes effective, no charge will be initiated for the duration of this Agreement except where required by law. The parties agree that secure, adequate, and accessible parking for employees helps better serve customer needs and should be a consideration in local arrangements.

#### **Section 3**

The Department agrees that if they relocate an office or should circumstances prompt changes in lease agreements, prior to the "solicitation for offers" the Department will notify the Union and/or place the issue on the agenda of the local Partnership Council.

Parking space for the Union is a subject for local bargaining.

#### **Section 4 - Violations**

An employee will receive two (2) courtesy warnings and one (1) counseling prior to receiving a parking citation by VA police except where a vehicle is parking in clearly marked emergency lanes or parking spaces. All citations issued will be reviewed by the Director/Superintendent/Manager or designee who may make a recommendation to the Federal Court. The citation or parking warnings will be purged in accordance with the VA Records Control Schedule.

#### **Section 5 - Shuttle Service**

The Department may provide existing or future shuttle service on a space-available, first-come, first-served basis for employee use. Changes in the shuttle service used by employees is a subject for local bargaining.

#### **Section 6 - Security**

In VA-owned parking facilities, the Department will provide a safe and secure parking area for its employees including, but not limited, to the following:

- A. Lighting - Adequate lighting in all parking areas throughout the facility.

- B. Security Service - For employee safety, VA police will provide escort service, when available and if requested, to parking areas under VA jurisdiction, traffic control, and general facility security.
- C. Inspections - Inspections of grounds including facility and parking areas are to be regularly scheduled.
- D. Pedestrian Crosswalks - Crosswalk areas from parking area to facility will be clearly marked.
- E. Signage - Clearly understandable and unobstructed signs (traffic, pedestrian, etc.) consistent with both GSA standards and guidelines and safety traffic engineering principles are to be provided.
- F. Problem Reporting - Local procedures will be negotiated for problem reporting, e.g., car lights left on, lights out on parking lots, damaged or obstructed signs, etc.
- G. The provision of electronic security measures and security fencing are subjects for local bargaining.

#### **Section 7 - Commute Options**

- A. The parties agree to explore alternative commuting options and to encourage their use.
- B. The Department will make appropriate arrangements for employees to advertise ride-sharing opportunities.
- C. The Department will work closely with public transportation agencies to ensure the maximum availability of public transportation to the facility with special emphasis on accommodating mobility-impaired employees.

## **ARTICLE 26**

### **PERFORMANCE APPRAISAL SYSTEM**

#### **Section 1 - Overview**

A. The Department will strive for continuous improvement in performance to fulfill the Department's commitment to providing quality customer service. Accomplishment of the mission is intended to be achieved within an environment that both recognizes the interdependence of employee contributions and promotes teamwork.

Improvement in Department performance will be sought by analyzing work processes and correcting systemic problems and/or revising processes, as appropriate. Consistent with the Department's commitment to an environment that promotes teamwork, the cornerstone of performance evaluation will be the accomplishment of group or team objectives.

B. To promote teamwork a simplified performance appraisal system will be employed. The purpose of the performance appraisal system agreed to in this Article is to provide a fair and equitable framework for honest feedback and open, two-way communications between employees and their supervisors. The system focuses on contributions within the scope of the employee's job description in achievement of the Department's overall mission. Accomplishment of objectives is intended to be achieved within a team environment. The performance appraisal system includes an annual written appraisal of achievement for each employee.

The performance appraisal system will emphasize:

- Continuous communication
- Employee development (rather than being used as a disciplinary tool)
- Administrative simplicity (rather than labor-intensive)
- The evolution of the supervisor's role to coach
- Recognition of special skills and contributions as part of or in addition to regular job duties
- Employee input into group objectives
- Overall employee contributions
- Encouragement of unit and group towards achievement of the Department's mission

C. An annual rating of "successful" assures employees of eligibility for within grade increases, promotion consideration, and award consideration and serves as a positive, tangible assertion that the employee is in "good standing."

The Performance Appraisal System as set forth in this Article is intended to be innovative and evolutionary in nature. Its effectiveness is critical to the Department achieving its mission.

## **Section 2 - Policy**

In its entirety and application, the Performance Appraisal System must be fair, equitable, and solely related to job performance.

## **Section 3 - Performance Standards**

A. The parties agree that Management will establish and communicate to employees critical elements, non-critical elements, and performance standards subject to law and regulations, and this Article. Employee participation or input into the establishment of performance standards will be made in collaboration with the Union.

B. The Union will be given a reasonable written advance notice when Management changes, adds to, or establishes new elements and performance standards.

C. Performance standards that assess an employee's manner of performance must be job-related, documented and measurable. There must be a nexus between the expected manner of performance and the expected job results.

## **Section 4 - Communications**

A. An orientation briefing will be provided to all new employees entering on duty by the employee's supervisor, and there will be an oral discussion to explain, clarify, and communicate the employee's job responsibilities as articulated in the employee's position description and/or performance plan. The purpose of this discussion is to ensure that there is a clear and common understanding of the duties and responsibilities contained in the employee's position description and/or performance plan.

B. The supervisor will assure that the employee has an up-to-date position description, up-to-date copy of the Department's mission and goals and, if applicable, the career ladder plan and will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Department's mission.

C. Subsequent orientation sessions should be held when there is a change in the work situation. Examples may include:

- A change in the supervisor of record,
- When the employee is detailed,
- A change in the work unit's goals or objectives,
- A change in assignments,

- A change in the work processes of the unit, or
- When an employee returns from an extended absence of ninety (90) calendar days or more.

D. Informal discussions are a standard part of supervision and should occur throughout an appraisal period.

1. Discussions may be initiated by the supervisor or employee. Discussions may be held one-on-one or between a supervisor and a work group.

2. Discussions should be candid, forthright dialogues between the supervisor and employee(s) aimed at improving the work product. Discussions will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product. Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s) and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance.

### **Section 5 - Uses of the Performance Appraisal System**

The performance appraisal system is used for making a basic determination that an employee is in "good standing." It is also the basis for making certain personnel-related decisions.

A. Within-Grade Increases - An employee who has attained a rating of "Successful" and has achieved an "acceptable level of competency" will be entitled to appropriate within-grade increases.

B. A rating of "Successful" will be used as the initial factor in determining basic eligibility for consideration of awards, promotions, and other personnel actions.

### **Section 6 - Process**

A. All "successful" bargaining unit employees will receive an annual performance appraisal for the period April 1 through March 31, or other dates agreed to by the national parties, thereby certifying that the job duties and responsibilities have been performed at an acceptable level. The evaluation will be issued in writing to the employees within sixty (60) calendar days of the end of the appraisal period. Employees new to the Department (with less than ninety (90) calendar days) as of April 1, will receive a delayed evaluation upon completion of the ninety (90) calendar days.

B. When evaluating performance, the supervisor will not hold employees accountable for factors which affect performance that are beyond the control of the employee.

C. Documented performance discussions will only be required when the supervisor believes the employee is not performing in a successful manner. If at any time during the

appraisal year the supervisor identifies a significant performance-related problem with an employee, the supervisor will meet with the employee and union representatives, if requested, to advise the employee of the problem, determine the root cause, and develop a written assistance plan to resolve the problem. This counseling session will be documented in writing, and a copy will be provided to the employee

D. The assistance plan will afford the employee a reasonable opportunity of at least thirty (30) calendar days to resolve the identified performance-related problem. During this period, the employee will be deemed to be performing at a successful level for purposes of any performance-related personnel actions and will not be subject to adverse action for performance-related problems. This “deemed Successful” level will not constitute an assessment or rating of a successful level of performance.

E. The assistance plan 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. The parties agree that placing the employee on 100% review does not equate to appropriate assistance.

F. The purpose of the period of assistance is to help the employee improve rather than accumulate documentation as the basis for a future performance-related adverse action.

G. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary. The supervisor will so notify the employee of this determination in writing.

H. If, following the assistance period, the supervisor is unable to make an evaluation that the employee is successfully performing his/her job duties and responsibilities, the supervisor will give the employee a documented performance interview communicating (1) this determination, (2) that the employee will be placed on a formal Performance Improvement Plan (PIP), and (3) that personnel related actions (WIGI, awards, etc.) will be withheld while this level of performance continues. The employee is entitled to a union representative at this performance interview.

### **Section 7 - Performance Improvement Plan (PIP)**

A. If the supervisor determines under Paragraph 6H that the employee is not successfully performing his/her job duties, the supervisor shall, in addition to providing the employee the written notice discussed above, develop in consultation with the employee and union representative, upon request, a written PIP. The PIP will identify the employee’s performance deficiencies, the successful level of performance, the action(s) that must be taken by the employee to improve to the successful level of performance, the methods that will be employed to measure the improvement, and any provisions for counseling, training, or other appropriate assistance. The goal of this PIP is to return the employee to successful performance as soon as possible.

B. A reasonable period of not less than ninety (90) calendar days under a PIP will be given for the employee to achieve successful performance.

C. At any time during the PIP period, the supervisor may conclude that the employee's performance has improved to the Successful level and the PIP can be terminated. In that event, the supervisor will notify the employee in writing, terminate the PIP, and evaluate the employee successful, if appropriate.

### **Section 8 - Performance-Based Actions**

A. Should all remedial action fail and the employee's performance is determined to be unacceptable, the supervisor will issue a rating of unacceptable performance to the employee. One of the following actions will be taken: reassignment, reduction to the next lower appropriate grade, or removal.

B. An employee who is reassigned or demoted to a position at a lower grade will receive a determination of his/her good standing after ninety (90) calendar days in the new position.

C. An employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:

1. Thirty (30) calendar days' advance written notice of the proposed action which identifies the specific basis for the proposed action including specific instances of unacceptable performance and

2. A reasonable time, not to exceed twenty (20) calendar days, to answer orally and in writing.

The decision to retain, reduce in grade, or remove an employee shall be made within thirty (30) calendar days after the date of expiration of the notice period.

D. The employee will be given a written decision which:

1. Specifies directly or by reference the instances of unacceptable performance on which the decision is based and

2. Specifies the effective date, the action to be taken, and the employee's right to appeal the decision.

E. The employee may appeal to either the Merit Systems Protection Board in accordance with applicable law or file a grievance under the negotiated grievance procedure.

### **Section 9 - Statistical Data**

Both parties agree that statistical data utilized to evaluate process effectiveness or individual performance must be reliable, valid, fair, and equitable.

Accordingly, the parties agree that within one hundred twenty (120) days of the signing by both parties of this Agreement, the parties will address the Department's use of numbers and numerical data in measuring workloads, work processes, and individual and group

performance with its primary objective to assure absolute integrity of the data. The results of this undertaking will be incorporated into this Article.

**Section 10 - Reopener**

Either party may reopen this Article after two (2) years following the effective date of this Agreement.

## **ARTICLE 27**

### **REDUCTION IN FORCE**

#### **Section 1 - Purpose**

The Department and the Union recognize that unit employees may be seriously and adversely affected by a Reduction in Force (RIF), staffing adjustment (Title 38), reorganization, or transfer of function action. Management recognizes that attrition, reassignment, furlough, hiring freeze, and early retirement are among the alternatives to RIFs that may be available. This article describes the exclusive procedures the Department will take in the event of a RIF, reorganization, or transfer of function as defined in this Article. It is also intended to protect the interests of employees while allowing the Department to exercise its rights and duties in carrying out the mission of the Department.

#### **Section 2 - Applicable Laws and Regulations**

For purposes of Title 5 employees, the policy, procedures and terminology described in this Article are to be interpreted in conformance with 5 USC 3501-3504, 5 CFR Part 351, FPM Chapter 351, 29 CFR 1613.203, and other applicable governmentwide laws and regulations. For purposes of Title 38 employees, the policies, procedures, and terminology of this Article are to be interpreted in conformance with VA Directive and Handbook 5111. Either party may reopen Directive and Handbook 5111 within one year with proper notice. Any successor to the Directive and Handbook or changes or revisions to this document will be developed through the predecisional involvement of the Union and subject to collective bargaining.

#### **Section 3 - Application**

The Department agrees to fairly and equitably apply this Article and any laws or regulations relating to any matter in this Article.

#### **Section 4 - Union Notification**

A. Directors of VA facilities shall be responsible for properly notifying the Union in conjunction with any of the actions described in this Article.

1. A facility-based action affecting the interests of one local Union shall require notice to the President of that local.

2. A facility-based action affecting the interests of two or more local Unions shall require notice to a party designated by the National VA Council.

B. For actions covered by this Article, the Department agrees to notify the Union as described in Paragraphs A(1) and (2) in this Section at the earliest possible date but no later than 90 calendar days prior to the effective date.

C. All notices per Sections A and B above will be given prior to any notice to affected unit employees. Verbal notices will be confirmed in writing.

D. A properly constructed notice to the Union under this Section shall consist, at a minimum, of the following information:

1. The reason for the action,
2. The approximate number, types, and geographic location of position affected, and
3. The approximate date of the action.

### **Section 5 - Definition**

For the purpose of this article, the following terms are defined in law and regulations and are included for informational purposes:

A. Reduction-In-Force (RIF):

When the Department releases a competing employee from his or her competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personal ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to erosion of duties when such action will take effect after the Department has formally announced a reduction-in force in the employee's competitive area and when the reduction-in force will take effect within one hundred eighty (180) days.

B. Transfer of Function:

The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas or the movement of the competitive areas in which the function is performed to another commuting area is known as a transfer of function.

C. Reorganization:

A reorganization is the planned elimination, addition, or redistribution of functions or duties in an organization or activity.

D. Title 38 Staffing Adjustments:

Changes resulting in a reduction of full-time Title 38 staff may occur through separation or reassignment to other facilities or other commuting areas, changes in assignment or reassignment within the facility, and changes to a lower grade or pay based on changes in staffing levels or patterns of at least one full-time permanent Title 38 employee.

E. Competitive Area:

An area in which employees compete for retention is known as a Competitive Area.. A competitive area must be defined solely in terms of the Department's organizational services or units and geographical location, and it must include all employees within the competitive area is defined.

F. Competitive Level:

Positions in a competitive area that are in the same grade (or occupational level) and classification series that are so alike in qualification requirements, duties, responsibilities, pay schedule, and working conditions that the incumbent of one position can successfully perform the critical elements of any other position in the level upon assignment to it, without loss of productivity or undue interruption is known as competitive level. Competitive levels for Title 38 employees will be determined in accordance with VA Directive and Handbook 5111.

**Section 6 - Freezing of Vacancies:**

The Department will freeze all relevant vacant positions within the facility sixty (60) days prior to the effective date of a reduction-in-force. When the Department decides to fill a vacant position after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted will be offered the vacancy, provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with Section 24 of this Article.

**Section 7 - Employee Notification**

An individual employee who is adversely affected by actions stated in this Article shall be given a specific notice not less than sixty (60) days prior to the effective date of the action. All such notices shall contain the information required by the Office of Personnel Management (OPM) and the Federal Personnel Manual (FPM) regulations in addition to the information required by this Article.

**Section 8 - Content of Notices**

The content of the specific notice shall include the following information:

- A. The specific action to be taken,
- B. The effective date of action,
- C. The employee's competitive area, competitive level, subgroup and service date, and the annual performance ratings of record for the applicable three (3) years,

- D. The place where the employee may inspect the regulations and records pertinent to his/her case,
- E. The reasons for retaining a lower standing employee in the same competitive level because of a continuing exception,
- F. Grade and pay retention information, and
- G. The employee's grievance or appeal rights.

### **Section 9 - Employee Information**

The Department shall provide complete information needed by employees to fully understand the action and why they are affected. At a minimum, the Department shall:

- A. Inform all employees as fully and as soon as possible of the plans or requirements for actions in accordance with applicable rules and regulations,
- B. Inform all employees of the extent of the affected competitive area, the regulations governing such action and the kinds of assistance provided to affected employees,
- C. Maintain and publicize a list of vacancies Departmentwide and maintain a copy of the Governmentwide job bulletins, such as Federal Jobs or Federal Research Service, and
- D. Conduct a placement program within the Department to minimize the adverse impact on employees who are affected by RIF. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employees.

### **Section 10 - Personnel Files**

The Union may review any bargaining unit employee's Official Personnel Folder (OPF) at an employee's request in writing if the employee believes that the information used to place him on the register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this Article.

### **Section 11 - Records**

The Department will maintain all lists, records, and information pertaining to actions taken under this Article for at least two (2) years in accordance with applicable rules and regulations.

### **Section 12 - Retention Register**

The Department will state in writing that to the best of its knowledge the retention register is accurate as of the date it was developed. A copy of the retention register will be made available to the Union at the earliest possible time.

### **Section 13 - Employee Use of Authorized Time and Department Facilities**

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of RIF under this Article shall be entitled to reasonable time while otherwise in a duty status without charge to leave for:

- A. Preparing, revising and reproducing job resumes and/or job application forms,
  - B. Participating in employment interviews,
  - C. Using the telephone to locate suitable employment, and
  - D. Reviewing job bulletins, announcement, etc.
- E. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone/FTS, reproduction equipment, interagency messenger mail, E-mail, typing, and counseling.

### **Section 14 - Performance Appraisals**

Except for employees who are re-rated after a period allowed in 5 CFR Part 432, annual performance appraisals for purpose of retention standing will be frozen sixty (60) days prior to the effective date of the action. The three (3) latest annual appraisals of record prior to the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this Section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

### **Section 15 - Release From Competitive Level**

When an employee is to be released from his/her competitive level, the "best offer" is made. The offer will be as close to the employee's current grade as possible and in the same commuting area if possible.

### **Section 16 - Employee Response to Specific Notice**

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have the fourteen (14) days specific notice period in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Department will make the better offer to the employee. However, making the better offer will not extend the sixty- (60) day notice period.

### **Section 17 - Reassignment to a Different Geographic Area**

Dislocation of employees outside of their commuting area shall be avoided when the Department has alternatives. When the Department is not able to place an employee

within the local commuting area and the employee is reassigned to another geographic area, such action will be considered to be in the best interest of the Government. The employee's relocation expenses shall be at Government expense and reimbursed at the authorized rates.

### **Section 18 - Relocation Trips**

When the Department assigns an employee to a position requiring a move to another geographic area, the employee will be granted administrative leave and/or excused absence, as appropriate, to locate housing and make related arrangements at the new work location. The employee shall be placed in travel status for such trips and shall receive travel and per diem reimbursement at the authorized rates.

### **Section 19 - Time Allowed for Relocation**

Employees reassigned to a different commuting area who relocate will be allowed a period of time, as appropriate, to complete the move and report to work at the new work location.

### **Section 20 - Displaced Employees**

The Department shall provide any employee to be separated by RIF or transfer of function with the appropriate information regarding unemployment benefits available to them.

### **Section 21 - Details**

Employees on detail will not be released during a reduction-in-force from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

### **Section 22 - Transfer of Function**

A. When a transfer of function occurs, the Department will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer. If there are not enough qualified volunteers from among these affected employees, the Department will solicit qualified volunteers from the competitive area.

B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, preference will be given to the volunteers with the highest retention standing. In the event there are not enough volunteers for the transfer, the employee with the lowest retention standing will be selected.

C. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which management has determined to fill.

### **Section 23 - Repromotion Rights of Affected Employees**

For a period of two (2) years, affected employees demoted by an action covered by this Article will be repromoted to vacancies as they occur according to the following criteria:

- A. The Department determines to fill the vacancy,
- B. The employee has the requisite skills and abilities for the position without undue interruption, and
- C. Another qualified employee does not have a higher retention standing.

**Section 24 - Reemployment Priority Rights of Affected Employees**

Career and career-conditional employees who have received a specific RIF notice and have not declined a valid job offer at a rate lower than the current grade will be entered on the Department's Reemployment Priority List (RPL) for the commuting area in which they are qualified and available. Department components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the Department (with some exceptions for veterans). Career employees may remain on the list for two (2) years and career-conditional employees for one (1) year from the date of separation unless removed earlier through placement or declination of an offer.

## **ARTICLE 28**

### **SAFETY, HEALTH, AND ENVIRONMENT**

#### **Section 1 - General**

The parties recognize that a safe and healthful work environment is valued by the Department; is necessary for the accomplishment of the Department's missions; and contributes to a high quality of life for the employees. It shall be the responsibility of the Department to establish and maintain an effective and comprehensive Occupational Safety and Health Program in accordance with Public Law 91-596, the Occupational Safety and Health Act of 1970 (referred to as the Act), Executive Order 12196, and 29 Code of Federal Regulations (CFR) Part 1960. In administering the program, the Department agrees to recognize the Union as the exclusive representative of bargaining unit employees. The Department shall furnish places and conditions of employment which are free of recognized hazards and unhealthful working conditions.

#### **Section 2 - Union Participation**

A. The Department recognizes that Union participation in its Occupational Safety and Health Program is essential for the success of that Program. The Union may designate representatives at the facility level, intermediate levels, and the National level who will represent the interests of the Union and the employees in the development and implementation of this Program. The Parties agree that work on the Safety and Health Program is a part of the ongoing Partnership between the Department and the Union. Time spent serving as a Union representative during safety and health inspections, as a member of a Safety and Health Committee or its subcommittees, developing plans for abatement of materials, investigating accidents, and safety-related committee assignments will be considered duty time.

B. The National VA Council (NVAC) President will designate three (3) National Safety and Health Representatives who will each be on 50% official time. They will work with the Department's national-level safety and health officials in developing and implementing the Program. The National Safety and Health Representative will represent the interests of the Union and the employees in the development and implementation of all aspects of the Department's, an Administration's, occupational safety and health program. The National Safety and Health Representatives will be the point of contact for any safety and health initiatives at the Department, Administration, and/or System levels that impact employee safety and health. The parties will develop joint training programs and materials in safety and health for bargaining unit employees. The representatives will provide training and assistance to local Unions in the performance of their responsibilities under the program. The National Safety and Health Representatives may visit facilities within the bargaining unit to work with local Unions on safety and health matters. Notice of such visits will be given to the Director of each facility.

C. The National Safety and Health Representatives will be given copies of all Designated Agency Safety and Health Official (DASHO) letters and other national-level

communication to the field on safety and health matters as well as all safety manuals and publications.

D. The Department will pay tuition, travel, and per diem expenses for each National Safety and Health Representative to attend at least one conference each year.

E. The NVAC President may designate additional representatives to work on individual projects of mutual interest to the parties. The NVAC President may designate representatives at appropriate intermediate levels within the Department to develop and implement the Safety and Health Program at that level.

F. The Union's National and Local Safety and Health Representatives shall be authorized the use of FTS and conference call capabilities.

G. Each local Union at a bargaining unit facility may designate a local Safety and Health Representative who will serve as the Union's point of contact for safety and health matters at the facility. Functions of local Safety and Health Representatives include, but are not limited to the following:

1. Conduct joint inspections.
2. Issue joint reports regarding inspection findings to the appropriate management official.
3. Participate, as appropriate, in inspections conducted by governmental authorities outside the Department's control including JCAHO.
4. Receive and investigate employee reports of unsafe or unhealthy conditions. Employees should submit such reports to both the Union or Management's representative.
5. Develop and monitor abatement plans needed to correct local conditions as appropriate.
6. Refer matters to OSHA and/or NIOSH as appropriate.
7. Receive copies of any written notice referred by a facility official in response to an employee report of an unsafe or unhealthy condition.
8. Monitor preventive maintenance plans for HVAC system components.
9. Receive all reports of security incidents involving threats to employees, their offices, and property. Such reports may be sanitized as appropriate.
10. Receive all accident reports; such reports may be sanitized as appropriate.

H. Each facility with twenty-five (25) or more employees will have an Occupational Safety and Health and Fire Prevention Committee. The Union will be afforded representatives on such Committees, the number of which is subject to local negotiation.

The facility's Committee may establish subcommittees to address particular issues or subjects, and the Union will be represented on each subcommittee. The Union will be given the opportunity to have a representative on any other facility-level committee that relates to the safety and health issues of bargaining units. These will include, but not be limited to, Blood Borne Pathogens and Infection Control Committees.

I. The Union will be given the opportunity to participate in all scheduled workplace inspections which are intended to detect hazards to employee safety and health, whether conducted by Department Safety and Health personnel, non-Department employees acting on behalf of the Department, OSHA and Environmental Protection Agency (EPA) personnel, or other regulatory agencies and bodies.

### **Section 3 - Standards**

A. The Department shall comply with Occupational Safety and Health Standards issued under Section 6 of the Act and/or where the Secretary of Labor has approved compliance with alternative standards in accordance with 29 CFR 1960. The Department will notify the Union in accordance with Article \_\_\_\_, Mid-Term Bargaining, prior to the submission of any alternate standards to the Secretary of Labor. On a case-by-case basis, the parties may adopt more stringent safety and/or health standards to address specific concerns.

B. Personal Protective Equipment (PPE), as required by appropriate OSHA standards to protect employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to employees required to wear specific PPE. Hazard assessments to determine the need for PPE will be conducted by each facility for each workplace. These assessments will also evaluate the need for and feasibility of engineering controls or other devices designed to reduce workplace injuries and illnesses or eliminate the need for PPE. These assessments will be documented and a copy provided the Union. When assessments determine the appropriateness of PPE, affected employees will have the opportunity to choose from available styles and sizes to optimize employee comfort and protection. Employees will receive training on the proper use and care of PPE.

C. Nothing in this Section precludes local level negotiations.

### **Section 4 - Report, Evaluation, and Abatement of Unsafe and Unhealthful Working Conditions**

A. Any employee, group of employees, or representative of employees who believe that an unsafe or unhealthful working condition exists in any workplace, has the right to report such condition to the appropriate supervisor, the facility director, the appropriate Department Safety and Health official, and the Union. In the case of immediate threat to life or danger of serious physical harm, the employee shall immediately report the situation to the supervisor and/or facility Safety and Health personnel.

B. Facility Safety and Health personnel and local safety representative will evaluate

employee reports of unsafe or unhealthful working conditions in accordance with 29 CFR 1960. The Union will be formally notified of all serious hazards as defined in 29 CFR 1960.

C. The Department agrees to ensure prompt abatement of unsafe and unhealthful working conditions.

D. If there is an emergency situation in an office or work area, the first concern is for the employees and customers. Should it become necessary to evacuate a building, Management will take precautions to guarantee the safety of employees. Individuals ordinarily will not be readmitted until it is determined in conjunction with whatever expert resources have been called in, depending on the circumstances, that there is no longer danger to the evacuated personnel. "Expert resources" may include, but are not limited to, local police departments, the Federal Protective Service, local fire departments, appropriate health authorities, etc. The Union Health and Safety Committee members or Union Health and Safety Representatives will be notified as soon as possible regarding the emergency situation.

E. An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthy working conditions.

F. When abatement action is dependent upon GSA or other lessors, the abatement must be prepared in conjunction with appropriate members of that group. The Facility Health and Safety Committee will be timely notified and consulted, and all personnel subject to the hazard shall be advised of interim measures in effect and shall be kept informed of subsequent progress on the abatement plan.

G. Prior to the establishment of the official abatement plan, the facility's safety and health official will request that the supervisor take interim steps for the protection of the employees. The supervisor shall comply with this request.

H. Any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

#### **Section 5 - Comprehensive Analysis of Injuries and Illnesses**

A. The Department agrees that comprehensive analysis will be performed to determine causes and appropriate corrective actions concerning patterns of injuries and illnesses that occur at each facility. The analysis will examine such factors as: the general conditions under which the affected employee's job is performed, the processes and procedures involved in the performance of that job, and any unusual factors that may have contributed to the injury or illness. Recommendations to correct the conditions that contributed to the injury or illness will be included in the written results of this analysis and presented to the facility safety committee.

B. Particular attention will be paid where patterns of injuries or illnesses are found in a given occupation, facility, or part of a facility. Experience in correcting hazards will be shared within the Department in an effort to find optimal ways of reducing injuries and illnesses.

## **Section 6 - Imminent Danger Situations**

A. The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures (29 CFR 1960.2(u)).

B. In the case of imminent danger situations, employees shall make reports by the most expeditious means available. The employee has a right to decline to perform his assigned tasks because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. However, in these instances, the employee must report the situation to his supervisor or another supervisor who is immediately available.

C. If the condition can be corrected and the corrected condition does not pose an imminent danger, the employee must return to work. If the supervisor cannot correct the condition or does not feel that an imminent danger condition exists, the supervisor shall request an inspection by facility safety and/or health personnel.

D. A Union representative will be given the opportunity to be present during the inspection by the facility safety and/or health personnel. If facility safety and/or health personnel decide the condition does not pose an imminent danger, the instruction to return to work shall be in writing and contain a statement declaring the area or assignment to be safe. Refusal to perform an assignment after facility safety and/or health personnel have deemed it to be safe may result in disciplinary action. However, continued refusal by the employee at this point may be justified if there is a reasonable basis for the employee to believe the imminent danger still exists.

E. When Management receives a report that a dangerous, unhealthful or potentially dangerous or unhealthful condition is present at a particular work site, Management shall notify the Health and Safety Committee and the Local Union Health and Safety representative(s) of the alleged dangerous or unhealthful condition.

## **Section 7 - Training**

A. The Department shall provide safety and health training for employees, including specialized job safety training, appropriate to the work performed by the employee. This training will address the Department's and the facility's Occupational Safety and Health Program, with emphasis on the rights and responsibilities of employees.

B. The Department will provide basic and specialized safety and health training for Union Safety and Health Representatives.

C. The Union will participate in the development of safety and health training, including curriculum and training materials.

## **Section 8 - Allegations of Reprisal**

The Department agrees there will be no restraint, interference, coercion, discrimination, or reprisal directed against an employee for filing a report of an unsafe or unhealthful working condition or for participating in Department Occupational Safety and Health Program activities or because of the exercise by an employee on behalf of herself or others, of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960.

## **Section 9 - Work-Related Injuries and Illnesses**

A. Employees must report any and all injuries that are work-related to their supervisor. The supervisor will take appropriate action to insure that:

1. The employee has the opportunity to report to the Employee Health Physician or his/her personal physician for treatment, completion of necessary reports, etc.;
2. Appropriate facility personnel are promptly notified to ensure timely processing of necessary reports and employee claims. The Department agrees that assistance will be given to employees in preparing necessary forms and documents for submission to the Office of Workers' Compensation Programs (OWCP) and that employees will be informed of their rights under the Federal Employees' Compensation Act, as amended in 1974.

B. An employee who has sustained a work-related injury or illness will be required to perform duties only to the extent and limits as prescribed by the treating physician or the Employee Health Physician, as appropriate. No employee will be assigned duties when, in the physician's opinion, this would aggravate the employee's injury or illness. In the event that the employee's supervisor does not have limited duty that meets the physician's stated limitations for the employee, the supervisor will make a good faith effort to locate limited duty work within the facility that the employee can perform. If limited duty is not available, the employee will be placed on continuation of pay, if eligible, or in an appropriate leave status at the employee's option. The Union may suggest limited duty opportunities at the facility. The Union has the right to represent any unit employee at any stage of this procedure. (See Section 15, Fitness for Duty Examinations, paragraph C.)

## **Section 10 - Use of Insecticides and Other Like Chemicals**

There will be no application of insecticides and other like chemicals during working hours. However, exceptions may be made in sensitive hospital areas. Such other chemicals include paint, carpet glue, HVAC cleaning agents, and similar construction or maintenance chemicals. Whenever pesticides are used in a large scale application, the Health and Safety Representatives as well as employees will receive advance notice about the spraying. Individuals with special health needs will be reasonably accommodated.

## **Section 11 - Leases**

The parties recognize the potential impact of solicitations of offers from GSA. The Union will be notified timely of these situations. This provision is not a waiver of the Union's right to request additional information, consultation, and bargaining.

### **Section 12 - Temperature Conditions**

The parties recognize that temperature conditions in and around work areas can have a direct bearing on employees' health. The parties agree that the problem of temperature extremes, either hot or cold, and appropriate measures to reduce the risk of exposed employees are appropriate matters for referral to established Health and Safety Committees or to the Local Health and Safety Representatives, as appropriate.

### **Section 13 - Asbestos**

A. Management shall conduct an inspection in each facility to determine the existence of asbestos. Qualified inspectors will inspect the facility for asbestos under EPA standards for Hazardous Air Pollutants regulation.

B. Management will review all construction and/or space modification contracts and/or work orders to determine if asbestos is present and, if so, how to proceed with appropriate removal or containment.

C. Management will notify the local Union prior to initiating procedures for asbestos removal.

D. Where it has been determined that asbestos exists in a facility, Management will conduct periodic air sampling as appropriate.

E. If air sampling indicates that airborne concentrations of asbestos fibers exceeds regulatory levels, exposed employees will be notified in writing of the exposure within five (5) days after discovery of the excessive asbestos concentration. Management will assist affected employees in filling out and filing the appropriate OWCP forms.

F. If the airborne asbestos concentration amounts are exceeded, Management will insure abatement of the asbestos hazard pursuant to 29 CFR 1910.1001(f).

G. Once significant airborne asbestos particles are detected, Management will conduct sampling at intervals of no greater than three (3) months to monitor employee exposure levels.

H. Union Health and Safety representatives will be given training on asbestos removal and permitted to monitor removal procedures.

I. Union Health and Safety Representatives will be given a copy of all tests monitoring asbestos levels.

J. Asbestos abatement plans may include the discontinuance of work or the shifting of employee work location. Notice of such abatement action will be provided to the Union in

advance, except in an emergency situation in which the Union will be notified as soon as possible. Management will meet its labor obligations in both instances.

K. Management will insure that all external surfaces within the unrestricted work environment in any facility shall be maintained free of accumulation of asbestos fibers.

L. Asbestos and asbestos-contaminated material shall be collected and disposed of in accordance with appropriate EPA regulations.

M. Management will institute a medical surveillance program for all employees substantively engaged in work involving asbestos for thirty (30) or more days per year. Employees who are exposed to airborne asbestos fibers will receive medical monitoring.

N. Management will make available medical examinations and consultations to each employee prior to assignment to an area containing asbestos which requires that negative pressure respirators be worn.

O. When an employee is assigned to an area where substantive asbestos exposure will exceed thirty (30) or more days per year, a medical examination must be given within ten (10) working days following the thirtieth day of exposure.

P. Management shall record all measurements taken to monitor employee exposure to asbestos including tremolite, anthophyllite, and actinolite. Such records shall be maintained for at least thirty (30) years. The records will include information such as the date of measurement, the operation which caused exposure, the sampling method employed by VA, the number, duration and results of the samples, type of protective devices worn, and name of the employee exposed.

Q. VA will initiate a maintenance program in all facilities that contain asbestos. Such a maintenance program will include:

1. Inventory of all asbestos-containing materials in a facility.
2. Periodic examinations of asbestos containing materials to detect deterioration.
3. Written procedures for handling asbestos materials.
4. Written procedures for asbestos disposal.
5. Written procedures for dealing with asbestos related emergencies.
6. Training of those required to handle asbestos containing material in safe handling procedures.
7. Training of all affected personnel in prohibited activities which would enhance dangerous exposure.

8. Management must inform all affected employees regarding the standards contained within this Section regarding asbestos.

Such information must be provided to each employee on a yearly basis and include instructions regarding safe asbestos handling. Also, access to information regarding exposure records and medical records must be provided on a yearly basis.

#### **Section 14 - Use of Respirators**

Situations requiring employees to wear respirators for safety shall be a subject for local bargaining which will include a process for respirator fit testing.

#### **Section 15 - On-site Security**

A. Management will make reasonable efforts to protect employees from abusive and threatening occurrences and will take reasonable precautions to ensure such protections.

B. The Department will arrange for emergency protective assistance at each facility to enable employees to receive assistance if the situation requires it.

C. Whenever an employee is faced with a physically threatening situation, Management will provide appropriate assistance.

D. Employees will not be required to divulge personally identifiable information to the public in individual circumstances where the employee reasonably believes harassment or physical abuse may result. In such cases, the employee should inform the supervisor in a timely manner.

E. The Department will equip reception areas with appropriate security devices to ensure, to the maximum extent possible, employee safety.

F. All phones will be labeled with appropriate emergency numbers.

#### **Section 16 - Emergency Preparedness**

A. Each facility shall have an emergency preparedness plan. This plan will publish the chain of command which will identify a member of Management who will be physically present for employee direction during all scheduled work hours in each installation. The plan will also cover employee procedures in the event of fire, earthquake, bomb threat, tornado, flood, hurricane, or similar emergency. Evacuation drills will be conducted quarterly.

B. Management agrees to make reasonable efforts to assure that each installation has adequate personnel available to administer cardio-pulmonary resuscitation (CPR). All clinical personnel and other employees required to respond to Code Calls will become familiar with all work site locations within the facility.

1. The Administration will provide CPR shields and masks for those employees administering CPR.

2. Training for CPR certification and/or recertification will be at no cost to the employees.

C. Management agrees that the first concern when an employee is injured on the job is to make certain that the employee gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.

D. When it is necessary to assist an employee return home because of illness or incapacitation or to provide transportation to a medical facility, Management will arrange for transportation. If a co-worker is required to transport the employee, there will be no charge to leave for the co-worker.

E. Management agrees to maintain adequate first aid supplies at each permanent installation. All employees will have reasonable access to these supplies.

### **Section 17 - Smoking Cessation Program**

A. The parties agree that they will intensify efforts to assist those employees who are interested in breaking the smoking habit. The parties are committed to making cessation programs available to each and every employee who wishes to participate in them. The mechanics of the programs are an appropriate subject for local bargaining. Programs will include or be similar to programs conducted by the American Lung Association or the American Heart Association.

B. Employees who wish to stop smoking but who are unable to successfully complete a smoking cessation program, or who have quit smoking but are experiencing related difficulties, may seek additional assistance through the Employee Assistance Program. Employee participation in assistance or cessation programs is strictly voluntary.

### **Section 18 - Video Display Terminals**

"Video Display Terminal" (VDT) refers to a work processor or computer terminal which displays information on a television-like screen (cathode ray tube).

