

Agreement 2000
Between
U.S. Immigration and Naturalization Service
and
National Immigration and Naturalization Service
Council

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Outline Index

An outline of the contract is provided at the end for easy reference. The outline can be used as a tool to quickly look through the contract to find the articles and paragraphs relevant to issues in the workplace, or for training. The outline headings throughout the contract are for reference only.

----- Notes -----

Note: Organizational titles frequently change. The titles referenced in this agreement are those that existed when the agreement was negotiated.

ARTICLE 1 - Recognition Bargaining Unit

. The Service recognizes the American Federation of Government Employees (National Immigration and Naturalization Service Council) as the bargaining agent for all personnel of the Immigration and Naturalization Service, except professionals, those assigned to Border Patrol Sectors and those excluded from coverage by the Civil Service Reform Act.

Gender Language

. All references to members in this Agreement designate both sexes, and whenever the male gender is used, it shall be construed to include male and female members as appropriate.

ARTICLE 2 - Effect of Law and Regulation

A. **Existing or Future Laws.** In the administration of all matters covered by this Agreement, the parties are governed by existing or future laws; and government wide rules or regulations in effect upon the effective date of this Agreement. In the administration of this Agreement, should any conflict arise between the terms of this Agreement and any present or future laws, provisions of such laws shall supersede conflicting provisions of this Agreement.

B. **Government Wide Rule or Regulation.** Should any conflict arise in the administration of this Agreement between the terms of this Agreement and any government wide rule or

regulation such as the Code of Federal Regulations or Department of Justice Orders, Policy Letters, Manuals (other than a rule or regulation implementing 5 U.S.C. 2302), issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.

C. **Service Policy.** In any conflict between the terms of this Agreement and any provision of Service Orders, Policy Letters, Manuals, etc., regardless of date of issuance, the terms of the Agreement will govern.

D. **Effect of Invalidation.** Should any part of this Agreement or any provision or provisions contained herein be rendered or declared invalid by reason of any of the contingencies referred to in this Article, such invalidation of such provision or provisions of this Agreement shall not invalidate those unaffected parts or provisions contained in this Agreement and they shall remain in full force and effect.

E. **Scope.** The requirements of this Article shall apply to all supplemental, implementing, subsidiary or informal agreements between the parties.

F. **Intent of Restatement.** In a number of the provisions of this agreement, statutes or regulations are restated for the convenience of the parties and the employees covered by the agreement. In restating the provisions of such statutes and regulations, some minor changes to the statutory and regulatory language have been made for clarity or to place that language in context. These wording changes are not intended to change the meaning of the language in question. However, should there be any conflict between the language of this agreement and the language of applicable statutes, or regulations in effect at the time the agreement became effective, the language of the statutes and regulations is controlling.

ARTICLE 3 - Employee Rights

A. Right to Join and Participate.

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

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

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

(2) **Management Non-participation.** Nothing in this section, or this Agreement, authorizes participation in the management of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in the Civil Service Reform Act of 1978, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

B. **Private Counseling.** Any discussions with individual employees concerning counseling, evaluations, workload review, or disciplinary actions will be conducted so as to insure the privacy of the employee

C. Contributions / Gifts.

(1) **Voluntary.** The Employer agrees that participation in the Combined Federal Campaign, United States Bond Drives, Blood Donor Drives, and other worthy programs will be on a voluntary basis.

(2) **Gifts.** Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary.

D. **Right to Communicate.** An employee has the right to communicate with the appropriate member of the following offices concerning individual personnel matters:

(1) The servicing Human Resources Office(s) including District, Center, Office, Regional and Headquarters Human Resources Offices;

- (2) The EEO Office or the EEO Officer;
- (3) A Supervisor or Management Official of a higher rank than the employee's immediate supervisor;
- (4) EEO Counselors;
- (5) The appropriate official in the Safety and Health Office.

Employees are encouraged (but not required) to initiate such individual personnel matters with first-line supervisors and to follow the chain of command where appropriate.

ARTICLE 4 - Management Rights

A. **Negotiating.** Nothing in this Contract shall preclude the Service and the Union from negotiating:

- (1) **Permissive Subjects.** At the election of the Service, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work projects, or tour of duty, or on the technology, methods and means of performing work.
- (2) **Procedures.** Procedures which management officials of the Service will observe in exercising any authority under this Article; or
- (3) **Appropriate Arrangements.** Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by Service officials.

B. **Authority of Service Officials.** Nothing in this Contract shall affect the authority of any Service official:

- (1) To determine the mission, budget, organization, number of employees and internal security practices of the service; and
- (2) In accordance with applicable laws:
 - (a) To hire, assign, direct, lay off and retain employees in the Service, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (b) To assign work, to make determination with respect to contracting out and to determine the personnel by which Service operations shall be conducted;
 - (c) With respect to filling positions, to make selections for appointment from:
 - (i) Among properly ranked and certified candidates for promotion; or
 - (ii) Any other appropriate source; and
 - (d) To take whatever action may be necessary to carry out the Service Mission during emergencies.

ARTICLE 5 - Union Rights

A. **Exclusive Representative.** The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of all employees in the unit. Where appropriate, for the purposes of this agreement, when the term District Office is used it is understood that it will include Service Centers, Asylum Offices, Administrative Centers, Regional Offices, and Headquarters.

B Representation at Formal Discussions.

- (1) **Formal Discussions.** The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.
- (2) **Notice.** The Union representative will receive reasonable advance notice of such formal discussions. The Union will receive copies of documents supplied to employees at the time of the discussion. Except in circumstances in which an urgent operational need to act quickly requires a shorter period or a shorter period is mutually agreed to by the parties, reasonable notice will mean not less than 24 hours.

C. **Representation at Investigatory Interviews.** The Union shall be given the opportunity to represent employees in investigative interviews as provided in Article 30, Section B of this Agreement.

D. **Right to Present Views.** The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices and matters affecting working conditions.

E. **Existing Agreements.** This Agreement is not intended to abolish, solely by exclusion here from, any national, local or regional understandings or agreements which have been mutually acceptable at the national, local or regional level. It is understood that any such understandings and agreements are valid only to the extent they are not inconsistent with the provisions of this agreement or controlling regulations as described in Article two.

ARTICLE 6 - Status of Employee Representatives

A. **No Restraint.** The Service shall not impose any restraint (except as may be otherwise provided in this Agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.

B. **Designation of Stewards.** A reasonable number of stewards may be designated by the Union or its affiliated Locals and shall be recognized as employee representatives for employees in the District, or other service facility in which they are designated to be stewards. The Union will supply the Service with their names, which may be posted on appropriate bulletin boards. It shall be the duty of the Union to notify Management of any changes in the roster of stewards.

C. **Authorization for Representational Duties.** Upon request and approval in advance, Union officials are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms of the Civil Service Reform Act of 1978 by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. The Service agrees that there shall be no restraint, interference, coercion, or discrimination against a union official because of the performance of these duties while they are serving as Union officials. Union officials shall be relieved from official duties during the period they are serving as union officials. This does not preclude employees being called back to their official duties when there is an immediate need for their services. Nothing shall require a Union official to take official time at an agency location unless required by the representational duties performed and/or required by the official duties from which the employee is relieved.

D. **Steward and Officer Lists / Management Directories.** It is incumbent upon the Union to furnish Management written notice of the names of the Union Officials and to advise Management of any changes in its list of designated Union representatives. In turn, Management will provide the Union, at the National, Regional and Local level, the appropriate Service telephone Directories and updates as printed. Management will advise new unit employees or employees transferring between stations, upon entering on duty, of the name of the Local President in writing.

ARTICLE 7 - Use of Official Time

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

- (1) **Representation.** Representation in grievances, discrimination complaints and appeals.
- (2) **Grievances.** To prepare and present grievances under the NGP, including allegations of discrimination, the Local representative may be authorized up to a maximum of sixteen (16) hours of official time but may not use more than eight (8) hours at any step of the grievance procedure. After arbitration has been invoked in accordance with Article 48, if a Local representative is designated to present the grievant's case, he or she will be authorized twenty-four (24) hours to prepare for arbitration. Should the hearing be continued, the designated representative will be granted eight (8) hours preparation time for each additional scheduled hearing day. The Local representative may be authorized up

to a maximum of four (4) hours to prepare a ULP charge. Prior to filing an unfair labor practice charge with the Federal Labor Relations Authority, Union Representatives will, in an effort to resolve the issue, discuss the complaint with local managers. Union officials shall not knowingly file a grievance or a ULP charge concerning the implementation of a policy or procedure agreed to by the Council President and Management at the national level.

(3) **Labor-Management Meetings.** For representation of the Union in Labor-Management meetings with the Employer pursuant to Article 10. Local presidents shall be authorized up to three (3) hours for preparation prior to each meeting.

(4) **Arbitrations & Appeals.** For representation at arbitrations and statutory appeal hearings.

(5) **Adjustment of Grievances.** Representation at adjustment of grievances, adverse actions and any EEO matters that affect bargaining unit employees.

(6) **Committee Meetings.** Attendance at committee meetings as the designated Union representative.

(7) **Respond to Management.** Review of and response to memoranda, letters, and requests from the Employer, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions.

(8) **Technical Representative.** To act as a technical advisor or assistant employee representative in hearings. The technical advisor or assistant employee representative will be granted up to 8 hours official time to prepare for the hearing. There shall be a limit of one representative so designated at a proceeding.

(9) **Observer.** To attend hearings or meetings in the capacity of an observer where bargaining unit employees have elected to pursue a grievance without Union representation.

(10) **Respond to Congress.** To respond to requests for information from members of Congress and/or testify before Congress.

(11) **Partnership.** To participate in Labor-Management Partnership Council proceedings and endeavors. Official time used under this subsection will not be counted against the negotiated block time of any local union official.

(12) **Treasurer.** The treasurer of each local and the Council will be authorized four (4) hours per month to complete reports required by other federal agencies.

(13) **EEO Briefings.** To participate in status briefings of the Service's EEO program.

(14) **Other Functions.** To perform those functions stated elsewhere in this agreement for which official time has been expressly provided.

Approval of official time for appropriate Union representational activities other than those specified above will be subject to review at the regional level.

B. **Block Time.** Official time for the performance of functions described in Article 7(A) as well as labor-management partnership activities will be granted during regular duty hours to Union officials as follows:

(1) Council President -(100%)

(2) Executive Vice President (100%)

(3) Seven Vice Presidents (100%)

(4) Fair Practices Coordinator - (100%)

(5) Two Staff Assistants to the President - (100%)

(6) Except as specifically provided, Local Union Officers shall be authorized reasonable official time to perform functions outlined in this agreement. The parties agree that use of blocks of official time for local union officials is an appropriate subject for bargaining in local supplemental negotiations.

C. **Required Procedures:**

(1) **Advance Notice.** All Union officials (except those listed in Section B 1 thru 5 above) will make every effort to schedule use of time and give advance written notice to Management in accordance with C(2) below. Requesting Union officials will inform the immediate supervisor by way of a completely filled out Form G-826, including among other matters, the nature of the duties to be performed and will indicate on the form the estimated amount of time to be used and the object class code to which the time is to be charged.

(2) **Form G-826 Procedures.** The Employer will furnish a form G-826 (pre-printed memorandum) which shall be used by all Union officers (except those listed In Section B 1 through 5 above) to request official time pursuant to this Article. The Union officer will prepare the form completely pursuant to this Article and submit the form to the appropriate supervisor in duplicate. The supervisor will endorse the form indicating approval or denial, retain one copy and return one copy to the requester. If the request is approved, the Union officer, upon completion of the authorized activity and at the time of his or her return to duty; will advise his or her supervisor, either orally or in writing, as to the date and time of his or her return to duty and total number of hours used. The supervisor will then note on his or her copy of the original request to reflect the total time (hours/dates) used and insure that such time is appropriately recorded on the Union officer's time and attendance report. The supervisor will also, at that time, forward a copy of the to the appropriate servicing Human Resources (LMR) Office. The Union official shall not be required to identify a possible grievant at the informal stage of the NGP until such time as the grievance is officially filed, but shall be required to identify the specific issue being considered and the Union official must identify his or her place of contact or telephone number at all times pursuant to Article 6C. Requests for official time will be acted upon in a timely manner. Adjudication of the request in a timely manner will mean 24 hours or less on consecutive weekdays, excluding weekends or holidays from the time that a properly completed request is submitted to an appropriate management official. Managers will take into consideration the time constraints the Union official may be operating under. Should an occasion arise when a request must be denied, in whole or in part, the Service will cite the reason for the denial on the official time request form.

(3) **Supervisory Approval.** The Union officer and/or employee involved shall also obtain approval of the employee's supervisor for any meeting during the employee's duty time.

(4) **No Internal Union Business.** In no case will internal Union business such as solicitation of dues, maintenance of the dues check-off agreement, or solicitation of membership be conducted on official time.

D. **Restriction on Block Time.** The 2080 hours of official time authorized for use by Council Officers listed in Section B 1 thru 5 above is intended and shall be interpreted as authorizing those Council Officers 100% official time for all representational duties performed during their normal duty hours. However, it does not authorize official time during normal duty hours for the following activities:

(1) **Internal Union Business.** Conduct of internal Union business for which Council Officers shall charge their time to annual leave or leave without pay.

(2) **Leave.** Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union officer (e.g. annual leave for a vacation or sick leave for an illness).

Recall to Duty

. Notwithstanding the provision of this Section, the Council Officers may be assigned official duties (and appropriately compensated) in situations of emergency.

E. **Travel Time.** A Local President or designee may be granted reasonable and necessary travel time for the purpose of traveling to assist in representing a grievant within his or her district at a sub-office or remote location which does not have a local Union steward, or for any other meetings scheduled by management.

F. **Council Representatives.** National Council representatives are authorized official time to attend the following meetings:

(1) **Labor-Management Meetings.** National and Regional Annual Labor-Management Meetings respectively;

(2) **Safety and Health Committee Meetings.** National and Regional Safety and Health Committee Meetings; or

(3) **Other Meetings with Management.** Any other meeting scheduled by Management with the intent of meeting with the Union as general representative of the bargaining unit for the purpose of obtaining the Union's views or offering Management's views on the

operation of a policy or program (excluding grievance representation, complaints, appeals, negotiations, etc.) will be authorized travel expenses and per diem. Necessary time for travel will be allowed.

G. Administrative Time for Training.

(1) **Limits.** The Service agrees that official leave may be administratively authorized for Union representatives to attend training approved by Management which is designed to advise representatives on matters within the scope of CSRA and Title 7, which are of mutual concern to the Service and the Union. Administrative excusal for this purpose will not exceed:

(a) Offices of Less than 50. Fifteen (15) training days per calendar year for each District, Office or Center, with less than fifty (50) employees,

(b) Offices of 50 to 299. Thirty (30) training days for each District, Office or Center with 50-299 employees,

(c) Offices of 300 to 500. Forty (40) training days for each District, Office or Center with three hundred (300) to five hundred (500) or more employees,

(d) Offices of More than 500. Sixty (60) training days for each District, Office or Center with more than five hundred (500) employees.

(e) Council. Thirty (30) training days per year for the Council. Council officers as identified in B who present such training may use the authorized official time for this presentation.

(2) **Procedures.** Requests for such leave to attend training shall be submitted to the appropriate District, Service Center, or Asylum Office, and a copy as well to the appropriate Administrative Center Director together with an agenda that includes the actual hours that training will be conducted. Requests shall be received in writing from the Union at least fifteen (15) working days in advance of the date the training is scheduled to commence. Management shall notify the Union of its decision no later than ten (10) working days after receipt of the request.

H. Arbitration Travel and Per Diem. The Service will pay travel and per diem expenses for Council Officers identified in Section B 3 when they act as representatives in arbitration cases for disciplinary actions of ten (10) calendar days or more, within their area.

I. Council Trips. The Council President and Executive Vice-President or Council Officers designated by the Council President will be authorized up to a combined total of twenty-two (22) trips, for the purpose of improving the labor management relationship within the Service, to assist local unions in 9A bargaining; to present the Union's case in arbitration of suspensions of 20 days or more; or cases involving demotions in grade. The trips will be authorized and coordinated with the Labor Management Relations Office in Washington, D.C.

J. Travel and Per Diem for Union Representatives. Union representative official time and travel and per diem provisions of this agreement shall normally apply only to designated union representatives. However, it is also understood that the Union at the local level may from time to time designate other employees to represent its interests and to participate in activities including rating panels, labor management meetings, partnership activities, or any other meetings called by management. Such employees shall be authorized official time, travel and per diem as necessary for participation in such activities consistent with the needs of the Service. The union shall make every practicable effort to rely on employees who are locally available for participation in such activities.

ARTICLE 8 - Facilities and Services

A. Union Use of Service Facilities.

(1) **Meeting Space.** Upon reasonable advance request by the Union, the Employer will provide meeting space, if available, in areas occupied by the Employer for meetings during non-duty hours. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.

(2) **Non-duty Hours.** Employees attending meetings under Subsection (1) will do so only during non-duty hours or while they are in a leave status.

(3) **Elections.** Upon reasonable advance request, mutually agreed upon space will be provided, if available, by the Employer to be used in conjunction with elections governed by Local by-laws. The Union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Employer.

(4) **Membership Drives & Materials.** Upon reasonable advance request, management agrees to provide space for the purpose of membership drives and distributing Union issued materials. These activities will be conducted during break, lunch periods and non-duty hours and shall not interfere with the mission of the Service. Specific arrangements will be negotiated locally.

B. Facilities for Representation.

(1) **Meeting Space.** Upon reasonable advance request by the Union, the Employer will provide confidential meeting space, if available, during official hours of business, in areas occupied by the Employer, for the following purposes:

(a) Grievances / Appeals. Preparing or discussing a grievance or appeal;

(b) Caucusing. Caucusing immediately before, after, and during scheduled meetings with the Employer;

(c) Agreement Administration. Discussing matters directly related to the administration of this Agreement.

(2) **No Internal Union Business.** Nothing in this section shall be construed as permitting meetings or the use of management supplied equipment for the purpose of conducting internal union business.

C. Bulletin Boards

(1) **Prominent and Accessible.** Each Employer installation will provide bulletin board space in a place of prominence and reasonably accessible for posting material published by the Union or its affiliated Locals.

(2) **Exclusive Use.** In each District Office the Employer will provide to the Union for its exclusive use one locked bulletin board (of approximately three feet by four feet). The bulletin board will be permanently attached to the walls where building regulations permit such permanent installations. The Union may, subject to availability of suitable space, install at its own expense bulletin boards of up to three (3) by five (5) feet in addition to the bulletin board supplied by management.

(3) **Restrictions.** Material which does not violate any law, contain libelous material or personal attacks may be posted on union bulletin boards.

D. Access to Employees.

(1) **Employee Lists.** Upon request, but no more than annually, the Service will furnish to the Union, at the Regional level, for its internal use only, a list which will contain the names, grades, position title, and posts of duty of all employees in the local bargaining unit. The Regional Vice President will be supplied, on a monthly basis, a listing of bargaining unit personnel accessions and separations from each District, Service Centers, Asylum Office, Regional Office, Administrative Centers, or Headquarters. The parties recognize that errors may occur from time-to-time in regard to input and coding of data, and that the listings will not be construed as action by the Employer to unilaterally deny bargaining unit status to any employee, or to confer it.

(2) **Employee Orientation.** Each new employee, including transfers, as part of his or her orientation, will be given a presentation not to exceed twenty-five (25) minutes by the local Union representative. The Union representative will be invited to attend and will be in a duty status, and the orientation will cover only the labor relations law, the provisions of the Contract and Union/Management Agreements. No recruiting or other internal Union business may be conducted during the orientation

E. Reference Materials.

(1) **Employee Use of CFR and AM.** The Service agrees to continue to provide in each District a copy of the Code of Federal Regulations and the Administrative Manual (AM) for use of employees and the Union, and will keep such material up-to-date.

(2) **CFR and AM.** The Service will provide a copy of Title 5 of the Code of Federal Regulations and the AM to those installations where there are more than one hundred (100) bargaining unit employees.

(3) **Council Copy of AM.** The Service will provide a copy of the AM and subsequent changes to the National Council President, the Executive Vice-President and to the Regional Vice-Presidents of the Council.

F. **Locker Rooms.** To the extent that local conditions warrant and space and resources are available, the Service agrees to provide suitable space for changing uniforms and lockers for storage of employee uniforms. Whenever Service facilities are redesigned, renovated or when a new facility is contracted, the Service will, to the maximum extent possible, provide adequate locker space for all uniformed employees.

G. **Contract Copies.**

(1) **Employee Copy.** A copy of this Agreement will be printed and given to each employee in the unit.

(2) **Printing.** The Service agrees to reproduce and distribute (8 ½" by 11") copies of this Agreement, legibly printed, with blue cover including bold letters "Agreement 2000" to all employees currently assigned to the bargaining unit and those subsequently hired into the unit. It is further understood that proof copies of the agreement will be reviewed and approved by Service and Union prior to final printing of the agreement.

(3) **Council and Local Copies.** The Service agrees to provide six hundred (600) copies of the printed Agreement to the President of the Council and fifty (50) copies to AFGE and each Local Union in the Council.

H. **Union Representatives Permitted on Government Property.** National representatives of the Union and Council officers shall normally be permitted upon all Service installations. It is understood that such Union representatives shall request permission to visit in advance to the supervisor in charge of the installation. If the supervisor cannot approve the visit for valid operational reasons the supervisor will make an alternative arrangement for the official. Upon arrival, the official shall advise the supervisor of his or her presence. Such representatives shall not interfere with the work of employees of the installation during duty hours. Subject to the above restrictions, national representatives of the Union shall be permitted to participate in meetings between Local representatives and the Service.

I. **Telephones.** Telephones will be made available on a reasonable basis to Union officers to conduct Union representational activities as authorized under the provisions of Article 7 of this agreement.

J. **Space & Equipment.** The parties agree that providing Local Union office space and reasonable access to government equipment is in the best interest of the parties and of their partnership endeavors. The Service will provide office space and reasonable access to government office equipment to each local union.

K. **Electronic Mail.** Union officials are authorized the use the Service's e-mail system. The Union may use the e-mail system to communicate informally with employees and the Service but not for strictly internal union business. The parties agree that internal union business is prohibited when using government-provided access to the Internet. The parties should be mindful of the fact that electronic mail messages are considered government records which may be accessed whenever a legitimate governmental purpose exists for doing so. Correspondence submitted through the e-mail system does not satisfy official notice requirements under this agreement.

L. **INSERTS.** The Service shall provide and update the Service's CD-ROM titled "INSERTS" to all Local Presidents and all Council Officers. The Union shall provide the Headquarters Labor and Employee Relations Policy Section with a list of those officials (including addresses) of all officials who are to receive "INSERTS".

M. **Telephone Cards.** The Service shall provide all Council Officers, including staff assistants, with a telephone credit card which may be used for all calls except for internal union business or personal business.

N. **Copy Machines.** Copy machines will be made available to union officials, with management approval. There will be no use of copiers for internal union business. The Union will supply the paper for any copies made.

O. **Fax Machines.** Union officials, in the performance of their representational responsibilities, may make reasonable use of the Service's fax machines to communicate with management officials, grievants and other Union officials, provided that the Union official concerned has sought and secured the permission of management. It is understood that documents pertaining to internal Union business are not to be transmitted over the Service's fax machines. It is also understood that bargaining notices and demands are not to be served by fax communiqués unless the receiving party expressly consented to such means of service in regard to the particular matter at issue.

ARTICLE 9 - Impact Bargaining and Mid-Term Bargaining

A. **Notice of Proposed Change.** The parties recognize that from time-to-time during the life of the Agreement, the need will arise for Management to change existing Service regulations covering personnel policies, practices, and/or working conditions not covered by this Agreement. The parties are encouraged to engage in pre-decisional involvement prior to the agency's formal presentation of proposals for working conditions under this article. If the parties are unable to reach an agreement through pre-decisional involvement or if pre-decisional involvement is not used, the Service shall present the changes and explanation of the changes, including the reason for the change(s) it wishes to make to existing rules, regulations, and, existing practices to the Union in writing. The Service recognizes that this obligation exists at the National, Regional and District level depending upon the level at which such changes originate. If the Service proposes a change in working conditions in locals in more than one region, such as for Telephone Centers or Service Centers, it shall serve the requisite notice on the Council at the national level. If the Union intends to exercise its bargaining rights regarding the proposed change, it must submit a timely bargaining demand including proposals, in accordance with the procedures and time frames specified below.

B. **Bargaining Procedures.** As applicable, mid-term bargaining shall be conducted in accordance with the following procedures and time frames:

(1) **National Level Bargaining:**

(a) **Notice of Proposed Change.** When bargaining is appropriate at the National Level, Management shall serve its notice of the proposed change upon the President of the Council or his or her designee.

(b) **Demand to Bargain / Information.** Within twenty-two (22) workdays after being served with the notice of the proposed change, the President of the Council, or his or her designee, may request any additional information necessary to clarify or determine the impact of the proposed change. At the same time they shall serve any bargaining demand in writing upon the Chief, Labor and Employee Relations Policy Section, INS Headquarters, or such other person as may have been identified for this purpose in the Service's notice to the Union.

(c) **Union Proposals.** The Union will submit bargaining proposals with its demand to bargain. If the Union has requested additional information from management related to the proposal from management, amendments to the proposals may be made within fifteen (15) workdays of receipt of the information.

(d) **Negotiations.** If, following any informal discussions, the Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date and site. Absent mutual agreement on a date for bargaining, such negotiations shall commence at 9:00 a.m. on the fifteenth workday following the date the Union's proposals were first received by Management.

(e) **Delays / Breaks.** Once negotiations have commenced the parties recognize the obligation exists to bargain in good faith and will therefore avoid unnecessary delays. If a break in negotiations is necessary the parties will agree on a time and date to resume bargaining prior to any recess, whenever practicable.

(f) Bargaining Teams. Each Party will inform the other of the names of its bargaining team members at least five (5) workdays before the start of any negotiations. The Union's bargaining team members will be accorded official time for all time spent in bargaining, including necessary travel time and impasse proceedings, provided that the number of such Union team members is not greater than Management's bargaining team. The Service will also pay the travel and per diem expenses for such members of the Union's bargaining team. To accommodate the bargaining process, Management will make such shift adjustments as may be necessary for those on the Union's team who are entitled to official time for bargaining purposes.

(g) Additional Team Members. The parties agree that the Union team may have members in excess of those on Management's team, not to exceed two (2), who will be on official time if an employee of the Service. Any necessary travel and per diem for such additional team members will be borne by the Union.

(h) Travel & Per Diem. The Service will pay the travel and per diem expenses for those members of the Union's bargaining team who are entitled to official time as specified above.

(i) Equipment. Management will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with Management.

(2) **Regional Level Bargaining**: Except as modified below, the provisions applicable to National Level mid-term bargaining shall apply to Regional Level mid-term bargaining.

(a) Notice of Proposed Change. When bargaining is appropriate at the Regional Level, Regional Management shall serve its notice of a proposed change upon the appropriate Regional Vice President of the Council.

(b) Demand to Bargain / Information. Within ten (10) workdays after being served with the Region's notice, the Regional Vice President or designee, may request any additional information necessary to clarify or determine the impact of the proposed change. At the same time the Union shall serve any bargaining demand in writing on the Head of the appropriate Administrative Center Human Resources Office or such other person as may have been identified for such purpose.

(c) Union Proposals. The Union will submit bargaining proposals with its demand to bargain, if the Union has requested additional information from management related to the proposal from management, amendments to the proposals may be made within fifteen (15) workdays of receipt of the information.

(d) Negotiations. If, following any informal discussions, the Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date at a site within the Region as provided by Management. Absent mutual agreement on a date for bargaining, such negotiations shall commence on the fifteenth workday following the date the Union's proposals were first received by Management.

(e) Consistent with Master. Agreements reached pursuant to Regional Level mid-term bargaining may not be inconsistent with the provisions of this Master Labor Agreement.

(f) Delays / Breaks. Once negotiations have commenced the parties recognize the obligation exists to bargain in good faith and will, therefore, avoid unnecessary delays. If a break in negotiations is necessary the parties will agree on a time and date to resume bargaining prior to any recess, wherever practicable.

(g) Travel & Per Diem. The Service will pay the travel and per diem expenses for members of the Union's bargaining team not to exceed the number on management's team but not less than two (2), which may include Council Officers as provided for in Article 7, or local officials. Any additional Union team members will have their travel and per diem costs borne by the Union. Team members for whom the Union is paying travel and per diem will also be on official time.

(3) **Local Level Bargaining**: Except as modified below, the provisions applicable to National Level mid-term bargaining shall apply to Local Level mid-term bargaining.

(a) Notice of Proposed Change. Local Management shall serve its notice of a proposed change upon the President of the appropriate Local affiliate.

(b) Demand to Bargain / Information. Within ten (10) workdays after being served with the notice of a proposed change, the Local President or designee may request any additional information necessary to clarify or determine the impact of the proposed change. At the same time they shall serve any bargaining demand in writing upon the District Director or such other person as may have been identified for this purpose.

(c) Union Proposals. The Union will submit bargaining proposals with its demand to bargain, if the Union has requested additional information from management related to the proposal from management, amendments to the proposals may be made within ten (10) workdays of receipt of the information.

(d) Negotiations. If, following any informal discussions, the local Parties are unable to reach agreement on the proposed change, they shall commence negotiations on a mutually agreeable date at a site within the District as provided by Management. Absent mutual agreement on a date for bargaining, negotiations shall commence not later than the tenth workday following the date the Local's proposals were first received by Management.

(e) Bargaining Team. The local parties shall inform each other of their bargaining team members at least two (2) workdays before the start of any negotiations. Union bargaining team members equal in number to those on management's bargaining team, but not less than two (2), will be granted official time for all time spent in bargaining including impasse proceedings.

(f) Travel & Per Diem. Management will pay the necessary travel and per diem expenses for no more than two members of the Union's bargaining team, which may include Council Officers as provided for in Article 7, or local officials.

(g) Consistent with Master. Agreements reached pursuant to Local Level mid-term bargaining may not be inconsistent with the terms of this Master Labor Agreement.

C. **Service of Notices and Demands**. Service of all notices, requests, demands or documents provided for under this Article shall be accomplished either by personal delivery or by U.S. Mail-Return Receipt Requested. Applicable time limits shall begin to run from the date of receipt of the document that triggers the particular time limit. Service will be deemed timely if the required document is either personally delivered or deposited in the U.S. mail within the specified time limit. The parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents upon them.

D. **Good Faith**. The duties of the parties to negotiate in good faith under this Article shall include the obligation:

(1) **Resolve to Reach Agreement**. To approach the negotiations with sincere resolve to reach agreement;

(2) **Duly Represented**. To be represented by duly authorized representatives prepared to discuss and negotiate on the subjects authorized by this Article;

(3) **Reasonable Times**. To meet at reasonable times as frequently as may be necessary, and to avoid unnecessary delays.

E. **Impasses**. Impasses in impact and mid-term bargaining negotiations at the local level will be resolved in accord with Article 51 of this contract.

F. **Post Implementation Bargaining**. The parties agree that effective management of the Service and its resources is a mutual concern. The parties also agree that on certain occasions there is a need for expedited implementation of new policies or practices affecting conditions of employment. The provisions of this article apply to such situations. It is understood, however, that nothing in this Article precludes the Service and the Union from engaging in post implementation bargaining if mutually agreeable.