A. The policy of the Department is to provide safe and healthful workplaces for all employees. In keeping with the policy, the Department acknowledges that there are certain ergonomic and environmental factors that can contribute to the health and comfort of VDT users. These factors involve the proper design of work stations and the education of managers, supervisors, and employees about the ergonomic job design and organizational solutions to VDT problems as recommended in various studies published by the National Institute for Occupational Safety and Health (NIOSH).

B. The Department agrees that employees should be provided information about ergonomic hazards and how to prevent ergonomically-related injuries. This information could be provided by Occupational Safety and Health Administration (OSHA) Safety and

Health Guidelines and other available literature. The Department agrees to provide, to the maximum extent possible, equipment (chairs, tables, workstations, lighting, keyboards and screens, printers, etc.) which meets ergonomic design criteria. It is also agreed that when equipment is purchased, to the extent possible, training should be provided by vendor on how to safely and properly operate that equipment.

C. The Department will achieve this policy by:

1. Accruing VDTs and accessory equipment that, to the maximum practical extent, provide comfort to the user and keyboards, worktables, and chairs that are height-adjustable and provide proper back support.
2. Consulting where practical with employees prior to purchase about furniture for use with VDTs.
3. Seeking and acquiring information and technical assistance, as needed, from appropriate resources on methods for most effectively designing VDT work station layouts.
4. Laying out workspaces that are properly illuminated to reduce glare and ensure visual comfort to VDT users while providing adequate lighting for traditional clerical tasks.
5. Educating employees about the proper and safe operations of VDTs, including the value of interspersing prolonged periods of VDT use with other work tasks requiring less intensive visual concentration. Where there are prolonged periods of VDT use and no other work tasks available, those employees should be given a rest break.
6. Distributing information to all employees on a periodic basis on VDTs and ergonomic furniture and identifying Department resources for more information.
7. Reviewing the set-up of equipment and furniture for VDT work stations as a regular part of safety and health inspections.

D. VDT Emissions Test - In accordance with standards for acceptable radiation emissions of VDTs (cathode ray tubes), Management will conduct periodic tests of terminals for any emissions. Any terminal that tests above standard will be repaired to meet the standard, or it will be removed from service.

E. Non-VDT Work Reassignment Request. If a pregnant employee requests reassignment for all or some portion of her pregnancy and has a written recommendation from her physician, the Department will reassign that employee to work that does not involve the use of a VDT.

F. VDT Breaks - Where an employee uses a VDT or other keying device for at least one hour, the employee shall receive a 10-minute break for every hour of utilization. Such breaks will be in addition to regularly scheduled rest periods. This does not preclude employees from receiving rest breaks when suitable non-VDT work is not available.

## **Section 19 - Indoor Air Quality**

A. The parties agree that all employees are entitled to work in an environment containing safe and healthful indoor air quality.

B. The Department shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by federal regulatory agencies such as OSHA, EPA, and GSA.

C. On-site investigations/inspections will be conducted when a problem concerning Indoor Air Quality or Building Related Illness is formally brought to Management's attention. These investigations/inspections shall meet the criteria of the GSA Federal Property Management Regulations and the American Society of Heating, Refrigerating and Air Conditioning Engineers, the protocols of OSHA, or the American Conference of Government Industrial Hygienists.

D. In compliance with engineering standards, the Department shall maintain ventilation efficiency.

E. In all facilities the Department shall ensure that:

1. Appropriate measures are taken to minimize and/or eliminate the impact of contamination from outside sources such as garages, cooling towers, building exhausts, etc. Where the levels of such contaminants become health threatening, management will either seek to relocate or evacuate the facility.

2. The Department will make reasonable efforts to provide comfortable humidity and temperature control.

F. Microbial Contamination

1. The Department agrees to eliminate or control all known and potential sources of microbial contaminants by assessments and appropriate response to all areas where water collection and leakage has occurred including floors, roofs, HVAC cooling coils, drain pans, humidifiers containing reservoirs of stagnant water, air washers, fan coil units, and filters. Such response will normally require prompt cleaning and repair of contaminated areas.

2. The Department also agrees to:

- a. Clean and disinfect or remove and discard porous organic materials that are contaminated (e.g., damp insulation in ventilation system, moldy ceiling tiles, and mildewed carpets) and

- b. Clean and disinfect non-porous surfaces where microbial growth has occurred with detergents, microbicides, or other biocides and insuring that these cleaners have been

removed before air handling units are turned on. In any leased space the Department will deal with the lessor and/or GSA to achieve these objectives.

### **Section 20 - Renovation and Construction**

A. Wherever management decides to alter the physical work site of employees represented by the Union, the Union Local will be notified in advance in accordance with Article \_\_\_\_ (Mid-term Bargaining).

B. The Department will:

1. Isolate areas of significant renovation, painting, and carpet laying from occupied areas that are not under construction;
2. Perform this work during evenings and weekends. Ensure that contaminated concentrations are sufficiently diluted prior to occupancy;
3. Supply adequate ventilation during and after completion of work to assist in dilution of the contaminant level; and
4. In leased space work with the lessor and/or GSA in order to achieve and maintain these standards.

### **Section 21 - Wellness Program; Stress**

A. The parties agree that recognizing, minimizing, and coping with stress are essential parts of employee wellness. Management will provide training at least annually on stress reduction. This will be a part of each facility's Wellness Program.

B. Employees who feel they are experiencing harmful levels of job-related stress may contact employee counseling services.

C. Department facilities will establish Wellness Committees or sub-committees to address wellness and health programs.

D. The Department agrees to provide the following services:

1. Emergency diagnosis and initial treatment of injury or illness that becomes necessary during working hours and that is within the competency of the professional staff and facilities of the health service units. If the injury or illness is work-related and the above-described services are not available, the employee will be transported to the appropriate medical facility.
2. Provision for special health examinations for specific categories of employees whose work environment presents peculiar health hazards.
3. Individual facilities will provide diagnosis and/or screening tests and health education programs for unit employees as a health service. It is understood by the parties

that these services are subordinate to the Department's mission. These services will be subject to Management's determination of available resources.

4. Referral of employees to private physicians, dentists, and other community health resources, upon request. An employee will be expected to notify his supervisor of his intention to seek medical treatment in health units. When this is not feasible, the employee may report directly to the health unit or person authorized to render emergency care.

5. Each facility where employees are exposed to chemical or biological hazards will implement a medical surveillance program in accordance with applicable regulations.

### **Section 22 - Equipment, Machinery, and Furniture**

A. Employees are encouraged to report (see Section 4) equipment, machinery, or furniture that cause or have potential to cause injuries such as repetitive motion injuries. The Department agrees to investigate such reports expeditiously and to implement appropriate corrective action.

B. As much as possible, equipment, machinery, and furniture purchased by the Department will be ergonomically compatible with the individual. The local Union will be involved in the development of facility policies that address the selection and purchase of equipment, machinery, and furniture.

C. The Department will ensure that employees have been oriented to the use of new equipment or machinery and will ensure that this equipment or machinery has been inspected before initial use, when required.

D. Only qualified personnel shall perform maintenance or repair on or about moving or operating machines. This does not preclude the normal or necessary adjustments to be made to machinery or equipment while in operation. Qualified personnel shall not be required to perform any maintenance or repair while the machine is in operation where it can be shown that there is a substantial risk of injury or a feasible alternative exists.

### **Section 23 - Workplace Violence**

The parties agree that violence should be eliminated from all workplaces within the Department. Each facility will develop a policy on the prevention of violence.

### **Section 24 - Safety and Health Records**

A. The Department agrees to compile and maintain records required by the Occupational Safety and Health Act and VA Safety and Health Programs. The Department agrees to ensure access by employees, former employees, and Union representatives to records/logs of facility occupational injuries and illnesses (including copies of accident reports) and to the annual summary of these in accordance with 29 CFR 1960, consistent with Freedom of Information Act and Privacy Act requirements.

B. The Department and the Union will identify employees who occupy positions that carry potential risks to their health. The Parties will establish and maintain procedures for the medical surveillance of such employees.

### **Section 25 -Hazardous Duty Pay and Environmental Differential**

#### A. Environmental Differential (Federal Wage System)

1. In accordance with 5 CFR Part 532, Subpart E, Appendix A, the appropriate environmental differential will be paid to an employee who is exposed to an unusually severe hazard, physical hardship, or a working condition meeting the standards described under the categories stated therein.

2. If at any time an employee and/or the Union believes that differential pay is warranted under 5 CFR Part 532, Subpart E, Appendix A, the matter may be raised at step 3 of the negotiated grievance procedure.

#### B. Hazardous Duty Pay

1. Pay for irregular or intermittent duty involving physical hardship or hazard for GS employees will be paid in accordance with the provisions of OPM regulations (5 CFR, Part 550, Sub-part I).

2. The Parties agree that any physical hardship or hazardous duties must be considered as part of position classification. Upon request, the Department shall inform the employee or Union whether or not such duties were taken into account in establishing the grade of the position and how the duties affected the grade established including whether, absent those duties, the grade would have been lower.

### **Section 26 - Arrangements for Health Hazards Involving Communicable Diseases**

The facility will:

A. Make appropriate arrangements for employees interviewing individuals with known communicable disease.

B. Take appropriate precautions when there is contact with a person who may have tuberculosis (TB). Employees with exposure or potential exposure to TB will be offered TB screening tests during working hours at no cost to the employees.

C. Keep records of employees' exposure to active TB at the work site.

D. Take appropriate precautions against the spread of infectious diseases.

E. Provide timely testing for employees who reasonably believe they were exposed in the course of their employment to a serious infectious disease. There will be no cost to the employees for leave or the exam.

## **Section 27 - Pollution Prevention Strategy**

- A. Management will maintain a current list of all hazardous materials in their respective sections/services and will be required to maintain paper copies of current Material Safety Data Sheets (MSDS) in each workplace
- B. All facilities will identify each employee using hazardous chemicals in the performance of his/her duties.
- C. Assessments will be made for each of the hazardous chemicals and determine if there could be a less hazardous chemical which would fulfill the respective need.
- D. All chemicals or hazardous materials purchased shall require MSDS with purchase.
- E. Employees will be retrained at least annually on the handling and disposal of each hazardous chemical.
- F. The Professional Industrial Hygienist will perform a physical inventory and audit January and July of each year and report to the facility Safety Committee on the compliance requirements, training needs of persons handling hazardous chemicals and disposals requirements.
- G. Types and quantities of hazardous waste generated at each health care facility and the methods used for disposal of each type of waste will be identified.
- H. The facility Safety Committee will review methods used to dispose of hazardous waste for compliance with applicable criteria.
- I. All affected employees will be informed of which may be affected by each hazardous chemical and the risks associated with the hazardous chemicals.
- J. Monitoring is a proper subject for the Safety and Health Committee.

**ARTICLE 29**

**SILENT MONITORING**

**Section 1 - Purpose**

A. The primary purpose of monitoring public telephone conversations is not for evaluating performance but to ensure that complete and accurate information is courteously provided to the calling public and to determine training requirements.

B. However, when monitoring is used to evaluate performance, the employee will be notified in advance of the period during which monitoring will occur. This period shall not exceed one week. In all cases immediate feedback to the employee will be provided.

**Section 2 - Task Force**

The Parties agree to establish a Labor-Management Task Force to examine alternatives to silent monitoring which follow the best practices of public and private-sector organizations on this issue.

**ARTICLE 30**

**STAFF LOUNGES**

Due to the complexities and variables surrounding needs, facilities, and/or services, the parties agree that the subject of staff lounges is more appropriately addressed at the Local level.

## **ARTICLE 31**

### **TEMPORARY, PROBATIONARY, AND PART-TIME EMPLOYEES/JOB SHARING**

#### **Section 1 - General**

All employees of the bargaining unit shall be covered by the terms of this Article to the extent consistent with applicable laws and Government-wide rules and regulations.

#### **Section 2 - Temporary Employees**

Temporary employees may be separated at any time upon notice in writing from the Department. When it is determined that a temporary employee is to be separated, the employee will be given two (2) weeks' notice.

#### **Section 3 - Probationary Employees**

A. The Department agrees to provide probationary employees with the opportunity to develop and to demonstrate their proficiency.

B. During the probationary period, frequent communication between the supervisor and employee is encouraged. In the event there are deficiencies in conduct and/or performance that may affect an employee's standing for conversion to career-conditional status, supervisors will counsel employees in a timely manner and document the meeting, with a copy given to the employee.

C. The employee's pre-employment background will be investigated consistent with applicable regulations.

D. Probationary employees have the right to Union representation.

#### **Section 4 - Part-time Employees**

A. To be considered part-time for purposes of this section, an employee must have a regularly scheduled tour of duty, set in advance, of at least sixteen (16) hours but not more than thirty-two (32) hours in an administrative workweek. An increase in a part-time employee's tour of duty above thirty-two (32) hours per week or sixty-four (64) hours per pay period is not permitted for more than two (2) pay periods. Except for situations involving patient care needs, this restriction will also apply to Title 38 employees. When a holiday falls on a part-time employee's regularly scheduled workday, the employee will be paid for the number of hours he/she was scheduled for that day.

B. The Department will give bona fide consideration to employee requests regarding part-time career and employment consistent with the Department's resource and mission requirements.

C. The Department recognizes that part-time employment may be particularly appropriate for the following classes of employees:

1. Employees seeking gradual transition into retirement,
2. Employees with disabilities or others who require a reduced workweek,
3. Parents who must balance family responsibilities with the need for additional income, or
4. Students who must finance their own education and/or vocational training.

D. Denials of requests for part-time employment from full-time employees will be discussed with the employee and, upon request, the employee will be provided with written reasons for the denial.

E. A full-time employee shall not be required to accept part-time employment as a condition of continued employment. If the Department proposes to convert any full-time positions to part-time, that will be a subject for negotiations in accordance with 5 USC 7106(b)(1) and Executive Order 12871.

F. An employee's request for temporary adjustment of an established part-time work schedule may be granted if based on personal need or to permit participation in management-approved details, other assignments, or training. Such adjustment shall not result in a permanent change of the established work schedule.

G. The Department agrees to provide part-time and full-time employees on the same tour of duty equivalent access to employee activities, e.g., health facilities, and not to deny opportunities for attendance at Department-approved training courses solely because of part-time status.

H. A permanent part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purpose of computing service for retention, retirement, career tenure, completion of probationary period, within-grade increases, leave category rate, and time-in-grade restrictions on advancement.

I. The Department will advise employees in writing of the effects of converting to part-time employment as it relates to employee benefits prior to the actual conversion.

J. Employees who accept or convert to part-time positions have no guarantee that they will subsequently be converted to full-time employment, but the Department agrees to consider the employee's request based on the employee's circumstances and the needs of the Department.

### **Section 5 - Job Sharing**

A. Job sharing is a form of part-time employment in which the tours of duty of two employees are arranged in such a way as to cover a single full-time position.

Job sharing can provide the Department and employees with considerable work scheduling flexibility. Work disruptions which tend to occur when employees are on extended leave can be reduced through job sharing.

B. The Department agrees that entry into job sharing is strictly voluntary, initiated by the employee, and without coercion by the Department. Job sharing will be considered when traditional part-time employment is not practical or feasible.

C. The Department shall give bona fide consideration to employees' requests regarding part-time job sharing employment, including requests for reassignment from a non-job sharing arrangement to a job sharing arrangement and from a job sharing arrangement to non-job sharing arrangement, consistent with the Department's resources and mission requirements.

Employees working in positions of the same occupational series, position description, or in the same line of work may request the opportunity to enter a job sharing arrangement. Employees not in the same occupational series, position description, or in the same line of work must qualify for the position for which they are applying.

D. Potential job sharing participants shall submit a written proposal to the immediate supervisor. The job sharers are expected to seek management assistance and approval in drawing up the job sharing plan so that the work will be properly divided.

Potential participants will receive a written response from management within a reasonable amount of time from the date of submission of their written proposal informing them of acceptance or rejection of their job sharing proposal. If rejected, the reasons will be stated. The participants may revise their written proposal to accommodate the reasons given for rejection and resubmit it for reconsideration.

E. Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for all personnel and employment purposes.

F. Each employee shall be informed of her regularly scheduled work hours, as agreed to by the employer, employees, and the other job sharer. Management will make every reasonable effort to avoid scheduling additional hours not contiguous with the established tour of duty. The Department agrees that statutory, regulatory, and contractual provisions shall apply in any situation in which overtime may be worked.

Additional hours will not be assigned to employees engaged in job sharing for the purpose of eliminating the need to schedule qualified, full-time employees for overtime. Such overtime hours will be assigned and accomplished according to contractual obligations.

G. A variety of different work scheduling arrangements can be used as long as each job sharer works no less than sixteen (16) hours and no more than thirty-two (32) hours each week. For example, split days (one job sharer works mornings and the other afternoons), alternate days (one job sharer works Monday and the other Tuesday, etc.), or split weeks

(one job sharer works from Monday morning through noon Wednesday and the other works noon Wednesday through Friday).

Although most job sharers split the hours of a full-time position in half, this is not an absolute requirement. The work schedules of job sharers may overlap (one job share may work from 10 a.m. to 2 p.m. every day and the other from noon to 4 p.m). This arrangement can provide the Department with extra coverage during heavy workload periods. A certain amount of overlap may also be desirable to enable job sharers to attend staff meetings or familiarize each other with work developments.

H. The employment of an individual in a part-time position shall not be a basis for exclusions from participation in job sharing.

I. Those individuals currently engaged in a job sharing arrangement shall be covered under this Article.

J. Each employee entering into a job sharing arrangement shall be given a written explanation of his/her work schedule and an explanation of the impact of conversion to part-time on his/her rights and benefits.

The job sharing agreement shall incorporate the understanding that in the event one of the job sharing participants leaves and management concludes that the needs of the position requires full-time staffing, management shall make every reasonable effort to assist the remaining job sharing partner in finding another partner. The remaining participant will be given a reasonable amount of time to find another partner.

During the period of time the remaining participant is searching for new job sharing partner, the remaining participant may be required to increase his tour of duty depending upon the needs of the organization and the terms of the job sharing agreement.

If the remaining participant is required to increase his tour of duty, he will be given as much advance notice as possible, but no less than two (2) weeks' advance notice prior to increasing the tour of duty.

K. Leave requests by employees in a job sharing situation shall be approved or denied in accordance with Article \_\_\_ of this Agreement.

L. Performance appraisals for job sharing participants will be handled in accordance with Article \_\_\_ of this Agreement. Throughout the tenure in a part-time position, the employee's appraisal will not reflect the performance of the job sharing partner.

## **ARTICLE 32**

### **TIME AND LEAVE**

#### **Section 1 - General**

- A. Employees will accrue and use sick and annual leave in accordance with applicable statutes, OPM regulations, and this Agreement.
- B. All leave charges shall be in increments of one-quarter hour.  
*Note:* Except for employees who accrue and use leave in full-day increments.
- C. Employees should request, in advance, approval of anticipated leave.
- D. Leave will be denied only for appropriate reasons and not as a form of discipline.
- E. No arbitrary or capricious restraints will be established to restrict when leave may be requested.
- F. Employees will not be denied leave based solely on their leave balance.
- G. For clearly compassionate and appropriate reasons, Management may increase the stated limits applicable to all forms of leave in accordance with governmentwide regulation and law.