G. **"Covered by the Agreement"**. Mid-term agreements may be negotiated at the level of recognition covering subjects or matters not specifically covered in this agreement. The parties agree that, notwithstanding the Federal Labor Relations Authority's "covered by the agreement" rule, the Employer is required to provide the Union with notice and an opportunity to negotiate pursuant to this article with regard to management-initiated changes concerning the following matters:

- (1) **Tours of Duty.** Implementation of new tours of duty and/or shifts including re-implementation of shifts not used in the previous twelve (12) months
- (2) **Work Sites.** Establishment of new or substantially expanded work sites
- (3) **Discipline Regulations.** Implementation of revised Department of Justice or INS regulations governing the administration of discipline
- (4) **Overtime.** Changes in:
 - (a) Eligible Employees. The classes of employees eligible for overtime and
 - (b) Distribution Procedures / Caps. Procedures for distribution of overtime (including procedures for assuring compliance with statutory overtime caps and procedures providing for assignment of overtime to volunteers before making mandatory assignments).

ARTICLE 10 - Partnership and Labor-Management Relations

A. **Information and Questions.** The Employer and the Union recognize that providing Union representatives the opportunity to obtain information and ask questions about Employer programs and other matters of interest may contribute to the effectiveness of the labor-management relationship. Therefore, the Employer shall provide the Union with briefings and the opportunity to ask questions about matters of interest and concern at the national, regional, and local levels.

B. **National Consultations.** Representatives of the Employer and the Union shall meet at the national level annually or at such other times as may be mutually agreed. These meetings shall be conducted immediately following National Labor Management Partnership Council Meetings held in Washington, D.C. The purpose of these meetings shall be to provide information to the Union's representatives and to permit the Union representatives to ask questions about matters of concern. An agenda covering the items to be discussed must be forwarded, in writing, to the Assistant Commissioner for Human Resources and Development at least thirty (30) calendar days prior to the scheduled meeting. Up to ten (10) additional agenda items may be submitted on the first (1st) day of the meeting. Issues of concern about which information is provided may be appropriate subjects for resolution through National Labor-Management Partnership Council meetings or as subjects of negotiation at the time of renegotiation of this Agreement or pursuant to a notice of proposed change in conditions of employment, such as personnel policies, rules, regulations and/or working conditions in accordance with Article 9.

Union representatives, not to exceed five (5), will be in official time status while attending such meetings. The cost of travel, including per diem or actual subsistence, will be borne by the Employer. These national consultations shall be held for two (2) days, with travel being accomplished on official time. Any additional representatives the Union feels are required (not to exceed four (4)) for the meetings may attend on official time at Union expense.

C. **Regional Consultations.** Regional officials and Union representatives, not to exceed five (5), will meet annually or at such other times as may be mutually agreed and the representatives will be in official status while attending such meetings. These meetings shall be conducted immediately following Regional Labor Management Partnership Council Meetings. Such regional consultations meetings will not exceed two (2) days, with travel being accomplished on official time, provided it occurs during the regular workweek. The cost of travel and per diem will be borne by the Service. Any additional representatives the Union feels are required (not to exceed four (4)) for the meeting may attend, on official time, at Union expense. The purpose of Regional meetings will be to provide information to the Union's representatives and to permit the Union representatives to ask questions about matters of concern. Agenda items to be discussed must be forwarded in writing to the appropriate Regional Director at least thirty (30) calendar days prior to the scheduled meetings. Such notice must be acknowledged promptly. Up to ten (10) additional agenda items may be submitted on the first (1st) day of the meeting.

D. **Local Consultations.** Representatives of the Employer and the Union at the District level shall have the opportunity to meet quarterly or at such other times as may be mutually agreed for the exchange of views and information, the informal resolution of problems, and for the improvement of communications, understanding, and cooperation.

between the Service and the Union. Where the Local President is located away from the District Office, the Employer shall pay travel and per diem for the Local President, when travel is required, to attend any quarterly meetings under this Section and for meetings called by management. The local parties may, by mutual agreement, substitute meetings of a local labor-management partnership council for the meetings specified in this paragraph.

E. Labor Management Partnerships

(1) **Cooperative Relationship.** The parties recognize the importance of working closely together for the purpose of promoting and improving a cooperative relationship by developing meaningful solutions to workplace issues.

(2) **Partnership Councils.** The parties have established joint Labor-Management Partnership initiatives and encouraged the establishment of Partnership Councils at all appropriate levels. Partnership Councils are the forum in which the parties can review, discuss, consider, and make recommendations to the Employer on matters relating to or affecting working conditions, employee morale, and efficiency of the agency's operations.

(3) **Duty Status.** If otherwise in a duty status, Union representatives will be accorded reasonable official time for the performance of duties or endeavors undertaken at the direction of an established partnership council. Such official time must be requested and approved as provided in Article 7.

(4) **Status of Partnership Agreements.** When an agreement or an understanding has been reached by appropriate Management and Union representatives in regard to a particular matter pursuant to the endeavors of an established partnership council, the Parties recognize and agree that such understanding or agreement can be implemented within the Jurisdiction of the particular partnership council without following the procedures in Article 9.

F. Joint Master Agreement Training. The parties will jointly provide Master Agreement training for each local union and Service office. The Service will pay the cost of the Master Agreement joint training. Any training document for the joint training will be prepared jointly. Training will be done jointly; however, this does not preclude additional or independent training by each party nor does it prohibit either party from developing training material for its own training programs.

ARTICLE 11 - Protecting Against Prohibited Personnel Practices

A. Definitions.

(1) **Prohibited Personnel Practice.** For the purpose of this Article, "prohibited personnel practice" means any action described in Section B.

(2) **Personnel Action.** For the purpose of this Article, "personnel action" means:

- (a) An appointment;
- (b) A promotion;
- (c) An adverse action, disciplinary action or other corrective action;
- (d) A detail, transfer, or reassignment;
- (e) A reinstatement;
- (f) A restoration;
- (g) A reemployment;
- (h) A performance evaluation under Chapter 43 of Title 5 of the United States Code;
- (i) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and
- (j) Any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

B. Prohibited Actions. Any employee of the Service who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

(1) **Discrimination.** Discriminate for or against any employee or applicant for employment

- (a) On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
 - (b) On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
 - (c) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
 - (d) On the basis of handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973, as amended; or
 - (e) On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.
- (2) **Non-merit Considerations.** Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
- (a) An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
 - (b) An evaluation of the character, loyalty, or suitability of such individual.
- (3) **Political Activity.** Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- (4) **Obstruct Competition.** Deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- (5) **Influence Withdrawals.** Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- (6) **Unauthorized Preference.** Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- (7) **Relatives.** Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.
- (8) **Whistleblower Reprisal.** Take or fail to take personnel action with respect to any employee or applicant for employment as reprisal for—
- (a) Disclosures. A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
 - (i) A violation of any law, rule, or regulation; or
 - (ii) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (b) Special Counsel / Inspector General. A disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
 - (i) A violation of any law, rule, or regulation; or
 - (ii) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(9) **Appeal Reprisal.** Take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.

(10) **Outside Conduct.** Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

(11) **Violation of Merit System Principles.** Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles contained in the Civil Service Reform Act of 1978.

C. **Information to Congress.** Nothing in Section B above shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

D. **EEO Affirmative Action.** Nothing in Section B above, shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;

(3) Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;

(4) Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or

(5) The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

E. **Redress Procedures.**

(1) **Elect Statute or Grievance.** An employee aggrieved under Section B(I), above, may raise the matter under a statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.

(2) **Effect of Election.** An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever occurs first.

(3) **MSPB Appeal of Grievance.** The selection of the negotiated grievance procedures contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board (MSPB) to review the final decision in the case of any personnel action that could have been appealed to the Board or where applicable to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

F. **Exclusive Grievance Procedure.** Except as provided in Section E, above, an employee may only file his or her complaint under the grievance and arbitration provisions contained in this Agreement.

ARTICLE 12 - Notice to Employees

A. **Copy for Union Representative.** An employee who receives a personally addressed notice, proposal or correspondence from the Employer concerning:

(1) An adverse action;

- (2) A disciplinary action;
- (3) A reduction-in-force;
- (4) Denial of a within-grade salary increase;
- (5) A fitness for duty examination; or
- (6) An involuntary reassignment or transfer;

shall receive an additional copy which states at the top of the first page "The copy may at your option be furnished to your Union representative."

B. New Employees.

- (1) **Union Information.** All new bargaining unit employees will be informed by the Employer that the Union is the exclusive representative of employees in the unit.
- (2) **Right to Join.** The Employer will also inform each new bargaining unit employee that he or she has the right, freely and without fear of penalty or reprisal, to form, join and assist a labor organization or refrain therefrom.
- (3) **Contract.** Each new bargaining unit employee shall receive from the Employer a copy of this Agreement.

C. Leave and Earnings Statements. Each employee will be furnished, on a biweekly basis, a NFC payroll earnings statement showing the employee's total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The notice shall also contain annual leave and sick leave balances.

D. Workplace Injuries. The Employer agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one year.

ARTICLE 13 - Outside Employment

A. Permission. Employees may engage in outside employment, including self employment, only with the written permission of the Employer. Such employment must not result in, or create the appearance of a conflict of interest with official duties or with official business of the Service; or tend to impair the employee's mental or physical capacity to perform official duties and responsibilities.

B. Request. Employees desiring to accept or undertake outside employment, including self-employment, shall request permission in writing, (on Form G-843, if available) and obtain written authorization from the Employer prior to commencement thereof. The request must include the following information:

- (1) Identity of proposed Employer;
- (2) Nature of work to be performed;
- (3) Approximate remuneration involved;
- (4) Anticipated maximum number of hours to be worked, and anticipated work schedule.

Voluntary Work

. Employees can engage in voluntary work, except that an employee must obtain written approval before engaging in voluntary work involving:

- (1) The practice of law, or
- (2) A subject matter, policy or program that is in the area of responsibility of the Immigration and Naturalization Service.

C. Timeframes. An employee's request must be submitted to the Employer at least fourteen (14) calendar days, prior to proposed commencement of outside employment or business activity. This time period is three (3) days in those cases where an employee has received a furlough notice.

D. Approval. The Employer will respond to the employee, approving or denying the request, as soon as possible but not later than ten (10) calendar days, after receipt of the request. If there is no response within ten (10) calendar days from receipt, the employee may assume there is no objection and begin in the outside employment or self employment. However, employees who have received less than ten (10) days advance notice of a furlough without pay may assume their requests have been approved if they have not received a response within three (3) calendar days from management's receipt of their

request. When the Employer denies a request, the employee will be advised of the reason therefor. The parties recognize that any approval (whether express or implied) to engage in outside employment may be withdrawn at anytime, provided the Service has a valid basis, as described above, for ordering the employee to cease his or her outside employment. The approval of outside employment for an employee earning AUO or LEA does not modify the eligibility requirements for AUO or LEA.

E. **Applicable Law.** The Employer agrees to follow all applicable laws and regulations regarding outside employment. The Employer shall not take actions regarding an employee's outside employment which are arbitrary or capricious.

F. **Practice of Law.** Except for employees specifically exempted under the provisions of the Memorandum of Understanding between the parties found in Appendix 7, employees will not engage in the practice of law.

ARTICLE 14 - Retirement

A. **Retirement Counseling.** The Employer will provide a retirement counseling program describing benefits and eligibility, to be made available on an as-needed basis, in which all employees in the unit nearing eligibility for retirement may voluntarily participate. Employees nearing eligibility for retirement who have questions concerning retirement benefits will, upon request, receive an oral or written response.

B. **Disability / Deferred Annuity.** Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Employer of the possibility of applying for a discontinued service annuity and eligibility for deferred annuity at sixty-two (62), provided he or she has at least five (5) years of civilian service and leaves his or her money on deposit with the Office of Personnel Management. Upon request, the Employer will inform an employee of his or her right to file an application for disability retirement provided the employee meets the length of service required for disability retirement (5 years for those under the CSRS and 18 months for those under the FERS system).

C. **Withdrawal.** An employee may withdraw a retirement application at any time prior to its effective date unless a commitment has been made to fill the vacancy created by the retirement or the position is scheduled to be abolished. However, if a vacancy exists within the duty station at the same grade and series, management will allow the employee to withdraw his/her retirement application.

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

ARTICLE 15 - Development and Training

A. **Employee Development.** The Service and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. The Service agrees to develop and maintain forward-looking effective policies and programs designed to achieve this purpose, consistent with its needs.

Through the procedures established in Article 10 of the agreement, the parties shall discuss training and development of employees.

B. **Employee Initiative.** The Service and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative in increasing his or her potential value to the Service through self-development and training. Employees are encouraged to take advantage of training and educational opportunities which will add to the skills and qualifications needed to increase their efficiency in the performance of their duties and for possible advancement in the Service.

C. **Fair and Equitable / Service Needs.** The nomination of employees to participate in training and career development programs and courses shall be based on Service needs and will be fair, equitable and free of personal favoritism.

D. **Schedule Variations.** Employees may be granted variations within the normal workweek, including leave without pay, for educational purposes consistent with Service needs.

E. **Individual Development Plan.** The Service encourages the individual employee to develop a personal plan for career self-development. In developing this plan, the employees may seek counseling and advice from the supervisor. (See Article 3, Section D, for rights of employees to contact Human Resources Office or higher-level supervisor for advice). The Service agrees to provide lists and catalogs on available Service training.

F. **Eliminated Positions.** The Employer agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Employer will be given to the employee to enable him or her to perform the duties of the new position.

G. **Out-service Training.** The Employer will pay authorized expenses for out-service training at a facility, approved by the Employer when the following conditions have been met:

- (1) The training has been applied for and approved in advance;
- (2) Such training will enable the employee to increase his or her proficiency in the current position (i.e., the training is job-related);
- (3) Existing training programs within the Service will not adequately meet the training need;
- (4) It is not feasible to establish a new training program to meet the need effectively;
- (5) Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in government;
- (6) Funds are available to pay for the training program;
- (7) The course is not being taken solely for the purpose of obtaining a degree; and
- (8) The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.

H. **Training Records.** The Service will maintain records for all employees who receive Service training. The Service will assign training for trainee level positions consistent with applicable policy and the needs of the Service.

I. **Union Recommendations.** The Service encourages the Union to submit recommendations to the Commissioner or the Regional Administrators concerning employee training needs and programs. When establishing or modifying the content or structure of its training courses or programs, the Service will give careful and due consideration to any recommendations received from the Union.

J. **Fair and Equitable Selection.** The parties recognize that it is the Service's right to assign duties in accordance with Part 7106 of Title VII of the Civil Service Reform Act of 1978 and that the types of duties assigned to employees may contribute to employee development. Therefore, supervisors will make assignments based on Service needs but will make reasonable efforts to be fair and equitable in this regard.

ARTICLE 16 - Classification

A. **Union Participation.** The Service encourages the Union to make known to the Service its views on the adequacy or inadequacy of occupational classification standards. The Service agrees to consider the Union's oral or written views concerning the occupational classification standards when making recommendations to the Office of Personnel Management and will notify the Union, in like manner, of any action taken.

B. **New Classifications.** Classification decisions rendered by the Service or the Office of Personnel Management having the effect of establishing a grade level within an occupation hitherto nonexistent in that occupation, will be forwarded by the region in which the action is taken to the Headquarters Office for circulation of that decision and the basis for that decision to all regions. This information will be considered where appropriate in the subsequent classification of similar positions within the occupation throughout the Service.

C. **Union Representation.** When the employee designates the Union as the employee's representative in a classification appeal, the representative may discuss the classification

appeal with the classifier prior to the beginning of a desk audit. Sufficient time shall be allowed prior to the beginning of the desk audit for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will summarize his or her findings for the appellant and the Union representative.

D. **Desk Audits.** Headquarters and Regional Classifiers may continue to make visits or telephone calls to field position locations to conduct desk audits of the different Service positions. Notice of the visit of the classifier will be posted as far in advance as possible on the bulletin board of the station he or she intends to visit.

E. **Position Descriptions.** The Service will provide every employee of the Service with an accurate description of his or her duties which may govern his or her grade. The employee will be encouraged to discuss any changes or inaccuracies with the supervisor who will also maintain a continuing review of duties.

F. **Request for Desk Audit.** If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. Upon request of the employee, a Union representative may be present during this discussion. If the employee wishes to further pursue the question, he or she may forward a written request to the servicing Human Resources Office. The servicing Human Resources Office will either answer or acknowledge receipt of the request in writing within thirty (30) days, providing an estimate of the additional time needed to reply.

G. **Effect of Lower Graded Duties.** The parties agree that where lower graded duties not addressed in the employee's position description are assigned to an employee on a continuing basis to meet the needs of the agency, this will not adversely affect the employee's salary or classification and the devotion of time to such duties will be recognized through an appropriate adjustment in assigned performance standards.

ARTICLE 17 - Safety and Health

A. **Safe and Healthful Working Conditions.** The Service agrees to provide safe and healthful working conditions, taking into account the mission of the Service and the inherent hazards of the job performed. The parties shall be governed by the Safety and Health Regulations contained in the I&NS Administrative Manual (AM) and this Agreement. Safety and Health Committees consisting of union and agency representatives will meet at the national and regional level as provided in the AM.

B. **Safety and Health Committees.** Safety and health committees are an important part of the Service Safety and Health Program as they form a chain of communication between employees and Management. They are in an excellent position to give program advice to appropriate levels of Management. With respect to Safety and Health Committees, the term District will include Regional Processing and Service Centers, Regional Offices, Asylum Offices, Headquarters Office, FLETC/Glynco, GA., and FLETC/Artesia, New Mexico, when a local representative is available at the facility. Where such Districts, Offices or Centers are co-located, the formation of a unified committee is appropriate if mutually agreeable to the union local and each activity head.

Where the term District Director is used in this article it is understood that certain Service facilities are under the control of officials other than District Directors. At those facilities the appropriate official shall be responsible for matters under this Article.

(1) **Membership.** Each Safety and Health Committee shall be composed of at least one representative of Management and at least one representative of the Union per local. The Management representative shall be designated by the Service. The Union representative shall be selected by the Union.

(2) **Meetings.** The Safety and Health Committee will meet as often as necessary upon the request of either party, but as a minimum, the committee will meet once every year to inspect facilities. The annual inspection will include a review of ergonomic conditions in the workplace. Copies of the minutes of the meeting and inspection reports will be submitted to the Director for correction of unsafe/unhealthful working conditions or practices observed or

reported. A copy of the minutes/inspection report and the written response will be furnished in a timely fashion from the Director to the committee and will be posted on the District bulletin board for the information of all employees. Copies of the minutes will be forwarded to the Regional Administrators, Regional Safety and Health Specialist and Regional Program Manager.

(3) **Purpose of Meeting.** Committees will meet to discuss methods for protecting the safety and health of employees, promoting safety and health education, promoting and implementing the Service and Regional Safety and Health Programs, the development and implementation of a Safety and Health Program as it applies to the District, conduct annual inspections of facilities and the recommendation of deserving employees for safety awards in accordance with the AM.

C. **Union Participation.** The Union agrees to participate on the Committee and will endeavor to have its members observe all safety rules and use all equipment and safeguards provided. Members of the Committee, upon request and with the approval of the Director, shall be allowed to leave their work, for the purpose of performing their duties as outlined in this Article, without loss of pay or charge to leave.

D. **Duty to Report Unsafe Conditions.** In the course of performing their normally assigned work, employees will be alert to observe unsafe practices and conditions. If an unsafe condition is observed, the employee should report it, in writing, to a member of the Safety and Health Committee.

(1) **Review and Report Unsafe Conditions.** The Committee shall meet within five (5) workdays of notification that a question has arisen and shall issue its recommendations, in writing, to the Director no later than ten (10) workdays after their meeting. In the event that the members of the Committee do not agree on the recommendations, any of the members shall have the right to express a written minority view.

(2) **Director Decision.** The written decision or an interim response of the Director shall be rendered within ten (10) workdays after receipt of the Committee's recommendations.

(3) **Grievance.** In the event that the decision of the Director does not satisfactorily resolve the problem, the employee or the Union may file a grievance pursuant to Article 47 of this Agreement, except that all such grievances shall be presented within ten (10) workdays at Step III of the grievance procedure, and insofar as the subject matter would be negotiable under the Civil Service Reform Act of 1978.

(4) **Identical Grievances.** When the parties become aware of identical grievances on safety issues arising under this section, involving two or more Districts, subject to the consent of the Union, one grievance shall be selected by the Union for processing. All decisions for that grievance will be binding on the other safety grievances.

(5) **Injury Logs.** Copies of the OSHA 200 log maintained by each office will be provided to the Safety and Health Committee for investigation of related unsafe conditions. The parties agree that any confidential or private information contained in the OSHA 200 Log may be redacted prior to submission to the committee.

E. **Vehicle Safety.** Service policy prohibits the use of vehicles not in safe operating condition. The Service will continue to require periodic inspection of all vehicles in order to insure a safe operating condition at all times. It is clearly the responsibility of any vehicle operator to report, in writing, all vehicle malfunctions or deficiencies to the person responsible no later than the end of the tour of duty; who, in turn, will be responsible to take immediate action to see that needed repairs are made. Negligence in reporting vehicle damages may be grounds for disciplinary action being taken against the responsible operator.

F. **Service Handbook.** The Service agrees to amend the appropriate Service handbook to incorporate changes relating to Service safety procedures which both the Union and the Service agree are necessary.

G. **Special Hazards / Imminent Risk.** When duties involving special hazards must be performed, the Service will provide reasonable training or indoctrination to the employees involved concerning the hazards and the proper work methods to be used. When an

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

H. **Weather Shelter.** Immigration Inspectors shall not be prohibited from using inspection booths or other available shelter during inclement weather conditions while not actually engaged in the inspection.

I. **Meal Breaks / Lunch Rooms.** Employees assigned to District and to Regional Offices and to the Headquarters Office should be accorded an uninterrupted lunch period between the third (3rd) and fifth (5th) hours of duty where lunch periods are customarily taken to the maximum extent possible. Lunch periods may fall outside the 3rd and 5th hours of duties in offices where alternative work schedule arrangements are in place. The Service shall provide clean and healthful lunch rooms for the consumption of food, to the maximum extent possible, for all Service employees. Arrangements within Districts for lunch periods will be subject to supplemental negotiations.

J. **Day Care / Housing.** The Service agrees to cooperate with other local and Federal agencies whose function it is to provide assistance to locating day-care centers and low-cost housing.

K. **GSA Facilities.** The Service, following the recommendations of the Safety and Health Committees, as provided in Article 17, Section B, will contact the General Services Administration or Management of the responsible facility to correct problems relating to safety and health that are their responsibility to correct.

L. **Immunizations.** Subject to the availability of funds, the Service will provide appropriate immunizations in accordance with established procedures for employees who have reached their fortieth (40th) birthday and have five (5) continuous years of service in the Service, at no expense to the employee.

M. **Unsafe Condition Move.** In the event of a relocation of an office that involves the safety or health of employees, the Union will be notified (in accordance with Article 9A of this agreement) in advance of such a move.

N. **Safe Staffing.** The safety and health of all employees is a foremost concern of the Service, and will be considered when employees are required to work after hours or overtime. Ensuring adequate staffing is an essential part of maintaining a safe and healthy workplace. When overtime assignments are required to ensure safety, such assignments shall be made in a fashion consistent with applicable agreements regarding overtime distribution.

O. **Employee Responsibility for Safety.** The Union will endeavor to have its members observe all safety rules and use all equipment and safeguards provided. In the course of performing their normally assigned work, employees will be alert to observe unsafe practices and conditions. If an unsafe condition is observed, the employee should report it to his or her supervisor or a member of the Union-Management Safety and Health Committee in accordance with the AM.

P. **Assistance for Handicapped Employees.** The Employer agrees to develop procedures to assure that all handicapped employees are provided appropriate assistance to evacuate buildings in case of emergencies.

Q. **Federal Employee Health Benefits (FEHB).** The Employer agrees to furnish each employee, on a timely basis, a copy of each of the following:

(1) Open Season Instructions;

- (2) Information to consider in choosing a health plan; and
- (3) Biweekly Health Benefits Rates.

Such distribution shall be made by the Employer to the extent such brochures are available to it from the normal sources of supply.

R. **TB Screening.** Subject to fund availability, the Service will conduct a voluntary screening program for Tuberculosis.

ARTICLE 18 - Injury Compensation

A. **Workplace Illness / Injury.** When employees or their representatives report an illness or injury has occurred in the performance of official duties, the employees at their request will be promptly counseled by trained personnel as to their right to file for compensation benefits and the benefits payable. The employees also shall be advised as soon as possible that compensation benefits can be used in lieu of sick or annual leave. The Service will give appropriate assistance to the employee in filing a compensation claim.

B. **Continuation of Pay / Leave.** The Service and Union understand that injury compensation cannot be paid for any period when an employee is on paid leave. If at the time disability begins the injured employee has sick or annual leave to his or her credit, he or she may decide whether to use all or part of it before applying for injury compensation benefits. An employee who suffers a traumatic injury, may obtain continuation of pay for absences caused by the traumatic injury in accordance with 5 U.S.C. 8118. If the employee should be charged for sick or annual leave (or if he or she is so charged because he or she was not informed of the possibility of injury compensation benefits) he or she may repay, in a lump sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave. This repayment would permit him or her to qualify for injury compensation provided all other conditions are met.

C. "Pamphlets and Forms

(1) **"When Injured at Work"**. The Employer agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one year.

(2) **"Authorization for Examination and/or Treatment" (CA-16)**. If the employee requires medical treatment because of a work-related traumatic injury, the supervisor should complete the front of Form CA-16 "Authorization for Examination and/or Treatment" within 4 hours of the request. In an emergency, where there is not time to complete the form, the Employer may authorize medical treatment by telephone and then forward Form CA-16 to the medical facility within 48 hours. Form CA-16 may not be used to authorize treatment for occupational disease or illness except if OWCP authorizes such use in an individual case.

D. **Document Review.** Employees will be permitted to review documents relating to their claim which the Office of Workers' Compensation Programs has authorized the appropriate Regional Human Resources Office to make available. Employees may be accompanied by their designated representative if they so desire.

ARTICLE 19 - Fitness for Duty Examination

A. **Fitness for Duty Examination.** In directing employees to undergo a fitness for duty examination, the Service will observe applicable rules and regulations.

B. **Right to Union Representation.** Employees will be advised of their rights to have a Union representative at any time allowed, or not prohibited, by Civil Service procedures. Employees may also be represented by an attorney or any other person of their choice.

ARTICLE 20 - Disabled Employees

A. **Light Duty.** If the treating physician of an incapacitated or injured employee (or a physician of the Service) certifies that the employee is capable of performing light duty work, the employee will be assigned such light duty work on a temporary basis as may be available and which the employee is capable of performing. The Parties understand that this provision does not obligate Management to create light duty work or light duty overtime

work but only to temporarily assign it to qualified employees to the extent that it is available and necessary.

B. **Restored to Duty.** An employee who suffers a compensable illness or injury and later, within one year after commencement of benefits, recovers from such injury or illness and meets the physical requirements of the position to which he or she is being assigned will be restored to duty in the former or an equivalent position in accordance with 5 U.S.C. 8151 and 5 CFR 353.307 et. seq.

ARTICLE 21 - Personnel Records

A. **Official Personnel Folders.** Official Personnel Folders (OPF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF.

B. **Copy of Documents and Right to Respond.** Each employee or his or her personal representative designated in writing will, upon request, and in accordance with the provisions of the Freedom of Information Act and/or the Privacy Act, be given a copy of any document contained in his or her OPF or Employee Performance Folder (EPF) with the exception of records restricted by law or regulation. The employee shall have the right to prepare and file on the temporary side of the OPF a concise statement of disagreement (no more than two pages) with any letter of reprimand, suspension, or demotion within ten (10) days of the effective date of the action. If the employee elects to file such a statement, a copy of the proposal (if applicable) and decision letter on which the action is based will be placed on temporary side of the OPF. When the document for which the employee files a statement of disagreement is removed from the OPF, the statement of disagreement will also be removed. Nothing in this Article shall negate an employee's right to grieve any matter.

C. **Unauthorized Disclosure.** No record, file or document filed in the OPF or EPF which is not available to the employee or his or her representative for inspection will be made available to any unauthorized person for inspection or photocopy. Such information will be made available to any authorized person only for official use.

D. **Procedures to Review.** Requests for access to OPF or EPF shall be made in writing through channels to the appropriate Headquarters or Regional Human Resources Office. The review of the OPF or EPF will normally take place at the requesting employee's place of assignment. Where this is not feasible it will take place at a site mutually agreed upon by the employee and/or Union representative and the Employer.

E. **Derogatory Material.** No derogatory material of any nature which might reflect adversely upon the employee's character or Service career will be placed in his or her OPF without his or her knowledge.

In the interest of strengthening supervisor-employee relationships, supervisors will discuss employee work performance or work deficiencies with involved employee on a timely basis.

F. **Results of Investigation.** When a formal investigation of an employee's alleged misconduct is conducted under the auspices of the Service's Office of Internal Audit (or successor), and or the investigative report of the Inspector General or Office of Professional Responsibility is reviewed by the Service and the Service determines that misconduct did not occur, the Service will notify the employee in writing. Such notification shall be provided unless prohibited by law or applicable regulation. The Union acknowledges that the Service may not be authorized under law to release or reference specific investigations conducted by an agency external to itself.

ARTICLE 22 - Performance Appraisal

A. **Authority of Arbitrator.** Pursuant to the provisions of the Civil Service Reform Act of 1978, and regulations prescribed by the Office of Personnel Management, the Parties recognize that an arbitrator has jurisdiction to hold management to carry out the provisions of Administrative Manual on Performance Appraisals, which provides the performance appraisal system for bargaining unit employees, including periodic appraisals of the job performance of employees, encouraging employee participation in establishing performance

standards, and use of the results as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

B. **Revised AMs.** In recognition of the fact that provisions of AM Chapter on Performance Appraisals are in the process of being revised, the Parties further agree as follows:

(1) when the revisions have been completed and approved by both Parties, the provisions of this Article will apply to AM Chapter on Performance Appraisals as revised; and

(2) as revised, AM Chapter on Performance Appraisals will be incorporated into this agreement as an appendix.

ARTICLE 23 - Reduction-in-Force, Transfer of Function and Reorganization

A. **Workforce Adjustments.** The Service and the Union jointly recognize that occasions may arise where adjustments of the work force may be necessary either by reduction-in-force, transfer of function, or reorganization.

B. Definitions.

(1) **Reduction-in-Force.** A reduction-in-force means the release of employees from their competitive level by separation, demotion, furlough for more than thirty (30) days, or reassignment requiring displacement; when lack of work or shortage of funds, reorganization, insufficient personnel ceiling, reclassification due to change in duties, or the need to replace a person exercising reemployment or restoration rights requires the Service to release the employee.

(2) **Transfer of Function.** Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function is virtually identical to functions already being performed in the other competitive areas affected; or the movement of the competitive area in which the function is performed to another commuting area.

(3) **Reorganization.** For the purpose of this article, "Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization that result in an employee's release from a competitive level by separation, furlough for more than thirty (30) days, demotion or reassignment.

C. **Employee / Union Notification.** Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Service, prior to official notification of employees, the Union will receive ten (10) days advance notice of any pending reduction-in-force or transfer of function or reorganization. This notice, in writing, will include the reasons for the reduction-in-force, transfer of function or reorganization, the approximate number and types of positions affected, the approximate date of the action, and an invitation to the Union to a meeting conducted by the Service to explain the reduction-in-force, transfer of function or reorganization procedures, and answer relevant questions.

D. **Minimize Adverse Impact.** The Service will attempt to minimize actions that adversely affect employees which often follow reduction-in-force by using, to the extent feasible, attrition to accomplish reductions. All reductions-in-force will comply with applicable laws and regulations.

E. **Advance Notice.** Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Service, the Service agrees to provide affected employees as much advance notice of reduction-in-force as is administratively possible but in no case will such notice be less than sixty (60) calendar days. All such notices shall contain the information required by Office of Personnel Management regulations.

F. **Applicable Laws.** All reductions-in-force, transfer of function and reorganizations will be carried out in compliance with applicable laws, and any alleged failure to comply with such laws and regulations will be processed in accordance with the grievance procedure set forth in Article 47, of this agreement, or for cases appealable to the MSPB, in accordance with their rules.