#### **Section 2 - Annual Leave**

- A. Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is an absolute right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. Management will render timely decisions on employees' leave requests. Employees should submit requests as far in advance as possible.
- D. If scheduling conflicts arise among employees' annual leave requests, they shall be resolved consistent with present practices or as otherwise negotiated in local supplemental agreements.
- E. When an employee requests annual leave in conjunction with scheduled days off at the beginning and/or end of the leave period, Management will not unilaterally change that employee's days off.
- F. The Department recognizes the needs of employees to plan vacation and personal time off. Therefore, the Department will not cancel leave which has been approved without the consent of the employee, except for rare and unusual circumstances.

G. Carryover (restored) leave will be addressed in accordance with applicable rules and regulations.

H. Should conflicts arise in scheduling annual leave, they will be resolved using a fair and equitable procedure negotiated locally. The Department will allow the maximum number of employees to use leave in accordance with coverage requirement.

### **Section 3 - Excused Absence**

Supervisors should excuse, without charge to leave, infrequent, brief periods of tardiness/absence if such tardiness/absence was for a good cause.

### **Section 4 - Sick Leave**

A. Sick leave is an employee's earned benefit and will be granted to the employee for appropriate absences such as when an employee:

1. Receives medical, dental, or optical examination or treatment.
2. Is incapacitated for the performance of duties by sickness, injury, pregnancy, or confinement.
3. Is required to give care and attendance to an immediate family member who is afflicted with a contagious disease.
4. Would jeopardize the health of others by being present on duty after exposure to a contagious disease.

*Note:* Sick leave is also authorized under the provisions of the Family Friendly Leave Act (Section 18 of this Article).

B. It is the responsibility of an employee who is incapacitated for duty to notify the immediate supervisor or designee (or to have any responsible person make the notification for the employee) at the work site as soon as possible but no later than two hours after the employee is scheduled to report for duty unless mitigating circumstances exist.

C. An employee who expects to be absent more than one day will inform the supervisor or designee of the expected date of return to duty and notify the supervisor of any change. In the case of extended illness, daily reports will not be required.

D. Supervisors should make an effort to accommodate employees who request, in advance, a change in work schedule to meet medical or dental appointments.

### **Section 5 - Documentation for Sick Leave**

A. An employee requesting annual leave, sick leave, or leave without pay for periods of illness of more than three consecutive workdays must make an appropriate request and

may be required to furnish evidence of the need for sick leave upon return to duty. An employee may justify the request for sick leave:

1. By medical certification from the Department's personnel physician or the employee's personal physician or health care professional, or
2. By the employee's own written statement in instances where the illness was not treated by a physician. The statement will indicate why a physician was not seen, for example, remoteness of area, nature of illness, or other specific reasons. The supervisor may request clarification should the employee's written statement not be sufficient to support the request.
3. An employee with a chronic medical condition that does not require medical treatment but does result in periodic absences from work will not be required to furnish a physician's certificate on a continuing basis if the employee: (1) is not on leave restriction and (2) provides, if requested, an updated valid medical certificate every six (6) months which clearly states the continuing need for the periodic absences.
4. Medical certification must include a statement that the employee was incapacitated for work and date(s) of incapacitation. This will be considered sufficient for medical certification purposes. This applies to both sick leave of more than three (3) days and certification for sick leave restrictions.

B. Documents regarding employee absence for sick leave purposes are highly sensitive. Management will ensure that they are maintained in a secure and confidential manner.

C. Where there is substantial reason to believe that an employee is abusing sick leave entitlement:

1. The employee shall be formally counseled and advised of the possibility of future medical certification requirements should the abuse continue.
2. If the abuse continues, the employee may be required to furnish a medical certification for each sick leave application.
3. All such cases requiring a counseling or medical certification may be reviewed in four (4) months but not later than six (6) months afterward.

*Note:* Frequency or amount of leave used will not be the sole factor for determining sick leave abuse, nor will leave for which medical documentation has been provided. When abuse ceases, the restriction will be removed, the record shall be made clean, and the employee will be notified of this action. The employee will also be notified of the reasons, in writing, if the restriction is to be continued.

## **Section 6 - Leave Misrepresentation**

No approved leave or approved absence will be a basis for disciplinary action except when it is clearly established that the employee submitted fraudulent documentation or misrepresented the reasons for the absence.

### **Section 7 - Nature of Illness**

Employees will not be required to reveal the nature of the illness as a condition for approval of sick leave.

### **Section 8 - Sick Out**

Employees may be required to furnish evidence of illness to support approval of sick leave for periods of less than three (3) days when Management has reasonable evidence that a "sick-out" has occurred. Under these circumstances, the Union will be provided, in advance, with the evidence for Management's suspicions that a "sick-out" has occurred.

### **Section 9 - Registration and Voting**

Management agrees that when the voting polls are not open at least three hours either before or after employees' regular hours of work, employees will be granted an amount of excused leave to vote, or to register to vote, which will permit them to report to work three hours after the polls open or leave work three hours before the polls close, whichever requires the lesser amount of time. Under unusual circumstances, an employee can be excused up to a full day. Where release of an employee at the beginning or end of the day would seriously impair operations, the supervisor, to the extent possible, shall make other arrangements to allow the employee a reasonable amount of time during the workday to vote or register to vote.

### **Section 10 - Unavoidable Delay While on Official Business**

When employees are unable to return to their home station through no fault of their own while away on official government business, the employees will notify their supervisors as soon as possible and obtain appropriate instructions. In such instances, the employees will be paid overtime or approved compensatory time, as appropriate, for any time beyond normal duty hours that they are determined to be performing official duties. If the employees are unable to return to their duty stations and must stay overnight at some other location, per diem expenses will be paid when appropriate.

### **Section 11 - Employee Absences for Court or Court-Related Services**

A. Except as otherwise modified by applicable law, governmentwide regulations or other outside authority binding on the Department, an employee summoned or subpoenaed in connection with a judicial proceeding by a court or other authority responsible for the conduct of that proceeding shall be authorized to attend the judicial proceeding without charge to leave or loss of VA salary in the following instances:

1. For jury duty.
2. To appear as a witness on behalf of the Federal, District of Columbia, state, or local government.

3. To appear as a witness on behalf of a private party in an official and job-related capacity or to produce official records.

4. To appear as a witness on behalf of a private party in an unofficial capacity and one of the parties to the proceeding is either the United States, District of Columbia, or a state, or local government.

5. Even though no compensation is received for serving on jury duty in a federal court, employees may keep expense money received for mileage, parking, or required overnight stay. Money received for performing jury duty in state or local courts are indicated on the pay voucher or check as either "fees for services rendered" or "expense money." "Expense money" may be retained by the employee; "fees for services rendered" must be submitted to the appropriate financial office.

6. It is agreed that days off and/or schedules will not be changed to avoid granting absence for court or court-related services.

B. An employee who is granted court leave and is excused or released by the court for any day or substantial portion of a day is expected to return to the employee's regular VA duties except when:

1. Only a small portion of the work day would be involved and thus no appreciable amount of VA service would be rendered.

2. The distance from the court to the place of duty is such that this would be an unreasonable requirement.

3. The regular tour of duty occurs at night.

### **Section 12 - Leave Without Pay (LWOP)**

A. Requests for LWOP will be given serious, bona fide consideration. The granting of LWOP will be in a fair and equitable manner.

B. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave.

C. Upon written request from the appropriate Union office, an employee may be granted leave without pay to engage in Union activities on the national, district or local level, to work in programs sponsored by the Union or the AFL-CIO. Such requests will be referred to the appropriate Management official. Such employees shall continue to accrue benefits in accordance with applicable OPM regulations. LWOP for this purpose is limited to one year but may be extended or renewed upon proper application.

D. Upon return to duty after a period of LWOP, Management will restore the employee to the position which the employee held prior to the leave or to a similar position at the same grade and pay within the commuting area.

- E. Employees may request LWOP for educational purposes.
- F. LWOP is granted at the discretion of Management, except in the following cases:
  - 1. When a disabled veteran requests LWOP for medical treatment,
  - 2. When requested by a reservist or National Guard member for military duties in accordance with appropriate military orders. Employees may request such leave after their military leave has been exhausted (38 USC Section 4316(d)),
  - 3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of a claim for employee compensation by the Office of Workers' Compensation Program, or
  - 4. When an employee makes a request under the Family and Medical Leave Act and meets the criteria for that program.

**Section 13 - Hazardous Weather/Emergency Conditions**

- A. Management and Union at each facility will jointly plan the procedures for hazardous weather/emergency conditions and will annually communicate these procedures to employees.
- B. Facilities under emergency conditions may authorize meals and accommodations for employees who are required to remain on duty.
- C. The VA Incentive Awards Program is an appropriate vehicle and will be utilized for recognizing exceptional services rendered by employees during emergency/hazardous weather conditions.

**Section 14 - Religious Compensatory Time**

- A. An employee whose personal religious beliefs require abstention from work during certain periods of time may elect to engage in overtime work to compensate for time lost for meeting those religious requirements.
- B. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the VA mission, the agency shall in each instance, afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the work day or work week.
- C. For the purpose stated in paragraph B of this section, the employee may work such compensatory overtime before or after the granting of compensatory time off.. Advanced compensatory time off should be repaid with the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited on an hour-for-hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

### **Section 15 - Military Leave**

- A. In accordance with law and regulations, full-time permanent and part-time permanent employees who are members of the National Guard or the Armed Forces Reserves are entitled to 15 calendar days of regular military leave in a fiscal year for active duty or active duty for training.
- B. For part-time employees, military leave is prorated based on the number of hours in the employee's work week.
- C. Employees who do not use the entire fifteen (15) days can carry any unused military leave (not to exceed fifteen (15) days) over to the next fiscal year. Military leave may never exceed thirty (30) days in any one calendar year.
- D. Regular military leave is charged in increments of one (1) day and includes nonworkdays falling within the period of absence of military duty, for example, weekends, holidays, and day off due to compressed work schedules. Nonworkdays falling at the beginning or end of military leave are not included in the period of military leave.
- E. Management will take into consideration the schedules of employees who work off-tours and will, when possible, arrange schedules to allow such employees to have scheduled days off immediately preceding and following the required military leave.

### **Section 16 - Advance Annual/Sick Leave**

- A. An employee may be advanced all annual leave that will accrue up to the end of the leave year. However, advance annual leave may not be granted to a temporary employee beyond the date set for the expiration of the employee's temporary appointment or to any employee if there is a likelihood that the employee will retire, be separated, or resign from the Department before the date the employee will have earned the leave. Upon separation, employees must repay the balance of any remaining advanced annual leave.
- B. Employees who are incapacitated for duty because of serious illness or disability should be advanced sick leave for up to thirty (30) days. The employee will not be required to utilize any annual leave prior to utilizing the advanced sick leave.
- C. Advance sick leave may be combined with annual leave when necessary to cover one continuous period of absence.
- D. It is agreed that advance leave, including both sick and annual, will be fairly and equitably administered.
- E. Denials of requests for advance leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

### **Section 17 - Voluntary Leave Transfer Program/Leave Bank**

As authorized by 5 CFR 630 Subpart J, employees are entitled to donate and receive leave for medical emergencies. By reference, the definitions, eligibility criteria and

administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 CFR 630 Subpart J are incorporated into this Agreement. The establishment of Leave Banks to administer the leave transfer program is a subject for local supplemental bargaining. Leave Bank Boards will operate by consensus.

### **Section 18 - Family Friendly Leave**

A. Employees may use up to forty (40) hours of sick leave in a year under the Federal Employee Family Friendly Leave Act:

1. To care for or otherwise attend to a family member having an illness, injury, or other condition which if an employee had such a condition would justify the use of sick leave by such an employee and

2. For purposes relating to the death of a family member, including making arrangements for and attending the funeral of such family member.

B. Family member is defined as:

1. Spouse and parents of spouse,

2. Children, including adopted children, and their spouses,

3. Parents,

4. Brothers and sisters and their spouses, and

5. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family member.

C. Up to an additional sixty-four (64) hours may be used if that number of hours does not cause the employee's sick leave balance to fall below eighty (80) hours.

D. The amount of sick leave to which part-time employees are entitled is a pro-rated amount of full-time employees entitlement, in accordance with governmentwide law and regulation.

### **Section 19 - Family Medical Leave**

A. Maternity and Paternity Leave

1. Under the Family Medical Leave Act and this Agreement, bargaining unit employees are entitled to sixteen (16) weeks of LWOP during any twelve- (12) month period for the following reasons:

a. Birth of a son or daughter and the care of such son or daughter and

b. Placement of a son or daughter for adoption or foster care,

2. Supervisors are encouraged to approve additional leave as circumstances warrant.

#### B. Other Family Medical Leave

Under the Family Medical Leave Act and this Agreement, bargaining unit employees are entitled to twelve (12) weeks of LWOP during any twelve- (12) month period for one or more of the following reasons:

1. The care of a family member of the employee with a serious health condition. Family member is defined as:

- a. Spouse and parents of spouse,
- b. Children, including adopted children, and
- c. Parents.

2. A serious health condition of the employee that makes the employee unable to perform the functions of the position of such employee.

C. Substitution of Paid Leave - For either Paragraphs A or B of this Section, the employee may elect to substitute annual leave, sick leave, compensatory time off, or credit hours for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, compensatory time, sick leave, or credit hours with unpaid family or medical leave for any period of approved leave. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

#### D. Notice of Leave

1. The employee will make an appropriate request for use of family and medical unpaid leave.

2. When the need for unpaid family and medical leave is foreseeable and the employee fails to give thirty (30) days notice with no reasonable excuse for the delay of notification, the Department may delay the taking of family and medical unpaid leave until at least thirty (30) days after the date the employee provides notice of his/her need for family and medical leave.

#### E. Medical Certification (when requesting leave for serious health conditions)

1. An employee shall provide written medical certification to the Department in a timely manner.

2. The written medical certification shall include:

- a. The date the serious health condition commenced.

b . The probable duration of the serious health condition.

c. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition including a statement as to the incapacitation, examination, or treatment that may be required.

d. A statement that the employee is unable to perform the functions of his/her position.

3. The Department shall not require any personal or confidential information in the written medical certification other than that required by Paragraph E2 of this Section.

4. If the Department doubts the validity of the original certification, the Department may require, at the Department's expense, that the employee obtain the opinion of a second health care provider designated or approved jointly by the Department and the employee concerning the information certified under Paragraph E2 of this Section.

5. If the opinion of the second health care provider differs from the original certification, the Department may require, at the Department's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Department and the employee concerning the information certified under Paragraph E2 above. The opinion of the third health care provider shall be binding on the Department and the employee.

"Health Care Provider" is defined as any of the following individuals:

a. Doctor of Medicine or Osteopathy.

b. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a sublimation as demonstrated by x-ray to exist) who are authorized to practice by state law.

c. Nurse practitioners and nurse midwives who are authorized to practice by state law or Christian Science practitioners listed with the First Church of Christ Scientist, in Boston, Massachusetts.

6. To remain entitled to leave under the Family Medical Leave Act, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from the Department that he/she submit to examination (not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

7. If the employee is unable to provide the requested medical certification before leave begins or the Department questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Department shall grant provisional leave pending final written medical certification.

8. If, after the leave has commenced, the employee fails to provide the requested medical certification, the Department may:

a. Charge the employee as AWOL, unless:

(1) The reason for not providing the medical certification was beyond the control of the employee.

(2) The employee made a good faith effort to provide the certification.

Prior to being placed on AWOL, an employee will be provided written advance notice of at least ten (10) working days and given the reasons why AWOL is being charged. During this period, the employee may comply with the Department's request for certification, and the AWOL charges will be rescinded.

b. Allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual and/or sick leave account, as appropriate.

9. Any health care provider designated or approved by the Department shall not be employed by the Department or be under the administrative oversight of the Department on a regular basis unless the employee's official duty station is located in an area where access to health care is extremely limited.

#### F. Medical Recertification

While an employee is using leave under the Family Medical Leave Act., the Department may require, at the Department's expense, subsequent medical recertification from the health care provider only if the circumstances described in the original medical certification change significantly or if the Department receives bona fide information that casts doubts upon the continuing validity of the medical certification. Such requests for medical rectification shall not occur more frequently than every six weeks.

G. An employee eligible under the Department's Family Medical Leave Program may request to participate in the Flexiplace Program consistent with Article \_\_\_\_\_ of this Agreement.

#### H. Protection of Employment and Benefits

Upon return from family and medical leave, the employee will be restored to the same position as occupied before the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

I. When an employee requests leave under the Department's Family Medical Leave Program, the Department will provide guidance concerning the employee's rights and obligations under the Program.

J. An employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual or sick leave, as appropriate.

## **Section 20 - Leave for Bereavement**

A. Upon request, subject to any documentation requirements, leave-approving officials shall approve up to five days of annual leave, sick leave, and/or LWOP for employees to mourn the death of the following family members:

1. Spouse,
2. Children, including adopted and step-children,
3. Parents including step-parents,
4. Siblings including step-brother/sister, or

5. Any individual related by affinity, i.e., whose association with the employee is the equivalent to one of the family relationships identified above.

B. Upon request, subject to any documentation requirements, leave-approving officials shall approve one day of annual leave, sick leave, and/or LWOP for employees to mourn the death of a grandparent or parent of their spouse.

C. The supervisor has discretion to require documentation (e.g., obituary, death certificate) prior to final approval of bereavement leave. However, this documentation will normally be required only in unusual circumstances.

## **Section 21 - Excused Absence (Administrative Leave)**

A. Excused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. The parties agree that excused absence may be granted for activities which are in the Government's interest.

B. Employees will be granted up to four hours of excused absence to donate blood to a Department-sponsored or endorsed blood program. Additional excused absence will be granted to employees who donate blood platelets through Department-endorsed Hemophoresis Programs. Time spent in necessary travel for such purposes shall also be administrative leave.

C. Upon request, subject to certification by a physician, leave-approving officials shall approve excused absence for employees who serve as living donors for bone marrow, organ, and tissue donation and transplantation. The use of excused absence can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave-approving officials shall approve:

1. Up to seven (7) workdays of absence without charge to leave or loss of pay for each donation by employees participating as living bone marrow donors.

2. Up to seven (7) workdays of absence without charge to leave or loss of pay for employees participating as living organ and tissue donors.

The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave-approving officials shall approve annual and/or sick leave or LWOP in combination with the maximum amounts of excused absence specified in Paragraphs 1 and 2 in this Section.

## **ARTICLE 33**

### **TIMELY AND PROPER COMPENSATION**

#### **Section 1 - Timely Receipt**

Employees are entitled to timely receipt of all wages earned for the applicable pay period. Employees shall receive their leave and earning statements in a secure manner and no later than payday, when available.