G. **Retention Registers.** Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position

offered by the Service. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected employees shall have the right to the assistance of the Union when reviewing such lists of records.

H. **Offers of Employment.** Affected employees shall have a minimum of five (5) calendar days in which to accept or reject, in writing, an offer of another position. Failure of employees to respond, in writing, to the offer within the time limits will be considered a rejection of the offer.

I. **Management Responsibilities.** The Service will:

(1) **Inform Employees.** Inform employees of plans for the transfer of function and the governing regulation after a decision has been made;

(2) **Written Notification.** Notify the employee of the proposed plan, in writing, so that the employee will be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) calendar days to accept or reject the position offered;

(3) **Placement Assistance.** Assist and counsel affected employees in seeking placement opportunities with other Federal agencies or elsewhere in the community; and,

(4) **Retirement and Severance.** Counsel employees on individual rights relating to such matters as retirement and severance pay.

J. **Minimize Adverse Impact.** The Service will attempt to minimize actions that adversely affect employees which often follow a reduction-in-force by using, to the extent possible, attrition to accomplish reductions.

In the event career or career-conditional employees are separated by reduction-in-force the Service will refer these names to the Department of Justice for inclusion on the appropriate reemployment priority list in accordance with governing regulations. Employees will be given preference for reemployment consistent with governing regulations.

The Service will provide affected employees information regarding employment possibilities with other government agencies, retirement, severance pay and other benefits available to them.

K. **Automation and Technology Changes.** The parties agree that technological changes such as automation and re-engineering are desirable for the efficient operation of the Service. However, decisions and actions concerning the impact of these changes should be made with a full awareness of employee morale. In light of this, when changes affect the classification, or status of positions covered by this Agreement, the Service will meet with the Union to discuss these changes. The Service will attempt to minimize the adverse impact of these changes by using attrition and reassignment.

L. **Transfer of Function to Other Agency.** In the event of a transfer of function of Service activity to another government entity, the Service will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.

M. **Eliminated Positions.** The Service agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Employer will be given to the employee to enable him or her to perform the duties of the new position.

ARTICLE 24 - Firearms and other Weapons

A. Authorization to Carry.

(1) **Management Right.** Determinations as to when, where, under what circumstances, and which employees shall be authorized or required to carry firearms and/or other weapons are reserved to the Employer. The Employer shall make determinations concerning firearms consistent with the requirements of the firearms policy.

(2) **Specific Authorization.** Those employees not specifically authorized by the Employer to carry firearms or other weapons are prohibited from carrying weapons in connection with their employment.

B. Employee Responsibility.

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

(2) **Policy Training.** All employees authorized to carry firearms shall be informed of the Justice Department policy concerning Department representation in Federal, State, Civil or criminal proceedings with respect to employment-related matters.

C. **Quarterly Qualifying.** Employees who are required and/or authorized to carry firearms must qualify quarterly, shall be provided ammunition, official time, and supervision/instruction consistent with outstanding policy of the Service.

D. **Effect on Inspectional Overtime.** The qualifications requirements of the Inspections firearms policy are not intended and should not be used to provide a basis for denying inspectional overtime to any eligible employee solely by reason of his or her occupation group, as provided in the applicable memorandum of understanding of October 5, 1989. The parties understand that this does not require the Employer to permit employees to carry firearms if they are not qualified to do so.

ARTICLE 25 - Uniforms and Appearance

A. **Employee Suggestions.** The Service agrees to notify the Council President within twenty-two (22) workdays of receipt in the Headquarters of all employees' suggestions regarding uniforms.

B. **Union Notification.** The Service will notify and discuss with the Union all proposed uniform changes, additions and deletions, prior to circulation to the field.

C. **Uniform Allowance.** Uniformed employees covered by this agreement shall receive a uniform allowance of not less than five-hundred dollars (\$500.00), per annum effective FY 2002 and said allowance shall increase at a rate of twenty-five dollars (\$25.00) per annum each year thereafter. These increases are contingent on continued Legislative authorization.

D. Uniform Selection.

(1) **Short or Long Sleeve / Neckties.** An officer may choose to wear either the short sleeve or long sleeve uniform shirt in order to adapt to various climatic or environmental conditions. Neckties will be worn with the long sleeved uniform shirts or with dress uniform coats.

(2) **Rough Duty Uniform.** The decision as to when to wear a rough duty uniform is a matter appropriate for local supplemental negotiations under Article 50.

(3) **Leather / Synthetic Equipment.** All leather goods for uniform wear shall be made of high quality, black, untooled leather or a similar synthetic material when the employee wears the rough duty uniform. Such synthetic material gear will be purchased from the uniform catalogue. Leather equipment shall be kept dyed and shined, and shall be replaced when it is cracked or worn out. All leather goods for plainclothes wear shall be well made of high quality leather and maintained in good serviceable condition. In all cases, the style and design of holsters and other leather goods will meet the specifications contained in Service regulations.

E. **Uniform Inspection.** Bringing all uniform items to formal inspections shall not be necessary after all required uniform items have been purchased and inspected by the appropriate supervisory officer. Thereafter, officers may be required to appear for formal inspection semiannually, once in winter dress uniform and once in summer dress uniform.

F. Uniformed Officers

(1) **Groomed Appearance.** Uniformed immigration officers need to maintain a professional and neatly groomed appearance. Accordingly, the following standards shall apply to all uniformed personnel.

(a) **Hair Grooming.** Head and facial hair, including sideburns and moustaches shall be neatly trimmed and clean, and shall neither interfere with the wearing of the required uniform nor constitute a safety hazard or an impediment to the employee's ability to properly perform his or her assigned duties.

(b) **Hair Length.** Hair shall not be worn below the bottom of the outer shirt collar (as measured when the officer is standing), nor cover any portion of the eyebrows.

(2) **Facial Hair.**

(a) **Beards.** Beards shall not be permitted, except for religious and/or documented medical reasons.

(b) **Sideburns.** Sideburns may not extend below the bottom of the earlobe, and may not be more than $\frac{3}{4}$ " wider than at their narrowest point.

(c) **Moustaches.** Moustaches may not extend more than $\frac{3}{4}$ " sideways from the corner of the mouth and/or more than $\frac{1}{2}$ " down from the corner of the mouth. Moustaches may not touch the lower lip when the mouth is closed. Handlebar moustaches are not permitted.

(3) **Jewelry.** Necklaces (other than a small portion of the chain) shall not be visible. "Choker" chains are not permitted.

(4) **Tattoos.**

(a) **Obscene / Offensive.** Obscene, racially/ethnically derogatory and/or criminal gang tattoos shall not be visible.

(b) **Grievance Procedures.** Any disputes concerning whether a tattoo falls within the foregoing parameters may be grieved and referred to expedited arbitration in accordance with Article 48. Pending the outcome of the arbitration, such tattoos shall not be visible.

G. **Fatigue Clothing.** Management will provide special agents and deportation officers fatigue clothing suitable for the protection of civilian clothing when working in environments which warrant such protection. Fatigue clothing will be stored at the official duty stations.

H. **Female Uniforms.** Female Immigration Inspectors and female information officers shall be allowed the option of wearing either the authorized uniform skirt or uniform slacks. The color of women's hose will be the natural flesh tones of the wearer.

I. **Raid Jackets / Vests.** An adequate supply of raid jackets and bulletproof vests will be maintained at the work site consistent with the Service's soft body armor policy.

J. **Non-uniformed Beards.** Non-uniformed employees will be allowed to have a neatly trimmed beard of such a length as to not present a safety hazard.

K. **Non-uniformed Appearance.** Non-uniformed employees will maintain a professional appearance, consistent with norms prevailing in the local community. Employees shall be attired in a manner appropriate for their position and the duties being performed, such as office duty, court duty, field duty, rough duty or undercover assignments. The parties recognize and agree that this provision shall not preclude employees from participating in casual dress days such as "dress down Fridays" where such practices now exist or are subsequently established through local supplemental bargaining.

L. **Nametags.** The parties recognize that officer safety is matter of critical importance. When management becomes aware that an employee, as a result of the performance of official duties, has been subjected to threats, harassment or other conduct leading to a reasonable fear on the part of the employee for the safety of the employee and/or his or her family, the Employer shall take action as follows.

(1) **Numbered Name Plate.** The Employer will promptly discuss the matter with the employee and shall authorize the use of a numbered badge or numbered name plate in lieu of a regular nametag for a period of not less than 120 days while the incident is reviewed.

(2) **Extensions.** At the end of 120 days, management may extend the authorization to use the numbered identification in lieu of the nametag in 60 day increments pending the outcome of the review.

(3) **Other Actions.** The agency may also take such other action as may be appropriate, including, but not limited to, reimbursing the employee for the cost of an unlisted telephone number, contacting local and Federal law enforcement authorities and/or relocating the employee if the employee and Service agree that such action is necessary.

(4) **Written Statement.** As soon as practical, the employee will provide management with a written statement outlining the threat, which will be used by management as the basis for conducting a review.

ARTICLE 26 - Travel

A. **Reimbursement.**

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

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

B. Definitions.

(1) **"Regular duty station"** is defined as: (1) the work location (such as station headquarters office, border crossing, airport) to which an employee is assigned permanently or, (2) if 50 miles or less from the employee's official duty station, any work location to which the employee is assigned as part of a predetermined rotational schedule.

(2) **"Temporary duty station"** is defined as any job site which is not the employee's regular duty station. The parties agree that the definition of temporary duty station is applicable for determinations of mileage and other related travel expenses subject to reimbursement.

(3) **"Official duty station"** is defined as the area, or, in the case of large reservations, the established subdivision thereof having definite boundaries within the corporate limit of the city or town in which the employee is stationed, but if not stationed in an incorporated city or town, the official duty station is the reservations, station or established area within which the regular duty station is located. A regular duty station and a temporary duty station may both be located within the official duty station.

C. Travel Status.

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

(2) **Compensable Hours.** Time spent in a travel status away from the official duty station of any employee is not hours of employment unless it satisfies the criteria specified in governing law and regulations.

D. **Regular Commute.** It is the responsibility of employees to place themselves at their regular duty station and return therefrom at their own expense.

E. Local Travel / Temporary Duty Station.

(1) **Local Mileage.** After an employee places himself or herself at his or her regular duty station, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the employer. In this regard, once an employee arrives at his or her regular duty station, he or she will receive mileage reimbursement for authorized use of a privately-owned vehicle in subsequent travel to any temporary duty station. For purposes of this article, "mileage" includes road and bridge tolls, ferry/fares, and parking fees, as well as the authorized mileage rate for the distance traveled.

(2) **Home to Temporary Station.** When an employee travels by privately-owned vehicle from his or her home to a temporary duty station and/or from a temporary, duty station to his or her home, the employee will be reimbursed for any, mileage in excess of his or her normal round trip from his or her home to his or her regular duty station.

(3) **POV Examples.** Examples of the rules set forth in subsections (1) and (2), above, for travel by privately-owned vehicle, include:

(a) Residence to Temporary Duty Station. When an employee travels from his or her residence to a temporary duty station and then returns home, the employee shall be reimbursed for actual mileage in excess of the normal round trip distance between his or her residence and his or her regular duty station.

(b) Regular Duty Station to Temporary Duty Station. When an employee travels from his or her residence to his or her regular duty station; then travels from his or her regular duty station to a temporary duty station back to his or her home, the employee shall be

reimbursed for all distance traveled after departing from his or her regular duty station which exceeds the distance between his or her regular duty station and his or her home.

(4) **Established Rotational Assignments Excepted.** Subsections (1) and (2), above, do not apply to or cover established rotational assignments through different duty stations within fifty (50) miles of the employee's official duty station. The site of each rotational duty assignment shall be the employee's regular duty station for the duration of the employee's rotational assignment at that specific job site. Work- locations of more than fifty (50) miles from the official duty station shall be considered temporary duty stations for the purpose of entitlement to reimbursement of travel expenses.

(5) **Overtime Assignments.** The local travel reimbursement policies set forth in subsections, (1) and (2), above, apply to travel to overtime assignments during regular hours of work.

F. Per Diem.

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

(2) **Partial Per Diem.** In accordance with subsection (1) above, employees performing travel outside the city limits of their regular duty station for a period of less than twenty-four (24) hours but at least twelve (12) hours without incurring lodging costs are entitled to partial per diem.

G. Travel Advances.

(1) **Sufficient Notice.** Travel or any extension thereof will, to the maximum extent possible, be authorized or ordered in advance in sufficient time for the employee to have in his or her possession a travel advance prior to starting such travel.

(2) **Government Credit Card Advance.** Those employees who have a valid government credit card for travel purposes are to use such credit cards to obtain necessary and appropriate cash advances.

(3) **Imprest Fund.** In cases where travel is not authorized or ordered in sufficient time for the employee to obtain a travel advance, the Service will attempt to accommodate the employee from the Imprest Fund. When an employee is authorized or ordered to travel without sufficient time to request and receive a travel advance, and funds cannot be advanced from the Imprest Fund at his or her duty station, he or she will be accommodated, if possible, from the Imprest Fund at the location to which he or she is detailed.

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

I. **Accommodate Handicapped Employees.** Although handicapped employees may be directed to perform official travel, there are situations in which the assistance of an attendant or escort must be provided if the travel is to be accomplished. Under such circumstances, the transportation and per diem expenses of an attendant will be allowed as necessary expenses for travel.

J. **Ordered Overtime Travel.** An employee may be reimbursed for taxi cab fares, plus tip, for transportation between office and home incident to officially ordered overtime provided all of the following conditions are met:

(1) **Concurrent Authorization.** Reimbursement is authorized concurrently, with the ordering of overtime work;

(2) **Official Business.** The employee performed overtime duty incident to the conduct of official business at the designated post of duty;

(3) **Dependent on Public Transport.** The employee is dependent on public transportation incident to the officially ordered overtime.

(4) **Infrequent Public Transport / Darkness.** The travel is performed during hours of infrequently scheduled public transportation or darkness.

K. **Government Owned Vehicles.** It is understood by all employees that in the use of government-owned or government-leased automobiles, there must be no intermingling of private and public interest. Failure to utilize government-owned or government-leased vehicles for purposes which are in the interest of the government or for its benefit, subjects employees to penalties.

ARTICLE 27 - Overtime - (Other than Uncontrollable Overtime and LEA)

A. **Fair and Equitable Rotation.** Overtime assignments will be distributed and rotated fairly and equitably among eligible and qualified employees. Supervisors shall not assign overtime work to employees as a reward or a penalty, but solely in accordance with the Service's need. Complaints or disagreements on distribution of overtime shall be processed in accordance with the negotiated grievance procedure.

B. **Performance of Duties.** All employees in an overtime status will perform the duties of the position to which assigned. They will wear the necessary uniform and identification that the duties of the position require.

C. **Maintain Records.** Necessary records to comply with this provision will be maintained at each duty station and made available to all employees upon request.

D. **Laws, Regulations, and Policies.** The Service agrees to continue to comply with applicable regulations, laws and policies in the payment of overtime to employees.

E. **Effect on Performance Appraisal.** The participation or non-participation of an employee in overtime work, where such work is voluntary, shall not in any manner reflect adversely on his or her appraisal.

F. **Reopener for Inspection Overtime.** Should any higher authority alter, amend, or change Immigration Inspection Overtime laws, this part may be reopened during the life of this Agreement.

G. **Overtime Cap.** Where the local parties do not have either an agreement or practice capping overtime earnings, management may restrict full participation in overtime assignments for the remainder of the overtime year by any employee whose projected overtime earnings as indicated on the Overtime Watch List Report (OT-732) at or after September 15th are within \$500.00 of the statutory cap. Procedures for restricting full participation in overtime shall be bargained locally.

H. **Overtime Hours Limit.** No employee shall be required to work more than 8 hours of inspectional overtime (including rollback) on a regular work day or more than 12 hours of overtime (excluding rollback) on a Sunday, Holiday, or other day on which the employee is not regularly scheduled to work when there are other qualified and eligible employees who are available and willing to work.

I. **Break in Overtime Hours.** Breaks in working hours of more than one (1) hour shall not be scheduled or assigned in any overtime day absent the agreement of the affected employee.

J. **Light Duty.** An employee on light duty is not precluded from participating in overtime if there is a need for those light duties to be performed on an overtime basis.

K. **Overtime Assignment Procedures.** The Parties recognize and agree that procedures, such as overtime wheels, for equitably distributing overtime assignments among eligible employees are matters appropriate for local bargaining.

ARTICLE 28 - Details and Temporary Duty Stations

A. Procedures to Assign.

(1) **Management Right.** The Employer retains the right to detail employees.

(2) **Limits.** The Employer shall exercise this authority:

(a) **Law, Regulation, and Contract.** In accordance with applicable law, appropriate regulations, and this Agreement;

(b) **Advance Notice.** By giving as much advance notice as possible to employees selected for detail.

(c) **Utilize Volunteers.** Absent a particularized need for specific skills or qualifications the Service shall utilize volunteers before requiring employees to participate on details involuntarily unless management determines that there is a need for a specific volunteer to continue to perform his regular duties.

B. **Definitions.** For the purposes of this Article, the following definitions apply:

(1) **Temporary Assignment:** The change of an employee from one position, work location, or post of duty for a fixed or limited duration of time, upon the expiration of which the employee is expected to return to the original position, work location or post of duty. A temporary assignment may be in the form of either a temporary promotion or a detail.

(2) **Detail:** Temporary assignment of an employee to a different position, work location, or post of duty without change of pay regardless of grade, for a specified period, with the employee returning to his or her assigned position at the end of the detail.

(3) **Rotation:** The recurring assignment of employees to different work locations, work shifts and/or tours of duty within the confines of the employee's work location or other locations to which the employees are regularly assigned.

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

D. **Record of Detail / Personal Favoritism.** The parties recognize that details to other positions and activities are necessary and integral part of mission accomplishment. Details to other activities or to higher graded positions for fifteen (15) consecutive workdays or more will be documented by memorandum to the employee with a copy to his or her Official Personnel Folder. Details will not be made on the basis of personal favoritism. Should the requirements of the Service necessitate an employee's being detailed to a lower position, this will in no way adversely affect the employee's salary, classification or job standing. If an employee alleges that a detail violates governing regulations or this Agreement, he or she may file a grievance under the negotiated grievance procedure.

E. **Volunteer Lists.** Employees who are interested in participating in details at other than their regular duty station should make their interest known to local supervisors. The Employer will maintain and refer to employee requests for voluntary details. Absent a particularized need for a specific skill or qualification, employee volunteers will be considered as the primary source for selecting employees for details.

F. **Undercover Employees.** Management will ensure that employees involved in undercover operations will not be assigned to activities that are likely to compromise their identity.

G. **Time Limit.** Except for training courses, and details outside the 50 States, details away from the normal duty station will not exceed 45 calendar days, unless the employee volunteers for a longer period or management determines that there is a valid operational need for a specific employee to continue on the detail.

H. **Union Representatives.** Management will make every effort to avoid placing a Union representative on a detail that would prevent that official from performing his or her representational functions, unless the employee volunteers for the detail.

I. **Selection Procedures.** The following procedures shall apply when the service offers temporary assignments, noncompetitive details or rotations, of forty-five (45) consecutive workdays or more to members of the bargaining unit:

(1) **Volunteers.** The Service will canvass the qualified employees for volunteers.

(2) **Selection.** Selection will be made from qualified volunteers.

(3) **Local Bargaining.** Procedures for selecting from qualified volunteers are a matter appropriate for bargaining as part of a local supplemental agreement.

ARTICLE 29 - Hours of Work

A. **Determination of Work Hours.** It is agreed that except in cases of emergency, or where otherwise authorized by law or applicable government-wide rule or regulation, or where the Service determines that it would be seriously handicapped in carrying out its functions or that the cost would be substantially increased, it will provide the following, consistent with 5 CFR 610.121:

(1) **Basic Workweek.** The administrative workweek shall be seven (7) consecutive days, Sunday through Saturday. The basic workweek shall be scheduled on five (5) days, Monday through Friday, where possible and the two (2) days outside the basic workweek shall be consecutive.

(2) **Inspections Workweek.** The basic workweek for Inspectors shall be scheduled on five days, Monday through Saturday, including Holidays, in accordance with the AM.

(3) **Basic Workday.** The basic non-overtime workdays shall not exceed eight (8) hours, excluding any non-paid meal period.

(4) **Effect of Holidays.** The occurrence of holidays shall not affect the designation of the basic workweek.

(5) **Posted Schedules / Individual Changes.** Assignments to tours of duty shall be posted 5 days in advance in the appropriate work area covering a 4 week period. Individual changes in the tours of duty schedule or assigned shifts shall be posted in the work area no later than one (1) week prior to the beginning of the workday affected. Exceptions to this provision may be made where there is mutual agreement between the employees and supervisors involved. Individuals involved in a change of tour shall be notified of the reasons, including the circumstances of the change.

(6) **Break Between Shifts.** The Service agrees to make every effort to schedule at least 16 hours between changes in shifts, unless the parties agree locally to a lesser period.

(7) **Voluntary Schedule Adjustments.** Employees who have been required to work greater than sixteen (16) consecutive hours may request a schedule adjustment to allow for rest and recuperation. Consistent with operational requirements, Management shall make every effort to accommodate such requests. It is understood that accommodation of such requests and such schedule adjustments may result in an apparent loss of overtime.

(8) **Break in Work Hours.** Breaks in working hours of more than one (1) hour shall not be scheduled in any basic workday.

(9) **Shift Trades.** Where mutually agreeable to all employees affected, employees may trade shifts or tours of duty out of the normal rotation, consistent with the needs of the Service. Supervisors will not disapprove such mutually agreeable shift trade requests except for valid operational reasons.

(10) **Meal Breaks / Lunch Rooms.** Employees assigned to District and to Regional Offices and to the Headquarters Office should be accorded an uninterrupted lunch period between the third (3rd) and fifth (5th) hours of duty where lunch periods are customarily taken to the maximum extent possible. Lunch periods may fall outside the 3rd and 5th hours of duty in offices where alternative work schedule arrangements are in place. The Service shall provide clean and healthful lunch rooms for the consumption of food, to the maximum extent possible, for all Service employees. Arrangements within Districts for lunch periods will be subject to supplemental negotiations.

(11) **Duty Rosters.** Establishment of duty rosters for employees who may be called back to duty is an appropriate subject for local bargaining.

B. **Definitions.** For the purposes of this Article, the parties understand that:

(1) **Tours of Duty.** Tours of duty refers to an employee's basic workweek, i.e., the days and hours within which the employee is expected to be on duty, e.g., day shift Monday through Friday; and

(2) **Shifts.** Shifts refer to the particular hours which define an employee's daily work schedule, e.g., the evening shift which starts at 2 p.m. and ends at 10 p.m.

C. **Alternative Work Schedules**

Establishment of Alternative Work Schedules. As an exception to other provisions of the contract relating to the establishment of work hours, Directors who have determined that the establishment of an alternative work schedule for any work unit has the potential of improving productivity and providing greater service to the public in accordance with 5 U.S.C. Section 6120, may establish alternative work schedules consistent with this Article. Management is responsible for obtaining any necessary higher agency approval for the establishment of such a schedule. The

terms and conditions of employee participation (e.g., whether mandatory or voluntary) in alternative work schedules are to be determined through local consultations and negotiations as provided below and as consistent with Article 50.

(2) Concepts.

(a) Definitions:

Alternative Work Schedule

(AWS) means both flexible work schedules and compressed work schedules.

Compressed Work Schedule

means a schedule in which a full-time employee completes the 80-hour bi-weekly basic work requirement in less than ten workdays or a part-time employee completes a basic bi-weekly work requirement of less than 80 hours in less than ten workdays. For purposes of this contract, the compressed work schedule is commonly one in which full-time employees are scheduled to work four ten hour workdays each week, scheduled on four of the workdays, or a part-time employee with a fixed schedule is scheduled to complete that schedule over four of the workdays, or the commonly practiced 5-4-9 system, or other compressed work schedules.

Flexible Work Schedule

means a schedule in which employees are allowed to determine their starting and ending time within the limits set by the Service in accordance with Article 50.

(b) Legal Restrictions. The parties recognize that the law provides that the Service may not establish such a schedule or continue such a schedule if the schedule would result in:

- (i) A reduction in the productivity of the agency;
- (ii) A diminished level of services furnished to the public by the agency; or
- (iii) An increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing an alternative work schedule).

(c) Inspections Limitations. Because of the statutory restrictions, the parties recognize the following requirements for scheduling:

- (i) The establishment of the hours of the workday in an alternative work schedule for inspectors must be consistent with the actual inspectional requirements of the unit or port of entry. For example, if most arrivals occur between three and seven p.m., the required workday should encompass these normally required inspections without the payment of overtime.
- (ii) The schedules of inspectors over the administrative workweek should to the maximum extent be allocated over the available workdays to ensure that inspections on Monday through Saturday during the basic workday do not require the payment of overtime.

(3) Overtime. It is understood by the parties that, under law, none of the hours that constitute an alternative work schedule may be compensated with, or be credited for purposes of premium pay, including administratively uncontrollable overtime, inspectional overtime and Fair Labor Standards Act compensation. In accordance with applicable law, inspectional overtime remains the basis for compensation of inspectors conducting appropriate inspectional operations on Sundays and holidays.

(4) Consultations. Where local management or the Local Union believes that productivity and services to the public will be promoted by the establishment of an alternative work schedule, they shall informally consult with the other party about proposed arrangements after providing written notice. Assuming the parties find the arrangements acceptable, such a schedule may be established without the necessity of negotiating an agreement.

(5) Negotiations. If, after consultations, the Local Union objects to the establishment or termination of an alternative work schedule, management may

propose the establishment or termination of such a schedule in accordance with Article 9A. If management objects to the establishment of such a schedule, the Local Union may propose negotiations over such a schedule in accordance with Article 50 Supplemental Negotiations. In any negotiations over the establishment of an alternative work schedule, the parties shall be governed by the provision of subsection B of this Article and all requirements of applicable regulations and the law.

ARTICLE 30 - Formal Meetings and Investigative Interviews

A. **Formal discussions.** The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Service and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.

B. Investigatory Interviews

(1) **Weingarten Rights.** The Service will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Service in connection with an investigation if:

(a) Reasonable Belief. The employee reasonably believes that the examination may result in disciplinary action against the employee; and

(b) Employee Request. The employee requests representation.

(2) **Annual Notice.** The Employer will advise employees in the unit of this right annually.

C. **Written Memorandum.** In some circumstances, a written memorandum may be used as a substitute for an oral examination in connection with an investigation. In such cases, where the criteria of paragraph B (1) of this article are met, the employee is entitled to the opportunity to consult with a Union representative prior to completing the memorandum.

D. Written Notice / Witnesses.

(1) **Office of Internal Audit.** In conducting investigations under the auspices of the Office of Internal Audit (or successor), the Service in taking a sworn statement from employees based on allegations which could result in disciplinary action against the employee, will provide sufficient advance written notice to the subject of the interview to allow them time to secure Union representation if they so desire. The failure to obtain representation, or adequately confer with the representative, will not delay the interrogation by more than 48 hours from the time the employee receives such notice. The Union will promptly designate its representative and make reasonable efforts to minimize delay. Upon request, a reasonable extension of time will be granted when the representative cannot be present.

(2) **Witness.** An employee who is requested to give testimony against another employee and who refuses to do so voluntarily will be entitled to representation prior to the time the Service initiates proceedings to compel such testimony or institutes charges of insubordination.

E. **Scheduling of Interview.** Interviews in connection with misconduct investigations may be conducted at any reasonable hour. However, where an employee is directed to appear for an interview, all hours spent in the interview shall be compensated at the appropriate rate.

F. **Travel for Interview.** When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Service will pay the travel and per diem for the employee.

ARTICLE 31 - Disciplinary and Adverse Actions

A. **Discipline Definition.** The disciplinary actions covered by the provisions of this Article are written reprimands and suspensions of fourteen (14) days or less.

B. **Adverse Action Definition.** Adverse actions covered by the provisions of this Article are removals, suspensions for more than fourteen (14) days, reductions in pay, reductions in grade, and furloughs of thirty (30) days or less.

C. **Oral Admonishment.** An oral admonishment will not normally be used as a first step in progressive discipline, unless it is confirmed in writing and a copy furnished to the employee.

D. **Union Representative / Information.** When the Union is designated as the representative in a disciplinary or adverse action, the employee will furnish to the Service, in writing, the name and address of the person to whom a copy of all correspondence addressed to the employee relating to the case shall be mailed or delivered. A copy of correspondence addressed to the employee will be furnished to the designated person by mail to the address provided or by personal delivery. The employee will be provided a complete copy of the disciplinary file on which the proposed action is based at the time the proposal is served. It is understood that all witnesses' personal information will be redacted.

E. **Addressee.** If the employee elects not to be represented by the Union, correspondence will be addressed to the employee and it will remain his or her prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.

F. **Unfounded Complaints.** No record of a complaint, determined to be unfounded or not investigated, will be placed in the employee's Official Personnel Folder. Such complaint may, in the interest of the employee and the Service, be maintained in a subject file but will not under any circumstances be considered as a factor in connection with any disciplinary action, promotion, etc. Such subject file will be maintained in accordance with the Service records retirement program. An employee will be advised of such a complaint when it is maintained in a subject file by local management unless the release of such information is prohibited by law or relates to a pending or ongoing investigation.

G. **Financial Obligations.** It is recognized that all employees are expected to pay promptly all just financial obligations. A just obligation is one which the employee acknowledges as being just, one issued by law such as state and local taxes, or one which has been reduced to a judgment by court means. In the event of a dispute as to the validity of a debt between an employee and any private individual or firm, the Service will take no action (other than to comply with a valid court order) until the dispute has been resolved. This would not apply in those cases where it is shown the employee has been involved in fraud or deceptive practices.

H. **Discipline / Adverse Action Procedures.**

(1) **Just Cause.** The parties agree that letters of reprimand, suspensions of less than fifteen (15) days, and adverse actions will be taken only for appropriate cause as provided in applicable law. Such cause, in the case of actions which are not based on unacceptable performance, shall be just and sufficient and only for reasons as will promote the efficiency of the Service.

(2) **Letter of Reprimand.** When a letter of reprimand is issued, the employee shall have the right, within ten (10) days, to prepare and submit a concise statement (no more than two pages) of disagreement. The Employer will consider the statement, and if appropriate modify, or withdraw the letter of reprimand. If the letter of reprimand is not withdrawn the statement of disagreement will be filed with the letter of reprimand on the temporary side of the OPF.

(3) **Notice of Proposed Action.** An original and one (1) copy of all proposed notices of disciplinary actions, including adverse actions, shall be furnished to employees.

(4) **Timeliness.** The Employer shall furnish employees with notices of proposed disciplinary actions at the earliest practicable date after the alleged offense has been committed and made known to the Employer. The parties recognize that

certain investigations are beyond the administrative control of the Employer. Where investigations have been unduly prolonged, regardless of whether they are within the administrative control of the Employer, a reasonable extension of the response period to the proposed disciplinary action will be granted by the Employer, upon the request of the employee or his or her representative.

I. **Appeal.** If employees believe that they have been unfairly disciplined, they may:

(1) **Reprimands and Short Suspensions.** With regard to written reprimands and suspensions of 14 days or less: file a grievance as stated below.

(2) **Adverse Actions.** With regard to adverse actions: file either a grievance as stated below or file a statutory appeal. Once an employee (or the Union on behalf of the employee) has filed a written grievance or a timely statutory appeal, he or she may not pursue the other procedure.

J. **Grievance.** If an employee wishes to pursue a grievance concerning a written reprimand or the final decision regarding a suspension or an adverse action, the Parties recognize and agree that:

(1) **Reprimands.** In the case of an official reprimand, the grievance process shall begin with Step III of Article 47E of this Agreement and continue through the successive steps.