#### **Section 2 - Errors in Payment**

Employees will review their leave and earnings statements and notify their supervisors of any unexplained changes. When there is an error in payment, the Department will advise employees of the procedures available. Upon the employee's request, the Department will provide the necessary forms for filing a request for waiver of all overpayment of pay and allowances received in good faith.

#### **Section 3 - Salary Payments**

A. If the salary payments do not arrive in time for regular distribution, the Department will contact the Treasury so that duplicate salary payments can be forwarded to the facility or individual in the most expeditious manner. Whenever there is a delay, management will distribute the salary payments as soon as possible after their receipt.

B. In the event an original salary payment and a replacement salary payment are received, the employee will be responsible for returning whichever payment is received later.

#### **Section 4 - Emergency Payments**

A. Whenever a Department error results in the failure of an employee to receive full salary payment on time, the Department will take immediate action to promptly pay the employee. An emergency payment will be issued not later than the Friday following the payday on which the salary payment was not received by the employee. This will include payment from petty cash, duplicate salary payment, partial payment, etc., to the extent authorized. This would not apply to nominal errors that are routinely corrected through payroll adjustments.

B. The amount of the emergency payment will be the employee's normal net salary (excluding overtime) as shown on the most recent leave and earnings statement.

#### **Section 5 - Electronic Funds Transfer**

The parties agree that all employees will be strongly encouraged to use direct deposit/electronic funds transfer (EFT) for salary payment.

## **ARTICLE 34**

### **TRAINING AND CAREER DEVELOPMENT**

#### **Section 1 - General Provisions**

A. The Department and the Union agree that the training and development of employees is of critical importance in carrying out the mission of the Department. In recognition of this, the Department will provide training and career development opportunities to employees of the bargaining unit. The Department is responsible for ensuring that all employees receive the training necessary for the performance of the employees' assigned duties.

B. The parties agree that there may be reorganization, technological changes, RIFs, or other major actions which could have an impact on job security. In recognition of this, the Department will make every effort to provide training which would allow employees to move into existing or projected vacancies, consistent with budget and staffing restrictions.

C. Nothing in this Section is intended to interfere with applicable merit promotion requirements or Title 38 career-advancement procedures.

#### **Section 2 - Local Training Committees**

A. There shall be a joint local level Training and Career Development Committee which will be authorized to reach joint agreements and make joint recommendations regarding training and career development programs.

B. The committee will consist of Management and Union representatives. The committee will meet as needed to address training issues such as:

1. Orientation sessions for new employees,
2. In-service or on-the-job training to improve the employees' capability to perform their current jobs,
3. Training for career enhancement,
4. Cross-training and rotational assignments,
5. Funding for training,
6. Upward mobility, and
7. Tuition Support.

#### **Section 3 - Training Costs**

A. The Department will pay all expenses, including tuition and travel, in connection with training required by the Department to perform the duties of an employee's current position or a position to which an employee has been assigned.

B. Depending upon the availability of funds and training priorities, the Department will also pay appropriate expenses for work-related training that will:

1. Improve an employee's ability to perform his or her current job or a job the employee has been selected to fill through merit promotion, or

2. Increase an employee's knowledge or skills in connection with career growth or advancement opportunities.

3. Approval of such training may also be contingent upon an agreement by the employee to share any costs with the Department.

C. When resources for training are limited, approval for training funds will be based on fair criteria that are equitably applied.

#### **Section 4 - Reassignments and New Assignments**

When employees are reassigned to new positions or assigned new duties in connection with their current positions, the Department will provide the training necessary to enable employees to perform all required duties.

#### **Section 5 - Scheduling Training**

A. When training required by the Department is conducted during an employee's regularly scheduled work hours, he will be granted excused absence to attend.

B. When training is approved under Section 3(B) of this Article, the Department will make a good-faith effort to grant excused absences from work or make schedule adjustments to accommodate an employee's training or educational program.

#### **Section 6 - Training Information**

A. The Department shall inform employees, at least annually, about Department training opportunities, policies, and nomination procedures. Upon request, the Department will advise individual employees of training opportunities that meet identified educational or career objectives.

B. The Department will maintain up-to-date information about training courses, programs, and seminars conducted or sponsored by the Department or available from some other source. This information shall be accessible to employees and publicized in such a way as to provide adequate notice to interested employees.

### **Section 7 - Notification**

Employees will be notified of approval or disapproval of training requests as soon as possible but in every case prior to the starting date of the training. Should an employee's request for training be disapproved solely for lack of funds, the employee may resubmit a request for training as funds become available. That request will be given first consideration but may be disapproved due to higher training priorities. If not selected for training, the employee will be notified of the reasons.

### **Section 8 - Educational Programs and Continuing Education**

A. As resources permit, the Department shall work with educational institutions and other training sources to develop opportunities for employees to participate in long-term educational programs.

B. The parties recognize that a block of time for pursuing continuing education is beneficial to the Department. Each facility is therefore encouraged to grant a minimum block of time to employees for pursuing continuing education opportunities.

### **Section 9 - Local Negotiations**

Procedures which ensure fair and equitable training opportunities are appropriate subjects for local bargaining.

**Section 10 - Tuition Support**

A. Employees who are eligible for receiving tuition support shall be informed of the availability of reimbursement funds and shall be given the opportunity to apply for the reimbursement funds.

B. When a change in qualifications for a position mandates an additional requirement for an employee already holding that position, the Department will pay for the education needed for the employee to meet the new qualifications unless the employee is grandfathered in or taken out of the position.

C. Tuition support for upward mobility is a proper subject for local bargaining.

D. Bargaining unit employees shall have an equitable opportunity to compete for the receipt of available tuition support funds.

E. All employees will be timely provided with information on the availability of funds for tuition support and on the processes by which an employee may apply for any available funds.

**ARTICLE 35**

**UNIFORMS**

Uniform issues shall be a subject for local bargaining; however, this local bargaining does not waive National bargaining rights.

## **ARTICLE 36**

### **UPWARD MOBILITY**

#### **Section 1 - Goals and Objectives**

The goal of Upward Mobility is to provide maximum opportunity for employees to advance so as to perform at their highest potential. An objective of Upward Mobility is to support the advancement of underrepresented minorities and women and to meet other special emphasis program goals. The Department's wide range of occupations will be considered in developing Upward Mobility opportunities.

#### **Section 2 - Program Penetration**

The extent of any installation's Upward Mobility endeavors will depend on, among other things: (a) the number of lower-graded employees having the requisite potential; (b) the number and type of target positions available which would link employee potential with positions in support of the facility's operations; (c) available training resources; and (d) ceiling or budget constraints. Efforts will be made to create alternate ways to support Upward Mobility such as collaborative efforts with schools having different academic and vocational programs.

#### **Section 3 - Identifying Positions**

Each facility will design an Upward Mobility Program, consistent with Section 2 above, that is responsive both to employee career advancement and to the facility's staffing needs. There will be joint labor/management involvement in the design of such a program. As part of this program, the parties will identify positions which may be appropriate for upward mobility. If the Department determines that a position should be filled as upward mobility, the position will be specifically described and announced as such. It will be filled at a grade level which is lower than the target level and will permit the consideration of employee potential as a factor in evaluating candidates for selection.

#### **Section 4 - Creating Training Positions**

It is understood that upward mobility may also be achieved by: (a) evaluating situations where vacant positions can be filled at lower-grade, trainee levels; (b) identifying areas where bridge positions could be established in order to provide opportunities for employees to enhance their careers; and (c) skills upgrading to supplement the existing skills of employees so that they may fully qualify for positions in other career ladders. The consideration of positions for upward mobility will not be limited to any particular occupational series.

Management will review promotion announcements to ensure that the qualifications sought of applicants are necessary for successful performance in the position (e.g., not all secretarial positions require the ability to take dictation).

### **Section 5 - Employee Initiatives**

Employees are encouraged to seek guidance from their immediate supervisor(s) or from the appropriate Administrative Office if they are interested in learning about available career opportunities. These employees will be furnished information about lines of career progression, education requirements, available job opportunities, etc. Upward Mobility announcements will be well communicated throughout the facility by such means as: E-mail, bulletin boards, newsletters, and staff meetings.

### **Section 6 - Specialized Training**

Management also agrees that the Upward Mobility Program can be enhanced by providing tailored guidance and training in instances where it may be beneficial to help employees adjust. These special efforts may be made consistent with the requirements of the position, the selectee's talents and aptitudes, and within available resources.

### **Section 7 - Cross-Training**

The parties recognize that cross-training, where this approach is feasible, can provide a valuable opportunity for employees to broaden their experience. Each facility will review the possibility of increasing the amount of cross-training conducted within its services or divisions.

## **ARTICLE 37**

### **WITHIN GRADE INCREASES**

#### **Section 1 - Definitions**

A. Applicability - This Article applies to all General Schedule, Wage System, Title 38, and nonappropriated fund employees in the unit of recognition and will be used in conjunction with Article \_\_\_\_\_ on Performance Appraisal.

B. Definitions -

1. Acceptable Level of Competence - An employee will be considered to have attained an acceptable level of competence when he is currently performing at the fully successful/satisfactory level or better level under the performance appraisal/proficiency system, and such performance is documented by a rating of at least fully successful/satisfactory.

2. Waiting Period - The term waiting period refers to the minimum time requirement of creditable service to become eligible for a within-grade increase.

3. Within-Grade Increase - The term within-grade increase (WIGI) means a periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step.

4. Equivalent Increase - This term means an increase in an employee's rate of basic pay which is equal to or greater than the amount of one within-grade increase. An equivalent increase is based on the step rate held by the employee before her advancement to the next step of the grade of her position. An equivalent increase does not include:

- a. A statutory pay adjustment,
- b. The periodic adjustment of a wage schedule,
- c. The establishment of special salary rates,
- d. A quality step increase or other incentive award,
- e. A temporary or term promotion when returned to the permanent grade or step, or
- f. An increase resulting from placement of an employee in a supervisory or management position who does not satisfactorily complete a probationary period under 5 USC S.3321(a)(2).

## **Section 2. Within-Grade Increases**

- A. The determination to grant or withhold a WIGI will be based on the employee's appraisal of record and his current performance under a performance plan for ninety (90) days or more.
- B. The WIGI will be granted as soon as the employee is eligible if he has met an acceptable level of competence.

## **Section 3 - Performance/Competence Determination**

A. Communication of Performance Requirements - Employees shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frames and means of communication of performance standards established under the performance appraisal system.

### B. Acceptable Level of Competence Determinations

1. An acceptable level of competence determination shall be based on the current rating of record. This rating used as the basis for an acceptable level of competence determination must have been assigned no earlier than at the end of the most recently completed annual appraisal period. If the most recent rating is more than ninety (90) days old, the current performance will be reviewed to ensure that the rating of record reflects current performance.

2. When it is determined that current performance is not at an acceptable level, a special rating/proficiency must be prepared to document current performance.

C. Notification - Employees shall be provided with an acceptable level of competence determination as soon as possible after the completion of the required waiting period.

1. Favorable Determination - The SF-50B, Notification of Personnel Action, shall be used to advise employees that they have achieved an acceptable level of competence and will receive a within-grade increase.

2. Negative Determination - When it is determined that the employee's performance is not at an acceptable level of competence, the employee shall be given a written notice which includes the following:

a. The reasons for the negative determination and the respect in which the employee must improve his/her performance, and

b. Inform the employee of his/her right to request reconsideration of the negative determination.

### D. Reconsideration

1. Time Limits - An employee or an employee's Union representative may file a written request for reconsideration not later than fifteen (15) days after receiving the notice of a negative determination. The time limit to request a reconsideration should be extended when the employee shows he was not notified of the time limit and was not otherwise aware of it or that the employee was prevented by circumstances beyond his control from requesting reconsideration within the time limit.

2. Reconsideration File - When an employee or her Union representative files a request for reconsideration, a reconsideration file shall be established which contains all pertinent documents relating to the negative determination including:

- a. The written negative determination and the basis thereof,
- b. The employee's written request for reconsideration,
- c. The report of investigation, when an investigation is made,
- d. The written summary or transcript of any Union presentation made, and
- e. The final decision on the request for reconsideration.

3. Written Exceptions - The reconsideration file shall not contain any document that has not been made available to the employee or his representative. The employee will be given an opportunity to submit a written exception to any summary of the employee's personal presentation.

4. Preparation of Response - An employee in a duty status shall be granted a reasonable amount of time to review the material to support the negative determination and to prepare a response to the determination.

5. Final Decision - The employee will be provided a written decision within ten (10) workdays after receipt of the employee's response. For Title 5 employees, this decision will include the right to grieve under the negotiated grievance procedure. For Title 38 employees, the decision will refer to the appropriate Title 38 procedures.

#### **Section 4 - Procedures for WIGI Determinations**

A. Where an employee has been assigned a present supervisor for less than ninety (90) days, and that supervisor cannot adequately assess the employee's performance, he shall secure the written views of the employee's prior supervisor before making a performance determination. A copy of this document will be given to the employee.

B. Except in rare and unusual circumstances, the WIGI will be granted as soon as the employee is eligible unless the employee was informed in writing:

1. During the most recent progress review, or

2. In no event later than at least sixty (60) calendar days before the end of the statutory waiting period for eligibility for a WIGI that his performance is below an acceptable level of competence and, unless his performance improves, the WIGI will be denied.

C. In those rare and unusual circumstances when the supervisor does not give sixty (60) calendar days advance notice and the WIGI is delayed, the supervisor will reconsider the employee's level of competence not later than sixty (60) calendar days after the date on which the employee completed the required waiting period. If the employee's level of competence is acceptable, the WIGI will be made retroactively effective on its original due date.

D. If at the end of the sixty (60) calendar days, the employee's performance is not at an acceptable level of competence for the purpose of approving the WIGI, the employee will be given a written notice which will include:

1. An indication that the employee's work has been reviewed;
2. A statement that the employee's work has been determined to be of a less than acceptable level of competence;
3. An identification of those elements where the employee's performance has resulted in denial of the WIGI;
4. A statement that the employee has a right to request, in writing, a reconsideration of the negative determination, provided the request is made within fifteen (15) days of the employee's receipt of the negative determination;
5. The name of the reconsideration official to whom the employee may submit a request;
6. A statement that the employee may have a Union representative when presenting a request to the reconsideration official;
7. A statement that the employee may appeal via the appropriate procedure the basis for the negative determination in person and/or in writing; and
8. An explanation that the employee may be considered for a WIGI at any time during the next twenty-six (26) calendar weeks if the employee demonstrates an acceptable level of competence.

### **Section 5 - Exceptions**

A. Delays of Acceptable Level of Competence Determinations. The employee shall be informed in writing whenever his or her acceptable level of competence determination is being delayed in accordance with OPM regulations. The employee shall be informed of the reasons for delay and the specific requirements for performance at the acceptable level of competence.

B. Waiver of Requirement to Make Acceptable Level of Competence Determinations. An acceptable level of competence determination shall be waived and a within-grade increase granted when a Title 5 employee had not served for at least ninety (90) days in any position under an applicable agency appraisal system during the final fifty-two (52) weeks of the waiting period for the reasons specified in 5 CFR 531.409(d).

**Section 6 - Redeterminations**

After a WIGI has been withheld, the Department may grant a WIGI at any time after it determines that the employee has demonstrated performance at an acceptable level of competence. In such cases, the WIGI will be effective the first day of the first pay period after the acceptable determination is made.

## **ARTICLE 38**

### **WORKER'S COMPENSATION**

#### **Section 1 - Counseling**

The Department agrees that when employees suffer or allege illness or injury in the performance of duties, the supervisor and/or the appropriate management official will immediately inform the affected employees of their rights under the Federal Employees Compensation Act (FECA). These rights include the following:

- A. The employee's right to file for compensation benefits,
- B. The types of benefits available,
- C. The procedure for filing claims, and
- D. The option to use compensation benefits if approved in lieu of sick or annual leave.

#### **Section 2 - Procedure for Filing Claims for Workers' Compensation Benefits**

- A. As soon as possible after experiencing a job-related injury or illness, the employee should contact her supervisor.
- B. The employee should obtain Form CA-1, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, from the health unit.
- C. The appropriate sections of the form should be filed out by the employee and given to the supervisor as soon as possible, but not later than thirty (30) calendar days from the date of the occurrence. If the employee is incapacitated, this action may be taken by someone acting on her behalf.
- D. The Department agrees to post a notice on all Department-controlled bulletin boards advising employees of the appropriate Human Resources' office room/building location for filing Workers' Compensation claims. The notice will also include Human Resources' office telephone numbers for obtaining information/assistance relevant to Worker's Compensation claims. The Department further agrees to distribute annual notice to all employees providing them the same information.

#### **Section 3 - Definitions**

- A. Traumatic injury/illness means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work day or work shift.

B. Occupational Disease means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain, or exposure to hazardous elements such as but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.

#### **Section 4 - Election of Benefits Options**

A. Pending the approval of the compensation claim, an employee with a job-related traumatic injury/illness or occupational disease may elect to be placed on sick or annual leave instead of leave without pay.

B. As an alternative to Section 4A, above, an employee with a job-related traumatic injury/illness may elect to receive forty-five (45) days of continuation of pay (COP) if the claim is filed within thirty (30) days of the injury. The entitlement to COP is not available to employees who file an occupational disease claim.

C. If the employee's claim is approved, the employee shall have the option of buying back any leave used and having it reinstated to the employee's account.

D. If the employee's claim for compensation is disallowed by the Department of Labor, Office of Workers' Compensation, any of the forty-five (45) days of COP that were previously granted will be converted to sick leave, annual leave, and/or leave without pay. The employee shall be responsible for advising the Department as to which form(s) of leave is (are) appropriate and for completing an SF-71, Application for Leave, or its electronic equivalent.

E. The Department shall assist employees in obtaining technical information regarding the proper procedures for filing claim appeals to the Department of Labor.

#### **Section 5 - Placement of Worker's Compensation (OWCP) Claimants**

A. When an employee requests and supports his request with appropriate medical information, the Department, will make a serious effort to assign the employee on a temporary basis to duties consistent with the employee's medical needs, pending resolution of his claim.

B. Where the employee requests and supports his request with approved OWCP claim and appropriate medical information, the Department will make a serious effort to assign the employee to duties consistent with the employee's medical needs. Any such action will be consistent with the negotiated Merit Promotion Article.

C. If the Department of Labor, Office of Workers' Compensation, determines that an employee who was previously deemed disabled has now recovered and is medically able to be reemployed, the Department will make a serious effort to offer appropriate employment.

**ARTICLE 39**

**AFFILIATIONS**

- A. The Department will honor the Union's rights as the exclusive representative regardless of any relationship between the Department and an affiliate body.
  
- B. The Department agrees that officials of an affiliate acting in a supervisory capacity over unit employees shall be bound by applicable law, regulation, and the terms of this Agreement and any applicable supplemental agreements in their supervisory relationships with bargaining unit employees.

## **ARTICLE 40**

### **ARBITRATION**

#### **Section 1 - Notice to Invoke Arbitration**

Only the Union or Management may refer to arbitration any grievance that remains unresolved after the final step under the procedures of the Article on Grievance Procedures. A notice to invoke arbitration shall be made in writing to the opposite party within thirty (30) calendar days after receipt of the written decision rendered in the final step of the grievance procedure.