(2) **Suspension or Adverse Action.** In the case of a suspension or adverse action, the grievance process shall begin at the arbitration step in accordance with the procedures set forth at Article 48 provided that the Union invokes arbitration after being so requested by the employee (if the Union declines to invoke arbitration, the employee has no further grievance rights under the negotiated grievance procedure). However, where the Union declines to invoke arbitration, the employee still retains whatever statutory appeal rights they might otherwise possess. The Service Notice of Decision shall represent the Service's final decision referred to in Section A of Article 48.

(3) **Appeal Arbitrator.** An employee may seek review of an arbitrator's award in an appealable adverse action to the Merit Systems Protection Board according to the rules and regulations of the Board pursuant to 5 U.S.C. 7121(d).

(4) **Appeal Performance Based Action.** In arbitration over adverse actions for performance or efficiency under 5 U.S.C. Sections 4303 and 7512 (Civil Service Reform Act of 1978), an arbitrator shall be governed by Section 7701(c) of Title 5. That provision provides that an action shall be affirmed if for unacceptable performance, if supported by substantial evidence; and affirmed if for efficiency, if supported by the preponderance of the evidence.

K. **Unwarranted Discipline.** Any disciplinary or adverse actions and all copies thereof which are later found to have been unwarranted shall be removed from the official file of the employee and destroyed and the employee so notified in writing.

F. **Investigative Interview Travel.** When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Service will pay the travel and per diem for the employee.

ARTICLE 32 - Actions Based Upon Unacceptable Performance

A. **Performance Based Actions.** The actions covered by the provisions of this Article are: reduction in grade and removal for unacceptable performance pursuant to 5 U.S.C. 4303, for employees in bargaining unit positions at the time the action was initiated.

B. **Performance Improvement Plan.** Before a performance based action is taken against an employee, the employee will be given an opportunity to improve his or her performance through the issuance of a written Performance Improvement Plan (PIP). The PIP will include the following:

(1) **Identify Problems.** Identification of each critical element which is being performed at an unacceptable level.

(2) **Explain Standards.** An explanation of what the employee must do to bring his or her performance in the critical elements so identified up to an acceptable level.

(3) **Allow Improvement.** A reasonable period of time commensurate with the employee's duties and responsibilities in which to improve performance, but not less than forty-five (45) days. And

(4) **Provide Assistance.** Where appropriate, the types of assistance that will be provided to the employee in improving his or her performance.

C. **Advance Written Notice.** An employee whose reduction in grade or removal under this Article is proposed shall be provided with at least a thirty (30) day advance written notice which identifies:

(1) **Identify Unacceptable Performance.** Specific instances of unacceptable performance;

(2) **Identify Critical Elements.** The critical elements of the employee's position involved in each instance of unacceptable performance;

(3) **Time to Review and Respond.** That the employee will be provided a reasonable amount of official time to review material on which the action is based and to prepare an answer orally and in writing;

(4) **Right to Representation.** That the employee will be given the right to be represented by the Union or an attorney or other person of his or her choosing in responding to the proposed action; and

(5) **Written Decision** That the Service will provide a written decision with specific reasons for the action taken within thirty (30) days after the expiration date of the notice period.

D. **Established Performance Standards.** No bargaining unit employee will be subject to removal or reduction in grade based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical elements of his or her position.

E. **Right to Review Documents.** Where an action is proposed under this Article, the employee or his or her representative will be provided, upon written request, with a copy of those portions of written documents which contain information and evidence on which the action is based. The Employer will also supply the employee or his or her representative, upon written request, with a copy of those portions of written documents favorable to the employee which are directly related to the specific instances on which the unacceptable performance is based.

F. **Performance Based Action Procedure.**

(1) **Notice, Information and Response.** An employee against whom an action is proposed under this Article shall be provided with ten (10) days, from receipt of notice of the proposed action and all information as set forth in Section E above, to review material relied upon by the Employer and answer the proposed action orally and/or in writing. Any request for data must be submitted within 10 days of receipt of the proposal. The employee may submit affidavits and/or other documentary evidence in support of the answer.

(2) **Decision.** An official who sustains the proposed reasons against an employee in an action based on unacceptable performance will set forth his or her reasons for the decision.

G. **One Year Limit.** The final decision in the case of a proposed action to either remove or downgrade an employee based on unacceptable performance will be based on those instances of unacceptable performance by the employee which occurred during the one (1) year period ending on the date of the advance notice letter.

H. **Record Retention.** If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for three (3) years from the date of the advance written notice letter, any entry or other notation of the

unacceptable performance for which the action was proposed shall be removed from any record relating to the employee.

I. **Final Decision.** The final decision regarding a proposed action based on unacceptable performance will be concurred in by an official in a higher position than the official who proposed the action. The final decision letter shall set forth the basis of the decision.

J. **Appeal.** If the Employer's decision is to effect an action based upon unacceptable performance, the employee may appeal the decision to the Merit Systems Protection Board in accordance with the applicable law or under the grievance/arbitration procedures as provided in this Agreement. Under no circumstances may an employee appeal an action under this Article to both MSPB and the grievance/arbitration procedures in this Agreement.

ARTICLE 33 - Career Ladder Promotions and Within Grade Increases

A. **Promotions.** Career ladder promotions shall be processed in a timely manner once an employee has met the time-in-grade and qualification requirements and the supervisor has determined the employee has acquired the knowledge, skills and abilities to work at the next higher level. Once these criteria are met, the promotions will be made effective at the beginning of the following pay period. If the determination is delayed, and that determination is that the employee possessed the necessary knowledge, skills and abilities on the date of eligibility, the promotion will be retroactive. Promotions will be processed retroactively if a delay occurs after the supervisor's determination.

B. **Grade Increases.** A within-grade increase shall be effective on the first day of the first pay period following the completion of the required waiting period. There are two exceptions:

(1) **Not Acceptable Level of Competence.** When there has been a determination that the employee is not performing at an acceptable level of competence (ALOC); or

(2) **Delayed Determination.** When the employee's ALOC is delayed because the employee

(a) **90 Day Review.** Has not served 90 days under performance standards; or

(b) **New Position.** The employee was reduced in grade because of poor performance and has not served 90 days under performance standards in the new position.

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

C. **Performance Assistance.** When the Service's evaluation leads to a conclusion that the employee's work is not at an acceptable level of competence for a within grade increase, the Employer will be required to take the following actions:

(1) **Identify Problems.** Explain each aspect of performance in which the employee's performance falls below an acceptable level and relate deficiencies to specific job elements and performance standards.

(2) **Explain Requirements.** Explain what is required to meet the acceptable level and what the employee must do to elevate his or her performance to that level,

(3) **Warn of Consequences.** Warn the employee that if performance does not improve to the acceptable level, the within grade increase, for which the employee otherwise would be eligible, will be denied.

(4) **Provide Assistance.** Provide assistance in improving performance rated below the fully successful level. Such assistance may include formal training, on-the-job training, counseling, or closer supervision. Within-grade increase determinations will be made in accordance with regulations, to include providing the employee with a written notification, when a negative determination is made, stating the reason(s)

for the determination and what the employee must do to improve performance to an acceptable level.

ARTICLE 34 - Quality Step Increase

A. **Definition.** "Quality Step Increase" means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with Section 5336 of Title 5, United States Code. The term "quality step increase" is used in Section 5336 of Title 5, United States Code.

B. **Purpose.** The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

C. **Consideration.** To be considered for a quality step increase, an employee's current rating of record must be outstanding and the employee must not have received a quality step increase within the preceding 52 consecutive calendar weeks.

D. **Determination.** A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved.

E. **Effective Date.** A quality step increase shall be effective on the first (1st) day of the first (1st) pay period following the approval date.

F. **Union Consultations.** The Union may raise questions and concerns with regard to the performance rating system at Regional consultations pursuant to Article 10 of the contract.

ARTICLE 35 - Annual Leave

A. **Right to Use.** Use of accrued annual leave is a right of the employee and not a privilege.

B. **Earn and Accrue.** Annual leave will be earned and accrued in accordance with applicable laws and regulations.

C. **Request Procedures.** All requests for annual leave in excess of five (5) days will be requested in advance and in writing (on Standard Form 71), where possible. Leave use will be recorded on the Time and Attendance Report and will be documented in writing on the SF-71, the Attendance Record Sheet or other document established by past practice or under Article 9 or Article 50.

D. **Timely Leave Approval.** Consistent with the needs of the Service, annual leave which is requested in advance will be approved in a timely manner.

E. **Procedure to Schedule in Advance.** Each employee shall be responsible for planning and making timely requests for his or her annual leave in accordance with his or her personal desires. Leave preferences shall be submitted in order that leave schedules can be established and posted in a conspicuous place in the facility no later than February 15 of each calendar year. Employees who do not request leave by February 15 will be allowed to take leave at a later date, provided it does not interfere with the annual leave schedule. Requests for annual leave of five (5) days or less need not have been included in the annual leave schedule provided all five (5) days are within one (1) administrative workweek.

F. **Priority Approval.** When all requests for annual leave for a given period cannot be granted, the supervisor shall give consideration to the following factors:

(1) **Accrued Leave.** Amount of leave to the employee's credit.

(2) **Seniority:** (For the purpose of the Article, seniority is defined as the length of I&NS service commencing with the first (1st) day of employment.)

(3) **Children's Vacation.** Whether employees have children of school age and cannot benefit from vacations taken when their children are in school.

(4) **Previous Requests.** Whether employees were able to take leave at desired time during a previous scheduling period.

G. **Three Consecutive Weeks.** The Employer agrees to grant annual leave in a manner which permits each employee, if he or she wishes, to take at least three (3) consecutive weeks of annual leave each year.

H. **No Seasonal Exclusion.** In no case will any particular time of the year or season be excluded from consideration for the granting of annual leave only because it is a particular time or season of the year.

I. **Religious Holiday.** An employee may be granted a request for annual leave for an established religious holiday of his or her faith which occurs on a regularly scheduled workday of the employee's basic workweek, in accordance with provisions set forth in Section D of this Article.

J. **Reason for Leave.** Employees are not required to specify the reason for a request of annual leave when such reasons are of a personal nature unless the employee is requesting leave under the emergency procedures of Section L below. Such leave will be granted in accordance with provisions of Section D of this Article.

K. **Canceled / Changed Leave**

(1) **Employee Initiated Change.** Any employee initiated change in approved vacation schedule cannot be made without the concurrence of all employees whose vacation schedule would be affected by the change.

(2) **Operational Need.** Approved annual leave requests for sixteen (16) hours or more, once approved, will be canceled only for valid operational reasons which require the employee not to take leave. Valid operational reasons include such matters as illness or death of another employee, directed details by authority outside the Service, special mission requirements which do not lend themselves to normal scheduling, and other events which create an actual necessity for personnel and not reasons which may make canceling leave merely desirable.

(3) **Restoration of Canceled Leave.** Annual leave that has been canceled for valid operational reasons may be restored in accord with the provisions of the governing regulations.

L. **Emergencies**

(1) **Procedure.** Where unforeseen emergencies arise requiring the use of leave, at the earliest opportunity, the employee shall notify the Employer of the nature of the emergency, the anticipated extent of his or her absence, and seek the Employer's approval for annual leave or leave without pay.

(2) **Extension.** If the emergency extends beyond the period for which leave was originally requested, the employee must again notify the Employer and request additional leave.

M. **Habitual Tardiness.** Habitual tardiness will not be excused and may be corrected through the initiation of disciplinary action. Tardiness of less than sixty (60) minutes, regardless of cause, at the discretion of the supervisor may be excused for adequate reasons. Depending on the circumstances the time may be charged to annual leave, compensatory leave, leave without pay or AWOL. If a charge against annual leave is made, it must be in multiples of fifteen (15) minutes, and the employee cannot be required to perform work for the period of leave charged against his or her account.

N. **Advance Annual Leave.** Annual leave may be granted and used in advance of accrual, not to exceed the amount that is expected to accrue during the remainder of the same leave year.

O. **Bereavement Leave.** An employee may be granted a reasonable amount of appropriate leave in the event of a death in his or her immediate family. "Immediate family" means the following:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children, and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and Grandchildren.
- (6) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family member.

P. **Leave Bank.** Employees are encouraged, but not required, to contribute to the Department of Justice Voluntary Leave Bank and the INS Voluntary Leave Transfer Program.

ARTICLE 36 - Sick Leave

A. **Earn and Accrue.** Sick leave will be earned, accrued, and approved in accordance with applicable laws, regulations, and this Agreement.

B. **Purposes for Sick Leave.** When requested and approved as provided in this Article, employees may use sick leave for the following purposes:

(1) **Medical Appointments.** To receive medical, dental, or optical examination or treatment;

(2) **Incapacity.** When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;

(3) **Family Care.** To provide care for a family member (as defined at 5 CFR 630.201 or its successor) as a result of physical or mental illness, injury, pregnancy, childbirth, or medical, dental or optical examination or treatment, provided, however, that a full-time employee may not use more than 104 hours of sick leave (or for part-time employees the amount of sick leave the employee normally accrues in a leave year) for these purposes within any leave year except as may otherwise be permitted by the Code of Federal Regulations;

(4) **Family Death.** To make arrangements in connection with the death of a family member or attend the funeral of a family member (as defined above), to the extent leave for these purposes does not exceed the limitations as described in (3) above;

(5) **Communicable Disease.** When, as determined by health authorities having jurisdiction or by a health care provider, the employee's presence on the job would jeopardize the health of others as consequence of the employee's exposure to a communicable disease;

(6) **Adoption.** When the employee must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, attorneys, court proceedings, and required related travel.

(7) **FEFFLA** Employees shall not be charged for leave taken under the Federal Employee Family Friendly Leave Act unless they specifically request sick leave for the care of a family member.

C. **Sick Leave Request Procedures.**

(1) **Anticipated Sick Leave.** When an employee knows in advance that sick leave will be required, he or she shall request sick leave at the time the necessity for the leave is determined.

Employees assigned to duty stations which have more than one 8-hour shift will provide notification at least one hour prior to beginning of the assigned shift.

(2) **Unanticipated Sick Leave.** When the need for sick leave is unanticipated and sickness or injury prevents the employee from reporting to work, the employee shall notify the Employer as soon as possible. In no event shall the employee provide such notification to his or her supervisor later than one (1) hour after the normal time for reporting to work. When employees are assigned to a duty station which has an evening and/or midnight shift, the employee will provide notification at least one hour prior to the beginning of the assigned shift. If the degree of the employee's illness or injury prohibits compliance with the notification requirements provided above, the employee shall provide such notification as soon as possible. Acceptable evidence of such circumstances may be required.

D. **Evidence of Illness.** Employees may be required to furnish acceptable evidence and Form 71 to substantiate a request for sick leave if the sick leave exceeds three (3) consecutive workdays. Leave use will be recorded on the Time and Attendance Report and will be documented in writing on the SF-71, the Attendance Record Sheet or other document established by past practice or under Article 9 or Article 50. Furthermore, supervisors may require medical certificates for absences of three

(3) workdays or less when a pattern of abuse is reasonably suggested by an employee's chronic use of short periods of sick leave or when there is reasonable doubt as to the validity of the claim to such sick leave. When requiring medical certificates under such circumstances, the employee will be counseled by the supervisor that continued abuse of sick leave may result in a requirement to furnish a medical certificate for each subsequent absence or sick leave regardless of duration. After an employee has been placed on leave restriction, the leave restriction will continue for a period of one year, unless the supervisor determines earlier that the leave abuse has ceased. The employee will be notified, in writing, at the end of the one-year of the reasons if the leave restriction is to continue beyond one year. If the leave restriction is not continued, the employee will be notified of the cancellation of the leave restriction, and the employee's record will be made clean.

E. **Annual Leave for Illness.** Upon request by the employee, an approved absence which would otherwise be chargeable to sick leave may be charged to annual leave if the request is made at the time the request for approval of the leave is submitted.