#### **Section 2 - Conventional Arbitration Procedure**

A. On or after the date of the notice to invoke arbitration, the moving party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons to act as an arbitrator. The parties shall meet within ten (10) calendar days after receipt of such list to select an arbitrator (this may be done by telephone for national level grievances). If the parties cannot mutually agree on one of the listed arbitrators, then Management and the Union will alternatively strike one potential arbitrator's name from the list of seven (7) and will then repeat this procedure until one (1) name remains. The remaining person shall be the duly selected arbitrator. The parties will choose lots to determine who strikes the first name. Following the selection, the moving party will, within fourteen (14) calendar days, notify the Federal Mediation and Conciliation Service of the name of the arbitrator selected. A copy of the notification will be served on the other party. The time limits may be extended by mutual consent.

B. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator. Both parties shall be entitled to call and cross-examine witnesses before the arbitrator. All witnesses necessary for the arbitration will be on duty time if otherwise in a duty status. On sufficient advance notice from the union, management will rearrange necessary witnesses' schedules and place them on duty during the arbitration hearing whenever practical. Such schedule changes may be made without regard to contract provisions on Hours of Duty. A reasonable amount of preparation time for arbitration will be granted in accordance with the provisions of Article \_\_\_ on official time and local supplementary agreements.

C. The arbitrator's fees and expenses shall be borne equally by the parties. If either party requests a transcript, that party will bear the entire cost of such transcript.

D. For single station local grievances, the site normally will be the facility where the grievance exists. At the Local's request, another site may be designated upon mutual agreement. If another site is used, the Local will pay the cost of the site. For grievances at the national level, the Department and the Council President will communicate to work out a mutually agreeable site for the arbitration.

E. The parties will attempt to submit a joint statement of the issue or issues to the arbitrator. If the parties fail to agree on a joint submission, each shall make a separate submission. The arbitrator shall determine the issue or issues to be heard.

F. The arbitrator's decision shall be final and binding. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations. The arbitrator will be requested to render a decision within sixty (60) days. Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for settlement, including remanded awards.

G. An arbitrator's award shall have only local application unless it was a national level grievance or the matter was elevated to the national level under procedures set forth below. Where it is mutually agreed between the Council President and the Department within thirty (30) days after a local has filed a notice for arbitration, an arbitration dispute will be elevated to the national level. The arbitrator has full authority to award appropriate remedies, including reasonable legal fees, pursuant to the provisions of Section 702 of the Civil Service Reform Act, in any case in which it is warranted.

### **Section 3 - Expedited Arbitration Procedure**

Conditions for Expedited Arbitration: notwithstanding regular arbitration procedures of the Agreement, the following expedited arbitration procedure is hereby adopted to provide prompt and efficient handling of specified grievances:

#### **A. Operation of Rosters**

1. Arbitrators participating in the program will be placed on rosters for each state in which their office is located. A biographic sketch will be provided by FMCS for each arbitrator listed. The Department will be provided a copy of the list(s) and biographic sketches sent to AFGE by the FMCS.

2. The local parties shall be provided the roster of available FMCS arbitrators for their area by the National Office of AFGE.

3. If, in selecting arbitrators for a local roster, the parties cannot agree with regard to a particular arbitrator, they may submit a joint written request to the FMCS for the direct appointment of a substitute arbitrator(s).

4. Once the parties have established their roster, the National Office of AFGE shall be promptly notified in writing and shall in turn promptly issue a written notification to the arbitrators concerned.

5. Arbitrators selected by the parties shall be placed on rosters established by them in alphabetical order and shall be selected in turn. If an arbitrator is not available for a hearing, that arbitrator shall be passed and not selected again until the time comes for the normal selection of that arbitrator again.

6. The parties may mutually agree to discontinue the services of arbitrators on their local rosters and select others from the regional roster to replace them.

7. The parties may mutually agree to arbitrators of their own selection who may be added to their local roster.

8. New arbitrators may be added from time to time to regional rosters.

#### B. Procedures and Time Limits

1. Upon receipt of a management decision at the last step of the grievance procedure, the Union President involved may notify management, in writing, of an intent to appeal to an arbitrator under the provisions of this program. The notice of intent to appeal must be made within thirty (30) calendar days of receipt of management's decision.

2. Within twenty (20) calendar days of the date of the notice of intent to appeal, the union and management may confer and the Union may telephone the arbitrator who--pursuant to the rotation system described above--is scheduled for the next hearing. A written confirmation notice shall be sent to the arbitrator, and a copy shall be furnished to the management official involved.

3. The arbitration hearing shall take place on the date(s) arranged by the union, management, and arbitrator; but in no case shall it take place later than ten (10) workdays after the phone call from the Union is received by the arbitrator.

4. In those situations in which multiple grievance cases fall within the time frames described in Paragraphs 1, 2, and 3 in this Section, more than one (1) case may be presented to the arbitrator for adjudication. However, except for performance appraisal cases involving the same performance standards, an arbitrator shall not be selected for more than two (2) consecutive days of hearings. The Union and Management may mutually agree to use a different arbitrator for different hearing days.

5. If the arbitrator is not available to conduct the hearing within the ten (10) workday limit, the next available arbitrator on the roster shall be notified until an available arbitrator is obtained.

6. If no arbitrator is available from the parties' local roster, the National Office of AFGE shall be informed so that a selection may be made by the parties from the list of available arbitrators on the regional roster.

7. If no arbitrator is available from the regional roster, the parties may make a joint written request to the FMCS which shall make a direct appointment of a substitute arbitrator.

8. If no arbitrators are willing or available for expedited arbitration, the regular arbitration procedures may be utilized.

C. Subjects Covered - These procedures shall be employed for the prompt resolution of grievances involving:

1. Any aspect of the performance appraisal plan;
2. Admonishments, reprimands, or suspensions of fourteen (14) days or less;
3. Other grievances mutually agreed to by the parties either on an ad hoc basis or as allowed under the parties' local supplemental agreement, except adverse actions shall not be heard under these procedures, unless agreed to by the grievant.

D. Conduct of Hearings

1. Upon being informed of the arbitrator to conduct the hearing, the employer may mail to the arbitrator a copy of the written record of the last step of the grievance procedure for the grievance(s) scheduled for hearing. A copy of any correspondence addressed to the arbitrator by either party in connection with cases will be submitted to the other party.

2. The arbitrator, after contacting both parties and arranging for the hearing date, time, and place, shall conduct the hearing pursuant to the following guidelines:

- a. The hearing shall be informal,
- b. There shall be no formal rules of evidence applied,
- c. The parties will notify each other of its representative(s) prior to the hearing,
- d. The arbitrator shall have the obligation and authority to assure that all relevant information is brought before the arbitrator by the representatives of the parties and shall insure that the hearing is a fair one,
- e. If the arbitrator unilaterally or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to require it, the case shall be referred to conventional arbitration under terms set forth in the parties' collective bargaining agreement. However, the moving party may choose to have the same arbitrator hear the grievance and continue the hearing by the use of regular procedures,
- f. No briefs shall be filed,
- g. The arbitrator may issue a bench decision at the hearing which shall be later confirmed in writing, but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. This decision shall be based on the record developed by the parties and shall include a brief written explanation. The decisions will not be cited as a precedent by either party to the arbitration, and
- h. It shall be the responsibility of the parties to thoroughly develop and prepare cases for prompt presentation.



E. Fees, Expenses, and Service of Copies

1. Arbitrators shall be paid a daily hearing fee which shall be the amount stated in the biographical sketch submitted to the parties by the FMCS.

2. Travel time and expenses (including meals and lodging) shall be paid when a hearing is held away from the city in which the arbitrator's office is located. Mileage expenses shall be paid at the current rate.

3. All fees and expenses of the arbitrator shall be paid as follows: one-half by the Union and one-half by Management.

4. In connection with each case, the arbitrator will be advised by the Union and Management of the appropriate officials to be billed.

5. Arbitrators shall be notified by the National Office of AFGE of the local parties which have agreed to employ them. If arbitrators change their fees or charges, they shall promptly notify the parties and the National Office of AFGE in writing. Arbitrators shall not charge any fees or add charges without giving at least thirty (30) calendar days advance written notice.

6. A copy of each award shall be sent to the National Office of AFGE and to the Department in addition to the participants in the hearing.

7. A joint committee may be established by the parties to serve as an information collection point, gather and schedule grievances, pay arbitration fees, monitor the efficiency of the procedure, and perform other necessary and appropriate duties.

F. Permanent Hearing Arrangement - In those locations where a sufficient number of grievances arise or a sufficient number of bargaining units exists in proximity to each other, and parties agree to do so, a permanent arbitration system may be established. The parties and arbitrators will conform to the provisions of Sections 3A, B, C, and D in this Article except as specifically provided for in the permanent system described below.

1. The arbitrator shall be scheduled for no less than one (1) day each month.

2. The hearing shall fall on the same day(s) each month. Any change of hearing day(s) shall be agreed upon by the parties and the arbitrator(s).

3. The parties shall determine whether they wish to have the same arbitrator serve as an umpire or whether they wish to rotate arbitrators from a mutually selected roster.

4. The arbitrator(s) shall be paid for the day(s) scheduled each month whether hearings are held or not in order to insure their availability.

5. All fees shall be divided equally between the parties involved.

6. A joint committee shall be established by the parties to serve as an information collection point and to gather and schedule grievances and perform other necessary and appropriate duties.

7. Arbitrations shall be held in the same location each month unless mutually agreed to otherwise by the parties and the arbitrator.

## **ARTICLE 41**

### **DUES WITHHOLDING**

#### **Section 1 - Eligibility**

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

#### **Section 2 - Union Responsibilities**

A. The Union agrees to inform management, in writing, of the following:

1. The dues amount(s) or changes in the dues amounts,
2. The names of the local union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
3. The name and address of the payee to whom the remittance should be made.

B. The Union agrees to promptly forward completed and certified form(s) to the appropriate Administrative office.

#### **Section 3 - Management Responsibilities**

A. It is the responsibility of management to:

1. Process voluntary allotments of dues in accordance with this Article and in amounts certified by the Union,
2. Withhold employee dues on a bi-weekly basis,
3. Transmit remittance to the local allottee designated by the Union in accordance with this Article, as expeditiously as possible at the end of each pay period, together with two (2) copies of a listing containing the following information:

a. The name of the employee and the anniversary date of the effective date of the dues withholding and

b. Identification of active employees for whom allotments have been temporarily stopped and identification of those which are a final deduction because of termination.

B. In the event technology for electronic transfer of funds becomes available, it will be authorized for the transmittal of Union dues.

C. Ensure that bargaining unit employees on dues withholding, who are reassigned from one VA facility to another but remain in the consolidated unit of recognition, will continue on dues withholding. Upon arrival at the new station, the dues withholding will be remitted to the new local at the receiving station at the rate being withheld at the prior station until the fiscal office at the new station receives a notification of a change of rate from the designated union official as described in Section 2.

#### **Section 4 - Procedures for Withholding**

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed SF 1187s to the union-designated officials. These officials will certify the form and include the amount of dues to be withheld. The certified SF 1187 will be forwarded to the appropriate Administrative office for processing. Dues withholding will become effective at the beginning of the next pay period if received in the appropriate Administrative office at least three (3) workdays prior to the beginning of that pay period. Questions concerning whether an employee is in the unit of recognition and eligible for payroll deduction of union dues will be resolved through consultations between the Human Resource Manager or designee and local union officials and/or through a unit clarification petition. In the event a clarification of unit petition is filed, the employee's dues will be withheld pending a decision on the petition.

#### **Section 5 - Changes in Dues Amount**

At any time there is a change in dues structure, the local will send a memorandum to the appropriate management official noting the amount of the change. The new amounts will be deducted starting the first pay period following receipt by the Fiscal Officer unless a later date is specified. The memorandum must be signed by one of the union officials designated to certify dues withholding forms.

#### **Section 6 - Revocation**

A. Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely SF 1188 to the union representatives designated for such purpose. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) calendar days prior to the anniversary date. The union representative must certify by date and signature the date the SF 1188 is given to the union representative or by some other appropriate date stamping device.

B. The union official will, by reference to the remittance listing, determine the anniversary date of the allotment. The ending date of the pay period in which the anniversary date occurs will be entered in Item 6 on the SF 1188. The entry will be initiated by the union official who will then deliver the form to the Fiscal Office prior to the close of business of the Friday following the date entered in Item 6. If, through error of the Union, an SF 1188 is received in the Fiscal Office later than the agreed-to date, the Fiscal Office will process the form at the earliest possible time, but no later than the first pay period following receipt. Union representatives may be in a duty status while receiving and processing the

SF 1188 and will be released from normal duties to carry out these duties under local release procedures.

### **Section 7 - Continuation of Dues**

A. When an employee is detailed or temporarily promoted out of the bargaining unit, Union dues withholding will restart automatically when the employee returns to the bargaining unit.

B. Anytime management officials request the Fiscal office in writing to discontinue an employee's dues withholdings because the employee has left the unit of recognition (i.e., promotion and reassignment), a copy of such request shall be provided to the Union. Where a dispute arises over whether or not the person has left the unit, the procedures outlined in Section 4 will be used.

### **Section 8 - Costs**

All payroll deductions and transmittals will be made at no cost to the Union.

### **Section 9 - New Position Determination**

If an employee who is on dues deduction is selected for a new, nonsupervisory position on which the parties do not agree whether it is in or out of the bargaining unit, the employee will remain on dues deduction until a decision is reached either through partnership, ADR, mutual agreement, or the formal CU petition process.

## **ARTICLE 42**

### **GRIEVANCE PROCEDURE**

#### **Section 1 - Purpose**

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. This is the exclusive procedure for resolving grievances except as provided in Sections 2 and 3.

#### **Section 2- Definition**

A. A grievance means any complaint by an employee(s) or the Union concerning any matter relating to employment, any complaint by an employee, the Union, or Management concerning the interpretation or application of this Agreement and any supplements or any claimed violation, misinterpretation or misapplication of law, rule, or regulation affecting conditions of employment.

B. This Article shall not govern a grievance concerning:

1. Any claimed violation relating to prohibited political activities (Subchapter III of Chapter 73 of Title 5);
2. Retirement, life insurance, or health insurance;
3. A suspension or removal in the interest of national security under Section 7532 of Title 5;
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.

C. Under Title 38 Section 7422, the following exclusions also apply:

1. Any matter or question concerning or arising out of professional conduct or competence such as direct patient care or clinical competence,
2. Any matter or question concerning or arising out of peer review, and/or
3. Any matter or question concerning or arising out of the establishment, determination, or adjustment of employee compensation under this Title.

*Note 1:* Any questions concerning the extent of the exclusions in Paragraphs C1-C3 will be resolved in accordance with the VA Partnership Council's *Guide To Collective Bargaining and Joint Resolution of 38 USC Section 7422 Issues*, which provides that these exclusions will be applied narrowly and only to those matters clearly and unequivocally involving direct hands-on patient care or clinical competence.

Note 2: The language in Paragraph C in this Section shall only serve to preclude a grievance where the Secretary, or a lawfully appointed designee of the Secretary (currently the Under-Secretary for Health), determines in accordance with 38 USC 7422 that the grievance concerns or arises out of one or more of the three (3) items listed above. Any determination under this language by the Secretary or his/her designee is subject only to judicial review pursuant to 38 USC 7422(c).

### **Section 3 - Other Applicable Procedures**

A. As provided for in 5 USC Section 7121, the following actions may be filed either under the statutory procedure or the negotiated grievance procedure but not both:

1. Actions based on unsatisfactory performance (5 USC Section 4303),
2. Adverse actions (5 USC Section 7512), and/or
3. Discrimination (5 USC Section 2302(b)(1)).

B. Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 USC Chapter 71.

C. An employee shall be deemed to have exercised her option under this Section when she timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure, whichever event occurs first. Discussions between an employee and an EEO counselor would not preclude an employee from opting to select the negotiated grievance procedure if the grievance is otherwise timely. For purposes of an EEO action, the time limit for filing a grievance should be extended if the additional time would help facilitate the resolution of the employee's complaint or contribute to a full and complete investigation of the facts.

### **Section 4 - Jurisdiction**

If either party considers a grievance nongrievable or nonarbitrable, the original grievance will be considered amended to include this issue. The Department must assert any claim of nongrievability or nonarbitrability no later than the Step 3 decision.

### **Section 5 - Representation**

The only representative an employee may have under this procedure is a union representative approved in writing by the Union. An employee may pursue a grievance without union representation, but the Union may elect to attend each grievance step. The Union will be provided notice immediately when any grievance is filed as well as given advance notice of each meeting.

### **Section 6 - Informal Resolutions**

Most grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis. The use of ADR is encouraged. The parties agree

that every effort will be made to settle grievances at the lowest possible level. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to VA. Reasonable time during work hours will be allowed for employees and union representatives to discuss, prepare for, and present grievances including attendance at meetings with management officials concerning the grievances, consistent with Article 2 and local supplemental agreements.

### **Section 7 - Procedure**

Employees and/or their representatives are encouraged to informally discuss issues of concern to them with their supervisors at any time. Employees and/or their representatives may request to talk with other appropriate officials about items of concern without filing a formal grievance if they choose. In the event of a formal filing of a grievance, the following steps will be followed:

Step 1. An employee and/or the Union shall present the grievance to the immediate or acting supervisor with an information copy to the Director of the facility in writing within thirty (30) calendar days of the date that the employee or Union became aware or should have become aware of the act or occurrence or anytime if the act or occurrence is of a continuing nature. The immediate or acting supervisor will make every effort to resolve the grievance immediately but must meet with the employee/representative and provide a written answer within fourteen (14) calendar days of receipt of the grievance.

Step 2. If the grievance is not satisfactorily resolved at Step 1, it shall be presented to the Service/Division Chief, or equivalent management official or designee, in writing, within seven (7) calendar days of the Step 1 supervisor's decision. The grievance must state, in detail, the basis for the grievance and the corrective action desired. The Service/Division Chief, or equivalent management official, or designee, shall meet with the employee and his/her representative and provide a written answer within ten (10) calendar days.

Step 3. If no mutually satisfactory settlement is reached as a result of the second step, the aggrieved party or the Union shall submit the grievance to the Director, or designee, in writing, within seven (7) calendar days of receipt of the decision of Step 2. The Director or designee, will meet with the aggrieved employee and his/her representative within seven (7) calendar days to discuss the grievance. The Director or designee will render a written decision to the aggrieved party and the Union within ten (10) calendar days after the meeting.

Step 4. If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 39, Arbitration.

Note 1: For Veterans Canteen Service (VCS) employees, Step 2 will be eliminated at those facilities where two levels of supervision are not present. In Step 3, the VCS Field Director, or his/her designee, will be the deciding official. The meeting will be at the duty station of the aggrieved employee and with an official higher than the Canteen Chief.

Note 2: For National Cemetery System (NCS) employees, where there are two levels of supervision, Step 1 will be the immediate supervisor. Step 2 will be an Assistant Cemetery Director where one exists and Step 3 will be the Cemetery Director. Where there is only one level of supervision, Step 1 will be the Cemetery Director and Step 1 time limits will apply. Step 2 will be eliminated, and Step 3 will be the NCS Area Director or designee.

Note 3: For VA Headquarters unit employees, the following officials will replace those mentioned in the respective steps:

Step 1 - Immediate supervisor

Step 2 - Service Director (or equivalent), or designee

Step 3 - Administration or Staff Office Head, or designee

Note 4: At any step of the negotiated grievance procedure, when any management deciding official designates someone to act on his/her behalf, that designee will have the complete authority to render a decision at that step and will render the decision. The designee will never be someone who decided the issue at any previous step.

Note 5: It is agreed that grievances should normally be resolved at the lowest level possible. However, there will be times when a grievance may be more appropriately initiated at the second or third step of the procedure for example, when a disciplinary action is taken by a Service Chief or higher level, when the supervisor at the lower level clearly has no authority to resolve the issue, or when the Union grieves an action of a management official other than a Step 1 supervisor. When a grievance is initiated at a higher step, the time limits of Step 1 will apply.

Note 6: Grievances over actions taken by VA Headquarters officials against field station employees may be grieved directly to arbitration in accordance with Article 14, Arbitration. The request for arbitration in such cases should be made by the local union president or designee to the facility Director, clearly setting forth the basis for the grievance and the corrective action being requested. The parties may coordinate an effort for informal resolution prior to the actual arbitration.

Note 7: Local management-initiated grievances shall be filed with the local union president or designee and shall constitute Step 3 of the negotiated grievance procedure. Such grievance must be filed within thirty (30) calendar days of the act or occurrence or when management became aware of, or should have become aware of, the act or occurrence. The time limits for the meeting and response will be fourteen (14) calendar days.

### **Section 8 - Extensions**

Time limits at any step of the grievance procedure may be extended by mutual consent of all parties.

### **Section 9 - Failure to Respond in Timely Manner**

Should management fail to comply with the time limits at Step 1, the grievance may be advanced to Step 2. Should management fail to comply with the time limits for rendering a decision at Step 2 or Step 3, the grievance shall be resolved in favor of the grievant, provided that (1) receipt of the grievance had been acknowledged by management at the appropriate step in writing and (2) the remedy requested by the grievant is legal and reasonable under the circumstances of the grievance.

### **Section 10 - Multiple Grievances**

Multiple grievances over the same issue may be initiated as either a group grievance or as single grievances at any time during the time limits of Step 1. Grievances may be combined and decided as a single grievance at the later steps of the grievance procedure by mutual consent.

### **Section 11 - National Level Grievances**

Grievances between the Department and the Union at the national level shall be filed by the aggrieved party as follows:

- A. Within thirty (30) calendar days of the act or occurrence or within thirty (30) days of the date the party became aware or should have become aware of the act or occurrence or at any time if the act or occurrence is continuing, the aggrieved party (VA Headquarters or the National VA Council) may file a written grievance with the other.
- B. Upon receipt of a grievance, the parties will communicate with each other in an attempt to resolve the grievance. A final written decision, including any position on grievability or arbitrability, must be rendered by the respondent within forty-five (45) days of receipt of the grievance. If a decision is not issued in forty-five (45) days or if the grieving party is dissatisfied with the decision, the grieving party may proceed to arbitration in accordance with Article 39, Arbitration. The time limits may be extended by mutual agreement.

## **ARTICLE 43**

### **LOCAL SUPPLEMENT**

#### **Section 1 - General**

Contract provisions contained in local contracts/supplements in existence prior to the Master Agreement will continue in effect insofar as they do not conflict with the Master Agreement. Whenever any subject is addressed in the Master Agreement, the terms of the Master Agreement shall prevail over the provisions of the local agreement concerning the same subject. Recognizing that the Master Agreement cannot cover all aspects or provide definitive language for local adaptability on each subject addressed, it is understood that Local Supplements may include substantive bargaining on all subjects covered in the Master Agreement so long as they do not conflict, interfere with, or impair implementation of the Master Agreement. However, matters that are excluded from Local Supplemental bargaining will be identified within each Article.

#### **Section 2 - Procedures for Local Supplementary Agreement**

A. The parties agree that any time after this Agreement has been in effect for thirty (30) days, the parties, upon the request of either local party, may negotiate a local supplement to this Master Agreement. The Local Supplemental Agreement may cover all negotiable matters regarding conditions of employment insofar as they do not conflict with the Master Agreement as defined in Section 1. The Local Supplement may include a provision for re-opening.

*Note:* This is not intended to preclude local bargaining of items that are not covered by the Master Agreement, i.e., policies, procedures, and directives initiated at the facility level or national level.

B. It is agreed that prior to implementation of any Local Supplement, the respective parties shall forward their agreement to VA Headquarters and the Union (VA National Council) for review. The national parties shall review the Local Supplement within thirty (30) calendar days of its receipt. In the event either of the national parties determines there exists a conflict with the Master Agreement, they shall forward a written document to the respective local and the other national party identifying the conflict for resolution at the local level.

#### **Section 3 - Ground Rules For Negotiating Local Supplemental Agreements**

In an effort to assist the local bargaining process, ground rules for bargaining Local Supplemental Agreements will include, but not be limited to, the following:

A. Upon mutual agreement of the parties, bargaining over local supplements will be held utilizing an interest-based-bargaining (IBB) process. However, prior to initiating IBB, all bargaining team members must be trained in the IBB process. In the event the parties fail to mutually agree to utilize IBB, traditional bargaining will be used.

B. In accordance with Executive Order 12871, the Department will bargain on the numbers, types, grades of employees, and positions assigned to any organizational subdivision, work project, tour of duty, and the technology, methods, and means of performing work. Further, management will not use 5 USC 7106(a) as a means of circumventing their 5 USC 7106(b)(1) bargaining obligations of this Agreement. In the event Executive Order 12871 is rescinded and if the Department chooses not to bargain 5 USC 7106(b), either party may reopen this Article. However, agreements reached during the effective term of the Master Agreement will remain in effect.

C. The parties agree to establish a local negotiating committee consisting of an equal number of representatives of the Union and Department. Each party shall be represented by a Chief Negotiator. The parties further agree that all members of the local negotiating committee will have the requisite authority to negotiate on behalf of their respective party. The negotiation process is the establishment of ground rules, face-to-face bargaining, preparation, facilitation, approved travel time, mediation, impasse, and third-party proceedings. The parties agree that all union members of the negotiating committee will be on official time for the previously described negotiation process. Employee participation in this process will not in any way adversely affect their performance nor will they be held accountable for their full range of duties in addition to these activities. Neither party waives any legal rights.

Each Chief Negotiator may approve attendance of alternates at Local Negotiating Committee sessions. The alternate will have the full rights, responsibilities, and authority of the Local Negotiating Committee member for whom they are substituting.

D. Management agrees to pay the travel and per diem for all local members of the local negotiation committee pursuant to the Federal Travel Regulations.

E. The Local Negotiating Committee will establish its bargaining schedule. Local management will ensure the availability of all Local Negotiating Committee team members

F. In the event either party desires a facilitator, the parties must mutually agree upon the individual to serve as facilitator. When IBB is used, a facilitator will be used.

G. If the Local Negotiating Committee has not reached agreement on a Local Supplement at the conclusion of the bargaining schedule, either party may use Alternate Dispute Resolution (ADR) or other methods, or elect to initiate impasse procedures. Moreover, neither party waives any rights regarding statutory impasse procedures.

H. The parties agree that it is appropriate in establishing ground rules to include, among other things, physical location of bargaining, caucuses, subject matter experts, start date, official time, prep time, observers, IBB or traditional bargaining, number of people on each team, and administrative matters and materials.

## **ARTICLE 44**

### **MID-TERM BARGAINING**

#### **Section 1 - General**

A. The purpose of this Article is to establish a complete and orderly process to govern mid-term negotiations at all levels. The parties are encouraged to use an interest-based bargaining approach in all mid-term negotiations and will ensure that negotiators are trained in this approach prior to the inception of bargaining.

B. In accordance with Executive Order 12871, the Department will bargain on the numbers, types, grades of employees, and positions assigned to any organizational subdivision, work project, tour of duty, and the technology, methods, and means of performing work. Further, Management will not use 5 USC Section 7106(a) as a means of circumventing its 5 USC Section 7106(b)(1) bargaining obligations under this Agreement. In the event Executive Order 12871 is rescinded and the Department chooses not to bargain 5 USC Section 7106(b), either party may reopen this Article to address the 7106(b) issues. However, agreements reached during the effective term of this Master Agreement will remain in effect unless changes are negotiated. Both parties continue to retain their statutory rights.

C. Recognizing that the Master Agreement cannot cover all aspects or provide definitive language on each subject addressed, it is understood that mid-term agreements at all levels may include substantive bargaining on all subjects covered in the Master Agreement, so long as they do not conflict, interfere with, or impair implementation of the Master Agreement. However, matters that are excluded from mid-term bargaining will be identified within each Article.

D. As appropriate, the Union may initiate mid-term bargaining at all levels on matters affecting the working conditions of bargaining unit employees.

#### **Section 2 - National**

A. The Department will forward all proposed changes for which there is a bargaining obligation to the President of the National VA Council (NVAC) or designee(s) along with copies of all necessary and relevant documents relied upon. When a new law is enacted and the Department decides not to issue a national policy, the NVAC will be notified prior to implementation.

B. Any Union demand to bargain must be received by the Director, Labor-Management Relations Service within thirty (30) days from the date the NVAC President or designee receives the proposed change. The date of receipt shall be documented on a simple form agreed upon by both parties. Extensions or reductions of the thirty- (30) day time period will be by mutual agreement. Upon request, the Union will be briefed on the proposed subject prior to the demand to bargain.

C. The Department's bargaining obligation is triggered when the Union submits a bargaining demand. When the Union's bargaining demand is submitted, the parties will discuss the proposed change and share their interests and concerns.

D. The parties may first attempt to reach agreement by conducting telephone negotiations. Such negotiations should normally begin no later than ten (10) workdays after the Management chairperson receives the Union's demand to bargain. Telephone negotiations shall normally be for up to three (3) hours per day, commencing at a mutually agreeable time on consecutive days unless concluded sooner.

E. If the parties are unable to reach agreement, negotiations will normally proceed to face-to-face bargaining. When traditional bargaining is used, the Union's written proposal(s) will be submitted prior to bargaining. The parties retain the right to modify, withdraw, or add to any interests, concerns, or proposals they may have discussed or exchanged earlier.

F. Bargaining sessions will be for 8-1/2 hour days at mutually agreeable times which include a break for lunch. However, the parties, by mutual agreement, may extend or shorten such bargaining sessions as necessary. The parties agree to utilize Alternate Dispute Resolution mechanisms, as appropriate, without waiving either party's statutory rights.

G. Each party may have up to four negotiators which by mutual agreement may be increased based on the complexity and/or number of issues to be negotiated. The parties will exchange the names of the bargaining team members for the specific issue(s) to be negotiated. This does not preclude the attendance of experts by mutual consent of the parties. Travel and per diem will be paid by the Department pursuant to the Federal Travel Regulations for bargaining team members. These members will be allowed official time to complete the bargaining obligation. An automated data base for existing and future memorandums of understanding will be established and maintained by Management. This data base will be made accessible to both the national and local Union officials.

### **Section 3 - Intermediate**

The President of the NVAC or designee will provide the names of the bargaining team members for the specific issue(s) to be negotiated when the Union delegates national bargaining to the intermediate level. Ground rules for intermediate bargaining shall be established by the parties at that level. The parties will make every effort to use bargaining team members from the geographic area of concern with travel and per diem for team members being paid by the Department.

### **Section 4 - Local**

A. On all policies and directives or other changes for which the Department meets its bargaining obligation at the national level, appropriate local bargaining shall take place at individual facilities and may include substantive bargaining that does not conflict with negotiated national policy and agreements. Upon request, the Union will be briefed on the proposed subject prior to the demand to bargain.

B. Proposed changes in personnel policies, practices, or working conditions affecting the interests of one local Union shall require notice to the President of that local. Proposed changes in personnel policies, practices, or working conditions affecting the interests of two or more local Unions within a facility shall require notice to a party designated by the NVAC President with a copy to the affected local Unions.

C. Upon request, the parties will negotiate as appropriate. The Union representative shall receive official time for all time spent in negotiations as provided under 5 USC Section 7131(a).

## **ARTICLE 45**

### **OFFICIAL TIME**

#### **Section 1 - Purpose**

The parties recognize that good communications are vital to positive and constructive relationships between the Union and VA Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business. They further recognize that this consolidated unit is very large and complex and requires Union coordination of its representational activities at several levels. Thus, official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of:

- A. Handling grievances and other complaints,
- B. Handling other representational functions, and
- C. Appropriate lobbying functions.

#### **Section 2 - Designated Union Officials/Representatives**

Official time in the following amounts is authorized for each of these Union officials:

- National VA Council President - 100%
- Three National VA Council Vice Presidents - 100%
- Eight Appointed National Representatives - 50%
- National Treasurer - 50%
- Fifteen District Representatives - 50%

These national Union representatives may designate a Union representative at their home station and transfer unused official time to that representative to perform the duties of the position for which official time is authorized.

*Note 1:* Travel and per diem is authorized for National Council Officers, District Representatives, National Representatives, and the National Safety Representative in connection with the semiannual meetings described in Article ----. Travel and per diem is also authorized as provided elsewhere in this Agreement or where otherwise agreed to by the parties or where required by law, rule, or regulation.

*Note 2:* When Union officials visit a facility other than where they are employed for the purpose of engaging in representational activities, they will notify Management prior to their visit. Management will notify the Union of any scheduling problems connected with the visit and the parties will attempt to work out a suitable arrangement.

Note 3: The National Treasurer, eight (8) appointed National Representatives, and District Representatives must work out mutually agreeable arrangements for their official time with local Management.

### **Section 3 - Accrual of Official Time**

Official time authorized for National Union representatives may be used as needed; however, upon request, the Union representatives will be advanced official time from future time accrual for that leave year. Any time not used during any pay period will be accumulated for the remainder of the leave year. Any time that was not used as needed by the end of the leave year will not be carried over to the next leave year. The Council will provide the Department with a listing of the National Union representatives so that each local facility may be informed. The Council will also provide a timely notice of any change in National Union representatives.

### **Section 4 - Additional Time Allotted**

Time spent in connection with national bargaining and LMR Committee meetings shall not be charged against the official time allotted above.

### **Section 5 - Travel to Other Locations**

Once official time is authorized, Union representatives will be permitted to leave the worksite to discharge their functions as described in this Agreement after reporting to their respective supervisors. Where travel to another location within the jurisdiction of a local Union is necessary for representational activities consistent with the provisions of this Agreement, and the transportation is otherwise being provided to the location for official business, the Union will be allowed access to the transportation on a space-available basis and also authorized official time for travel.

### **Section 6 - Duty-Time Activities**

For the following matters, Union representatives will be on duty time:

- A. All activities relating to Partnership,
- B. All activities relating to Total Quality Improvement, and
- C. For cases in which a Union representative is designated as the employee's representative, preparing or presenting appeals to the Merit System Protection Board and handling discrimination claims under EEOC procedures.

### **Section 7 - Performance Evaluation**

The use of official time, in accordance with this Agreement, will not adversely affect an employee's performance evaluation.

### **Section 8 - Substitutions**

The Union may substitute a retired VA employee for any of the twenty-nine (29) Union designees at the semiannual LMR meetings. In those instances, VA will provide travel and per diem for that retired employee.

### **Section 9 - Allegations of Abuse**

Alleged abuses of official time shall be brought to the attention of an appropriate Management official on a timely basis by supervisors and Management officials. The Management official will then discuss the matter with the Local or Council president as appropriate.

### **Section 10 - Local**

A. Each VHA local is entitled to at least one Union official with no less than 40% official time. Each VBA and NCS local is entitled to at least one Union official with no less than 25% official time. Where a local represents more than one administration or facility, a Union representative at each administration or facility is entitled to the designated minimum amount of official time. In the case of integrated facilities, a Union representative at each pre-integration facility is also entitled to at least the designated minimum amount of official time.

B. For locals already above the minimum amount of official time described in Paragraph A. in this Section, existing local agreements and past practices regarding official time on the effective date of this Master Agreement shall continue in full force and effect unless and until the local parties negotiate a change.

C. The minimum amounts of official time described in Paragraph A in this Section are not intended to limit the amount of official time that can be negotiated by the parties locally.

## **ARTICLE 46**

### **RIGHTS AND RESPONSIBILITIES**

#### **Section 1 - Introduction**

The parties recognize that a new relationship between the Union and the Department as full partners is essential for reforming the Department into an organization that works more efficiently and effectively and better serves customer needs, employees, Union representatives, and managers.

#### **Section 2 - Union Rights**

- A. In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by 5 USC Chapter 71, this Agreement, and the concept and principles of Partnership.
- B. Each party shall recognize and meet with the designated representative(s) of the other party at mutually agreeable times, dates, and places that are reasonable and convenient.
- C. The Department will not restrain, coerce, discriminate against, or interfere with any Union representative or employee in the exercise of his/her rights.

#### **Section 3 - Union Representation**

The Union will be provided reasonable advance notice and be given the opportunity to be present and to participate at any formal discussion between one or more representatives of the Department and one or more employees in the unit or their representatives concerning any grievance, personnel policy or practice, or other general condition of employment. The Union will also be allowed to be present and represent an employee at any examination of an employee in the unit by a representative of the Department in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary/adverse action against the employee and the employee requests representation.

#### **Section 4 - Notification of Changes in Conditions of Employment**

The Department shall provide reasonable advance notice to the appropriate Union official(s) prior to changing conditions of employment of bargaining unit employees. The Department agrees to forward, along with the notice, a copy of any and all information/material relied upon to propose the change(s) in conditions of employment. All notifications shall be in writing to the appropriate Union official, with sufficient information to the Union for the purpose of exercising its full rights to bargain.

#### **Section 5 - Information**

The Department agrees to provide the Union, upon request, with information that is normally maintained, reasonably available, and necessary for the Union to effectively

fulfill its representational functions and responsibilities. This information will be provided to the Union within a reasonable time and at no cost to the Union.

#### **Section 6 - Notification of Union Officials**

The Union will annually provide management at each facility with an updated list of the names, titles, and work telephone numbers of all Union officials along with the room/location of the union office and representatives as well as changes as they occur. The Department agrees to disseminate the list to all bargaining unit employees within 30 days after its receipt. Further, management agrees to provide all new hires with a copy of the list when they enter on duty.

#### **Section 7 - Union-Employee Communication**

The Department will not alter or censor the content of any direct communications between the Union and employees. However, Department facilities will not be available for posting or distribution of libelous or defamatory material directed at Department or Union officials or programs.

#### **Section 8 - Surveys and Questionnaires**

A. The Department will not communicate directly with bargaining unit employees through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union and bargaining where appropriate. This includes all questionnaires and surveys from all other agencies. Nothing in this section precludes the Union from the right to bargain over conditions of employment under the Statute.

B. Participation in surveys will be voluntary, unless the parties agree to require participation. Employees will be assured that their responses will be confidential and their anonymity protected, unless the parties agree otherwise.

C. The results of surveys conducted by either party regarding conditions of employment will be shared. If a third party conducts a survey and the results are distributed to the Department, the results will be shared with the Union.

#### **Section 9 - New Employee Orientation**

The parties are encouraged to make a joint presentation to new employees to orient them about the Department and the Union. If the Union desires to make a presentation on its own, the Union will be afforded the opportunity to make a thirty- (30) minute presentation during each orientation session for new employees. The Union will be provided the same respect and dignity as other presenters and will not be subjected to intimidation or censure. Management will provide the Union with notice of the date, time, and place of the orientation. The scheduled starting time of the Union presentation will be a subject for local negotiations. The Union official making the presentation will be allowed duty time to make the presentation. Stewards or Union officers may introduce themselves to new employees at the worksite and inform them of their availability for representation functions so long as there is no undue disruption of work activities.

**Section 10 - Voluntary Programs**

The parties shall provide each other reasonable advance notice of the initiation or discontinuance of all voluntary programs such as bond campaigns, blood programs, fund drives, etc. When requested, appropriate bargaining will be held. The parties agree that employee participation in the Combined Federal Campaign, blood donor drives, bond campaigns and other worthy projects will be on a voluntary basis. This does not preclude publicizing such projects and encouraging employees to contribute.

**ARTICLE 47**

**SURVEILLANCE**

A. The parties recognize that surveillance is conducted for safety and internal security reasons.

B. If the Department uses “covert” or “hidden” electronic camera surveillances during an investigation, the following shall apply if a disciplinary/adverse action is proposed against an employee represented by the Union:

1. The Union will be given a copy of all relevant evidence collected,
2. The Union will be provided a copy of the pertinent video tapes, and
3. The Union will be allowed to represent affected employees in any subsequent discussions or proceedings involving them.

C. The local union is not precluded from any further negotiations on the impact and implementation of covert or hidden electronic camera surveillances.

## **ARTICLE 48**

### **USE OF OFFICIAL FACILITIES**

#### **Section 1 - Local Union Office Space**

A. Management recognizes the importance and value of the Union's mission and purpose. Accordingly, Management agrees to furnish office space to the Union appropriate for carrying out its representational and partnership duties in locations easily accessible to employees and private citizens and of size, furnishings, and decor commensurate with other administrative offices within the facility.

B. Each office will be equipped with adequate telephone lines for FTS, fax, and computer capabilities.

C. In addition, the Department will provide District and National representatives with office space or suitable arrangements to carry out their representational responsibilities under this Agreement.

#### **Section 2 - Meeting Space**

The Department will, on an as-needed basis, provide conference rooms as available for discussions between employees and Union officials. The Department will also provide suitable space for regular Union meetings. The Union agrees to exercise reasonable care in use of such space.

#### **Section 3 - Telephone**

The Department will make internal telephones and FTS available to the Union for handling representational duties and conducting labor-management relations. The Union will use FTS in a reasonable, prudent, and cost-conscious manner. In no instance will FTS be used for internal Union business.

#### **Section 4 - Equipment**

A. The Department will provide or make available to each Union office the following:

1. Fax machine,
2. Personal computer with standard software, programs, and capabilities compatible with the Department's technology,
3. Laser printer, and
4. Access to e-mail and administrative DHCP functions in the Union office.

B. The Department agrees to furnish the Union, where available, access to photocopiers, maintenance, shuttle service, and other customary and routine services and equipment such

as the VANTS system for NVAC President's or designee's conference calls. The Department will also make the public address system available to the Union for appropriate use.

#### **Section 5 - Bulletin Boards**

At each facility, the Union will be provided space on bulletin boards in areas normally used for communicating to employees. Numbers and location of bulletin boards will be determined locally.

#### **Section 6 - Interoffice Mail System**

The local and its representatives may use the interoffice mail system for regular representation communications (e.g., grievances correspondence or memos to Management).

#### **Section 7 - Metered Mail**

Consistent with postal regulations, the Union shall have use of Department metered mail limited to representational matters. It is agreed that mass mailings are inappropriate under this Section.

#### **Section 8 - Membership Drives**

Management agrees to provide adequate facilities for membership drives at location that will provide access to unit employees during break and lunch periods. Detailed arrangements will be negotiated at the local level.

#### **Section 9 - Personnel Manuals**

- A. The Department will timely furnish the NVAC President a copy of the FPM, CFR, VA Directives, Circulars, and Handbooks. These publications will be updated regularly.
- B. Locals will be provided a copy of MP-5, Parts I and II; MP-3, Part III, and MP-1, Part I, or equivalent successor documents.
- C. The Department will also provide the local Union access to/or copies of all labor management materials currently provided.
- D. The NVAC and each local union will be provided access, or copies at no charge, of Department personnel manuals, including classification standards.

#### **Section 10 - Nonwork Space**

The Department agrees that where space for meals or break periods is not readily available, Management will cooperate with the local Union in identifying locations where employees can spend these nonwork periods.

### **Section 11 - Transportation**

- A. Where travel to another location within the jurisdiction of a local Union is necessary for representation activities consistent with the provisions of this Agreement, the Union will be provided transportation on a space-available basis.
- B. When a Union representative uses a privately owned vehicle (POV) because of the unavailability of a government-owned vehicle, travel reimbursement will be pursuant to travel regulations if the activity is pre-approved and is within budgetary constraints.
- C. Associated travel and per diem is an appropriate subject for local bargaining.

### **Section 12 - Literature**

- A. The Department will provide space for the purpose of distributing Union material. The space will be in prominent locations as agreed upon locally.
- B. The distribution of literature will be permitted provided it is done during nonduty hours of the distributor and does not interfere with the mission of the Department.

### **Section 13 - Copies of Agreement**

- A. The Department will provide to each employee on duty as of the date of this Agreement and to all unit employees entering on duty after that date at no cost, booklet copies of this Agreement, printed in type that can be read easily.
- B. The Department will initially provide the Council with 250 additional copies and each local with 20 additional copies of the Agreement.
- C. The Department will provide, at no cost to the Union, copies of supplemental agreement(s) sufficient to distribute to each employee in the unit covered by the supplemental agreement(s).
- D. The parties will survey the need to translate the Agreement into other languages and take appropriate action.
- E. The contract will be made available on disc, compatible with the Department's computer system.
- F. The Department will provide sufficient advance copies of this Agreement for ratification purposes.

**ARTICLE 49**

**TITLE 38 ADVANCEMENT**

A. Compensation for all advancements will be made within two (2) pay periods from the effective date of the advancement.

B. Notice of decisions on advancement shall be communicated in writing within ten (10) workdays of the action taken.

C. Supervisors shall monitor and review performance in order to determine progress or problems and to provide employees with information concerning performance. Discussions about performance will be held as often as needed, as determined by the employee and the supervisor.

**ARTICLE 50**

**CLINICAL RESEARCH**

- A. The parties recognize the benefits of participation in clinical research projects.
- B. The Union will be notified prior to implementation of any clinical research that impacts working conditions of bargaining unit employees.
- C. Participation in research projects will be voluntary, consistent with staff rights/policy and Management's right to assign work. Employees will receive training and written instructions regarding the intent and requirements of the research project prior to implementation.
- D. Staff involved in clinical research may be recognized for their participation/contribution to the project by the annual performance evaluation and other means, for example, monetary awards, acknowledgment in papers.

## **ARTICLE 51**

### **TITLE 38 NURSE PAY/SURVEY**

#### **Section 1 - Nurse Pay Survey**

- A. The Union will have a mutually agreed upon representative on each Title 38 nurse pay survey team.
- B. The selection of the discretionary facilities to be surveyed will be a subject for partnership.
- C. In accordance with 38 USC 7451 and VA regulations, Title 38 nurse pay surveys shall be limited to the labor market area or other areas as authorized by regulations.
- D. Surveys shall be done consistent with the provisions of 38 USC 7451 and VA regulations.
- E. In gathering data in accordance with 38 USC 7451, and wherever feasible, survey data for Title 38 nurse pay surveys shall be collected based on on-site visits.

#### **Section 2 - Adjustments to Pay**

- A. In accordance with 38 USC 7451 and VA regulations, any adjustments in Title 38 nurse pay shall be examined on an annual basis whenever adjustments are made in General Schedule pay.
- B. Whenever an adjustment in Title 38 nurse pay is delayed due to administrative error, a nurse shall be retroactively compensated for any lost salary.

#### **Section 3 - Premium Pay**

- A. Evening: In accordance with 38 USC 7453(b), a nurse performing service, any part of which is within the period beginning at 6 p.m. and ending at 6 a.m., shall receive additional pay for each hour of service at a rate equal to ten percent of the nurse's hourly rate of basic pay if at least four hours fall between 6 p.m. and 6 a.m. When less than four hours fall between 6 p.m. and 6 a.m., the nurse shall be paid the differential for each hour of service performed between those hours.
- B. Weekend: In accordance with 38 USC 7453(c), a nurse performing service, any part of which is within the period commencing at midnight Friday and ending at midnight Sunday, shall receive additional pay for each hour of service at a rate equal to 25 percent of such nurse's hourly rate of basic pay.
- C. Federal Holiday: In accordance with 38 USC 7453(d), a nurse performing service on a holiday designated by Federal statute or Executive Order shall receive for each hour of such service the nurse's hourly rate of basic pay, plus additional pay at a rate equal to such hourly rate of basic pay, for that holiday service, including overtime service. Any

service required to be performed by a nurse on such a designated holiday shall be deemed to be a minimum of two (2) hours in duration.

D. Overtime: In accordance with 38 USC 7453(e)(1), a nurse performing officially ordered or approved hours in excess of 40 hours in an administrative work week, or in excess of eight (8) hours in a day, shall receive overtime pay for each hour of such additional service. The overtime rates shall be one and one-half times such nurse's hourly rate of basic pay. For further clarification, see the Article on Hours of Work (provisions on Alternative Work Schedules).

E. Compensatory Time: In accordance with 38 USC 7453 (e)(3), compensatory time off in lieu of pay for service performed under the overtime provisions of Title 38 USC shall not be permitted unless voluntarily requested in writing by the nurse in question.

F. On-Call Duty: In accordance with 38 USC 7453(h), a nurse who is officially scheduled to be on call outside such nurse's regular hours or on a holiday designated by Federal statute or Executive Order shall be paid for each hour of such on-call duty, except for such time as such nurse may be called back to work, at a rate equal to 10 percent of the hourly rate for overtime service (i.e., 15 percent of the hourly rate of basic pay).

**ARTICLE 52**

**PHYSICAL STANDARDS BOARD**

- A. In the event that the Department believes that a Title 38 employee is physically or mentally incapable of performing his duties, the employee shall be entitled to meet with the recommending medical official and to provide any oral and written evidence before a recommendation is made. In any such meeting, the employee is entitled to Union representation.
- B. Once any decision is made that removes an employee from his position or duties for physical or mental inability to perform, the employee, consistent with Title 38, shall be able to use the appropriate appeals procedure.
- C. Confidentiality must be maintained throughout the review process.

**ARTICLE 53**

**PROFESSIONAL STANDARDS BOARD (PSBs)**

- A. The Union may submit names of candidates for PSBs. Management will give serious consideration to appointing from the candidates recommended by the Union.
- B. Employees normally will be reviewed annually by the PSB.

**ARTICLE 54**

**PROFICIENCY**

- A. The Department will involve employees actively in the promotion/evaluation process. Employees will be notified 90 days prior to due date for proficiency.
- B. Employees will be given 60 days to provide information that will be used in the proficiency.
- C. When employees meet time-in-grade requirements for promotion to the next grade, the employee will be evaluated for promotion at the next scheduled boarding.
- D. Employees will receive current copies of criteria for promotion and special advancement on initial employment. Employees will receive updated copies of promotion and special advancement criteria when changes are made.
- E. Where employees are not promoted, they will receive an explanation regarding those specific elements in which they are deficient.
- F. Proficiencies will be done timely to prevent delays in the boarding cycle. Employees whose proficiencies have been unduly delayed without good cause will be made whole.

**ARTICLE 55**

**REPRESENTATION AT BOARDS OR HEARINGS (TITLE 38)**

A. The Union will be allowed to represent any unit employee at any hearing before a Title 38 Disciplinary Board or whenever a probationary employee appears before a Professional Standards Board (PSB) in a termination proceeding. A representative in a PSB hearing may do those things an employee is entitled to do under regulations.

B. If the employee does not choose to have union representation, the Union may be permitted to have an observer present at hearings described in Paragraph A. The Union observer may attend the PSB hearing only during the employee's presentation. Consistent with applicable laws and regulations, Union representatives and observers must protect the confidentiality of any information to which they have access in connection with a Board Hearing.

## **ARTICLE 56**

### **TITLE 38 VACANCY ANNOUNCEMENTS**

#### **Section 1 - General**

All Title 38 bargaining unit positions will be announced facilitywide with posting and/or distribution a proper subject for local bargaining. If facilities are consolidated, positions will be posted at each geographic location. These announcements must be readily available for review by employees. Posting/Application period will run simultaneously for a minimum of fourteen (14) calendar days.

#### **Section 2 - Contents Of Vacancy Announcement**

The qualifications for the position and educational/certification level will be kept current and clearly defined on the vacancy announcement. If the requirements of the job/position change, the vacancy announcement will be reposted reflecting the changes.

#### **Section 3 - Vacancy**

- A. All employees will have a fair and equitable opportunity to compete for selection for a posted vacancy. All applicants will be asked the same questions during an interview.
- B. At the request of the employee, Management will supply the employee with an explanation of why she was not selected for the position.

#### **Section 4 - Title 38 Position Qualifications**

- A. The Union will be predecisionally involved and may submit recommendations for criteria to be used in the development of all bargaining unit position qualifications.
- B. The Union will be provided copies of all position qualifications for vacant positions.
- C. Current employees will receive first consideration when filling position vacancies.

## **ARTICLE 57**

### **VETERANS CANTEEN SERVICE**

#### **Section 1 - General**

Upon the effective date of this Agreement, all Veterans Canteen Service (VCS) schedule employees shall receive pay raises equal to or greater than the uncapped pay line for each Nonappropriated Fund (NAF) survey area in effect at that time. Pay will be set annually thereafter in accordance with the NAF pay survey. In no case shall any negative pay line be implemented by the Department.

#### **Section 2 - VCS Prices**

The parties agree that for the duration of this Agreement, Management will set Canteen prices and such prices will not be subject to negotiations. Management agrees to notify the Union prior to the implementation of price increases.

#### **Section 3 - VCS Vacancies**

To provide promotional opportunities for all VCS employees, internal candidates will be given first consideration for vacancies prior to hiring outside applicants. If a VCS employee is not selected, it shall be for bona fide reasons, and the employee will be given a written explanation of reasons for non-selection.

#### **Section 4 - Storage of Personal Items**

The availability of employee lockers or secure storage space for personal belongings is a subject for local negotiations. The supervisor will provide locks or other security devices to secure personal belongings.

#### **Section 5 - VCS/VA Interchange Agreement**

Within six (6) months of the effective date of this Agreement, the parties will submit a request to OPM for an Interchange Agreement that will allow the transfer of VCS employees to VA civil service positions. If OPM denies the request, the parties shall continue aggressive efforts to get such an agreement.

**ARTICLE 58**

**RESEARCH GRANTS**

A. Employees who have made funding or other project applications will be immediately notified of the approval/disapproval. The notification will include the project ranking.

B. Any employee in the Department Research Program whose status and/or employment rights are altered or jeopardized, for example due to a change in funding, will be fully advised of the possible impact of such change at the time a change to his status is considered.

## **ARTICLE 59**

### **RESEARCH PROGRAMS & DEMONSTRATION PROJECTS**

#### **Section 1 - Definitions**

A. "Research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

B. "Demonstration project" means a project conducted by the Office of Personnel Management or under its supervision to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

#### **Section 2 - Project Initiation**

A. When a demonstration project is considered, the Union and the Department are encouraged to jointly request demonstration authority from OPM and jointly develop the details of the demonstration project.

B. When VA receives notification from OPM, another Federal agency, or some other public or private organization that a research and demonstration project will be conducted, VA will notify the Union.

C. VA agrees not to enter into any research or demonstration project affecting unit employees without first meeting its obligation to consult or negotiate with the Union.

D. Upon request the Union shall receive:

1. Information concerning research programs or demonstration projects proposed to OPM by the Department, and

2. Data and reports of research provided to VA by OPM or other federal agencies which concern research projects affecting unit employees.

#### **Section 3 - Comments on Reports**

Whenever VA submits an evaluation report to OPM concerning a research or demonstration project affecting unit employees, the Union will be provided an opportunity to submit its views in an accompanying report.

## **ARTICLE 60**

### **WAGE SURVEYS**

#### **Section 1 - Membership Survey Teams**

Survey teams will consist of one member nominated by the local facility and one member nominated by the labor member of the local wage survey committee. Each will be selected on the basis of qualifications set forth under Federal Wage System procedures. The number of teams needed to complete the survey will be determined by the local committee.

#### **Section 2 -Office Space**

The host installation designated by the lead agency will provide office space and telephone capability to local committee members and survey teams for the purpose of conducting the survey. The Department will provide such facilities where necessary.

#### **Section 3 - Transportation**

The Department will make every effort to provide official vehicles for the use of survey teams and, if necessary, for committee members involved in the survey. In the event such vehicles are unavailable, Management will explore all other alternatives to provide transportation for the survey team.

## **ARTICLE 61**

### **DURATION OF AGREEMENT**

#### **Section 1 - Effective Date**

This Agreement will be implemented and become effective when it has been approved, ratified, and signed by the parties, including review pursuant to 7114(c) of 5 USC Chapter 71.

#### **Section 2 - Duration of Agreement**

This Agreement shall remain in full force and effect for a period of three (3) years after its effective date. It shall be automatically renewed for one (1) year periods unless either party gives the other party notice of its intention to renegotiate this Agreement no less than sixty (60) nor more than one hundred twenty (120) days prior to its termination date. Negotiations shall begin no later than thirty (30) days after these conditions have been met. If renegotiation of an agreement is in progress but not completed upon the terminal date of this Agreement, this Agreement will be automatically extended until a new agreement is negotiated.

#### **Section 3 - Reopener**

Negotiations initiated by either party during the term to add to, amend, or modify this Agreement may be conducted only by mutual consent of the parties. If mutual consent is reached, such notice to renegotiate must be accompanied by the revised proposals for the article(s) the party wishes to renegotiate. The parties will meet for the purpose of negotiating the amendments or modifications within thirty (30) days of receipt of the proposals from the moving party.

#### **Section 4 - Negotiation Schedule**

Arrangements for negotiating both the reopener or renegotiation under Section 2 or 3 above shall be in accordance with Article 43, Mid-term Bargaining.

#### **Section 5 - Amendments and Modifications**

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