F. **Advanced Sick Leave**

(1) **Requirements.** When an employee's sick leave balance has been exhausted, the Employer will approve requests for advance sick leave in cases of serious disability or ailment if:

- (a) Medical Certificate. The application is supported by a medical certificate;
- (b) Repayment. Repayment may be reasonably expected;
- (c) Maximum Advance. The amount advanced to a full-time employee may not exceed thirty (30) days. Part-time employees, working under a regular tour of duty, may be advanced sick leave on a pro rata basis.
- (d) Minimum Absence. The absence on account of illness must be for a period of five (5) or more consecutive workdays, but the actual advance may be for any part of the total absence;

(2) **Conditions for Advanced Sick Leave.**

(a) Charged to Employee. The total sick leave advanced must be charged against sick leave subsequently earned. In case of separation of any employee who is indebted for advanced sick leave (except in case of death, disability supported by an acceptable medical certificate, retirement for disability, or for active military service with restoration rights) recovery must be made for salary paid by:

- (i) deduction from any salary due the employee;
- (ii) refund from the employees;
- (iii) a claim filed against his or her retirement account; or
- (iv) referral to General Accounting Office for collection.

(b) Temporary Employees. Temporary employees may not be advanced sick leave in excess of the amount which they will earn during the period of temporary employment.

(c) Retiring Employees. Employees approaching mandatory retirement may not be advanced sick leave in excess of the amount which they will earn prior to date of retirement.

G. **Increment Charged.** Sick leave may be charged in fifteen (15) minute increments.

ARTICLE 37 - Administrative Leave

A. **Definition.** Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to an employee's accrued leave.

B. **Voting in Civil Election.**

(1) **General Rule.** As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he or she may be granted an amount of excused leave to vote in a civil election which will permit him

or her to report for work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off.

(2) **Additional Time.** Depending upon exceptional circumstance in an individual case, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the particular circumstances in his or her individual case, but not to exceed a full day.

(3) **Travel Time.** If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted the time necessary to make the trip to the voting place to cast his or her ballot. Time off in excess of one (1) day shall be charged to annual leave or if annual leave is exhausted, then to leave without pay.

(4) **In-person Registration.** For employees who vote in jurisdictions which require registration in person, time off to register may be granted on the same basis as for voting, except that no time shall be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable one (1) day round trip travel distance of the employee's place of residence,

(5) **Costs.** All costs incurred for travel in cases described in Sections B(1), (2), (3) and (4) will be borne by the employee.

C. **Blood Drive.** An employee donating blood at an officially authorized blood bank or in emergencies to individuals, will be granted administrative leave for the time necessary to make the blood donation and necessary time for travel and recuperation. The time authorized under this section shall be limited to four (4) hours on the day the blood is donated.

D. **Change of Duty Station.** Employees effecting changes in a residence in connection with a change in duty station within the Service will be granted administrative leave of five (5) workdays. The first two (2) days will be provided by the losing activity and the remaining three (3) days will be provided by the gaining activity. The purpose of this leave is to make all arrangements, preparations, and actions relating to preparing for and actually effecting the changes in station. An additional one (1) workday of administrative leave will be granted by the gaining activity when the changes in station will not be at government expense.

E. **Court Leave.** Employees will be granted court leave to serve as a juror, or as a witness on behalf of a state or local government when officially required to appear.

F. **Service Interviews.** Employees being interviewed for positions within the Service or taking examinations for positions within the Service will be granted administrative leave.

ARTICLE 38 - Home Leave

A. **Accrual.** Home leave shall accrue, be credited, and be granted in accordance with applicable laws and regulations and this Agreement.

B. **Granting.** Home leave will be granted to an employee who has completed an initial tour of overseas duty of twenty-four (24) months and who has been approved for an additional assignment overseas.

C. **Limited Use.** Home leave may be used only in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or at other locations, in accordance with regulations.

D. **Combined with Annual Leave.** Home leave may be taken in combination with annual leave.

E. **Management Discretion.** The discretion to approve an employee's home leave request will rest with the Headquarters, Human Resources Branch. Home leave will be approved in a fair and objective manner devoid of personal favoritism.

ARTICLE 39 - Leave Without Pay

A. **Definition.** Leave without Pay (LWOP) is a temporary non-pay status and absence from duty which has been requested and approved in advance by the Employer.

B. **Matter of Right.** The following employees are entitled, as a matter of right, to take leave without pay for the following purposes:

(1) **Disabled Veteran.** A disabled veteran for medical treatment when he or she presents an official statement from a duly constituted medical authority that medical treatment is required. The disabled veteran must give prior notice of the period during which his or her absence for treatment will occur.

(2) **Military Reservist.** A military reservist or national guardsman for the period he or she is required to perform active duty training if he or she has exhausted his or her military leave or he or she is not entitled to military leave.

(3) **Family Necessity.** An employee presenting acceptable documentation of need and who so requests in writing will be granted up to 12 weeks of leave without pay during any 12 month period as necessary to manage one or more of the following circumstances: the birth, adoption, or foster care of a child; a serious health condition of the employee that renders the employee unable to perform the essential functions of his or her position; to care for a spouse, son, daughter, or parent of the employee when that person has a serious health condition. It is understood that the definitions as set forth at 5 CFR Part 630, Subpart L, shall apply to the terms of this subsection to the extent such terms are so defined.

C. **National Union Office.** The Employer may approve leave without pay in the following circumstances: For three (3) years to any employee elected a National Officer of AFGE. Such leave may be extended in three (3) year increments and will be terminated when the employee leaves office.

D. **Administrative Discretion.** Recognizing that LWOP is a matter of administrative discretion and may not be demanded as a right, the Employer may approve requests for LWOP in the following circumstances:

(1) **Education.** When requested at least sixty (60) days in advance (a response will issue within thirty (30) days of receipt thereof), an employee may be granted up to one (1) year to participate in full-time study at an accredited institution of higher learning when the following conditions are met:

(a) Related to Position. The proposed course of study is directly related to the employee's position with the Service and the employee has completed a minimum of five (5) years of service with INS.

(b) Acceptable Performance / Expected Return. The employee has demonstrated an acceptable level of competence through past performance and it can reasonably be expected that the employee will return to work with the Service upon completion of the study period. Such LWOP will be automatically terminated without further notice when the employee withdraws or is terminated from the study program.

(2) **Injury / Illness.** For up to six (6) calendar months when an employee has an illness or injury, that would otherwise be covered with sick leave when the employee's annual and sick leave have been exhausted and there is reasonable assurance that the employee can and will return to work with the Service at the end of the leave period.

E. **NINSC Convention.** Local Officers, duly elected delegates, and National Officers at their option may substitute LWOP for annual leave for the purpose of attending the regularly scheduled INS Council Convention.

F. **Substitute for Annual Leave.** An employee at his or her option may substitute leave without pay for annual leave in the following situation:

(1) **Family Death.** For leave granted in conjunction with death in the immediate family,

(2) **Religious Holiday.** For leave on an established religious holiday which occurs on a regularly scheduled workday of the employee.

G. **Union Representatives.** Upon request of the National President of AFGE, employees who are selected to serve in the capacity of AFGE Union representative or officer, which requires absence from the job, may be granted annual and/or leave

without pay for a period of up to three (3) years. Extension for an additional year may be considered. For short absences, not exceeding two (2) weeks of annual leave or LWOP, upon request of the Local President or the Council President, Executive Vice President, or Regional Vice President, the Local District Director may approve such absences for a reasonable number of employees consistent with workload requirements.

ARTICLE 40 - Leave for Family Responsibilities

A. **Family Considerations.** The Parties recognize that, consistent with Department of Justice and government-wide policies concerning family-friendly working conditions, the Employer encourages its managers, to the maximum extent consistent with efficient and effective mission accomplishment to grant leave requested by its employees in connection with employee family responsibilities. Such family responsibilities include childbirth, adoption, caring for an ill or disabled family member, attending physician or dental appointments with a family member, and making arrangements necessitated by the death of a family member and attending funerals of family members. The Employer shall approve or disapprove such requests for leave consistent with law and applicable regulations.

B. **Family Member Definition.** For the purposes of granting annual leave, sick leave under the Federal Employee Family Friendly Leave Act, and participation in voluntary leave transfer program and leave bank programs, a family member is defined as:

- (1) A spouse or parents thereof;
- (2) Children, including adopted children, and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and
- (5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

A more limited definition applies to employees requesting leave without pay under the Family and Medical Leave Act (FMLA). The FMLA definitions are found in 5 Code of Federal Regulations 630.1202.

C. **Maternity Leave.**

(1) **Request Procedure.** Employees may initially request leave for the purpose of childbirth for a period of up to five (5) months. If circumstances require it, additional requests for leave may be submitted. An employee may use sick leave to cover physical examinations, medical treatment, and the period during which the employee is physically incapacitated for the performance of duties by pregnancy and confinement. In addition, sick leave may be used for care of the child as provided in Article 36 B (3). Any additional period of time may be charged to accrued annual leave and/or leave without pay. To obtain leave without pay in excess of 12 weeks in a leave year, the employee must intend to return to duty. All requests for maternity leave will be accompanied by a medical certificate. The certificate shall specify the date the doctor recommends the employee be placed on sick leave and the expected date of confinement.

(2) **Advanced Sick Leave for Maternity.** Sick leave for maternity reasons can be advanced to any employee on the same basis and under the same conditions that sick leave is normally advanced.

(3) **Advanced Annual Leave for Maternity.** Annual leave for maternity reasons can be advanced to an employee on the same basis and under the same conditions that annual leave is normally advanced.

D. **Accommodation of Pregnancy.** Where working conditions are more strenuous or hazardous than normal office conditions, a pregnant employee, after consultation with her physician, may request temporary reassignment to other available work for which she is qualified, to protect her health and that of her unborn child. Where such light duty is requested, based on medical certification, the Employer will make

a reasonable effort to accommodate the employee's request, including participation or non-participation in available overtime as provided in Article 20. A pregnant employee shall not be involuntarily reassigned to other duties solely because of pregnancy, absent a medical determination that she is incapable of performing some or all of the duties of her position.

E. **Continuation of Employment.** The Employer assures the continued employment of an employee who has been absent for maternity reasons. She will be continued in her current position or a position of like seniority, status, and pay unless termination of employment is otherwise required by expiration of appointment, by reduction in force, for cause, or for similar reasons unrelated to the absence.

F. **Paternity and Adoption Leave.** Fathers of newborns and employees who are adopting a child, may use sick leave in accordance with the provisions in Article 36 (B) (3) and (6). Annual leave and Leave without Pay (including LWOP under the Family and Medical Leave Act - FMLA) may also be used for the purpose of caring for the new child. Employees may initially request leave for these purposes for a period of up to five (5) months. If circumstances require it, additional requests for leave may be submitted.

G. **Care for Family Members.** Employees may take sick leave as described in Articles 36 (B) (3) and (5) to care for a family member who is incapacitated as the result of physical or mental illness, or injury. Annual Leave and Leave without Pay (including LWOP under the Family Medical Leave Act) may also be used for the purpose of caring for a family member. Employees may initially request leave for these purposes for a period of up to five (5) months. If circumstances require it, additional requests may be submitted. Employees may also request leave to attend medical, dental, or optical appointments with a family member.

H. **Leave for the Death of Family Members.** Employees may use sick leave under Article 36 (B) (4) to make arrangements necessitated by the death of a family member or to attend the funeral of a family member. Annual Leave or Leave without Pay may also be requested for such purposes.

I. **Leave for other Family Purposes.** Employees may be granted annual leave in accordance with Article 35 for the purposes of participating in events with family members that do not meet the criteria described elsewhere in this article. This includes such activities as participation in school activities, weddings, sports and cultural events.

J. **Voluntary Leave Transfer Program and Leave Bank Program.** An employee who has no leave balance may apply for the Voluntary Leave Transfer Program for the purpose of caring for a family member in a medical emergency. Participants in the Leave Bank Program may also apply to be a leave recipient for this reason.

ARTICLE 41 - Counseling for Performance and Conduct

A. **Reasonable and Fair.** Counseling shall be reasonable, fair, and used to encourage an employee's improvement in areas of conduct and performance.

B. **Privacy and Notice.** Oral counseling will be conducted during a private interview with the employee. The supervisor will notify the employee in advance if more than one Management official is to attend the counseling session.

C. **Union Representative.** The employee may request Union representation when the meeting involves an examination as described in Article 30 (B).

D. **Written Record.** Not all counseling will necessitate a written record. However, if a counseling is reduced to writing, the employee will be given two copies of the written record. The written counseling will include, if appropriate, any references to prior related oral counseling.

E. **Misconduct Record.** A record of counseling for misconduct will be retained for a period of up to on year.

F. **Performance Record.** A record of counseling for performance will be retained during the rating period for which it was issued. If the performance appraisal for that year incorporates information in the narrative sections from the counseling record or the counseling is incorporated into a performance improvement plan notice, it may be retained for a longer period.

ARTICLE 42 - Holidays and Religious Observances

A. **Holidays.** The following days are treated as holidays for the purpose of pay and leave of Service employees:

- (1) New Year's Day - January 1;
- (2) Martin Luther King's Birthday - 3rd Monday in January;
- (3) Washington's Birthday - 3rd Monday in February;
- (4) Memorial Day - Last Monday in May;
- (5) Independence Day - July 4;
- (6) Labor Day - 1st Monday in September;
- (7) Columbus Day - 2nd Monday in October;
- (8) Veterans Day - November 11;
- (9) Thanksgiving Day - 4th Thursday in November;
- (10) Christmas Day - December 25;
- (11) Inauguration Day - January 20 quadrennially (in the Washington, D.C. metropolitan area only);
- (12) Any other day designated as a holiday by Federal Statute or Executive Order.

B. In Lieu of Holiday Observance

- (1) **Federal Statute.** For employees working a Monday through Friday workweek, holidays falling on a weekend will be celebrated as defined by Federal Statute.
- (2) **Sunday.** When a holiday falls on a Sunday or an employee's day off in lieu of Sunday, the employee is excused from work on the next workday of his or her basic workweek. Holiday pay is authorized for the next workday if the employee is not excused on that day.
- (3) **Saturday.** When a holiday falls on Saturday or an employee's day off in lieu of Saturday, the employee is excused from work on the previous day of his or her basic workweek. Holiday pay is authorized for the previous workday if the employee is not excused from duty on that day.
- (4) **Staffing Needs.** The parties recognize that Service staffing needs on holidays are the same or greater than normal workday for some operations. However, where a holiday falls on a scheduled workday of an employee, every effort should be made to excuse the employee on the holiday consistent with the needs of the Service.

C. **Religious Holidays.** Employees who wish to attend or participate in the observance of the established religious holidays of their faith (e.g., Good Friday, Yom Kippur) may be granted annual leave in accordance with provisions set forth in Section D of this Article.

D. Accommodation of Religious Beliefs.

- (1) **Religious Observance.** The Service will make every effort to accommodate the practice of religious beliefs by individual employees as consistent with the needs of the Service. Employees who are required to be absent for some period of the workday because of religious observance or belief, may elect to work compensatory overtime as a substitute for time off, or take appropriate leave.
- (2) **Compensatory Time.** The Employer shall grant compensatory time off to an employee requesting such time off, and shall in each instance afford the employee the opportunity to work compensatory overtime in order to repay the compensatory time off. A request may be disapproved, however, if the requested change in work schedule would interfere with the ability of an organization to efficiently accomplish its mission. In such circumstances, there is no obligation to approve requests for time off for religious observances.

(3) **Leave Procedures.** Where an employee is granted leave for religious observance, the employee may perform compensatory overtime work before or after the compensatory time off. Time off taken in advance must be repaid by an equal amount of compensatory overtime work within six (6) pay periods following the pay period in which the employee was absent; otherwise, the time off will be charged to annual leave or leave without pay, as appropriate. When compensatory overtime work is performed in advance, the time off for religious observance must be taken within six (6) pay periods of the pay period in which it was earned; otherwise, it will be forfeited.

(4) **Premium Pay Excluded.** The premium pay provisions for overtime work do not apply to compensatory overtime work performed under this section.

(5) **Unavailable Overtime.** If no productive overtime is available to be worked by the employee at such time as he or she may initially request such work, alternative times will be arranged by the Employer for the performance of the compensatory overtime work within the time frames stated in Section D (3).

E. **State and Local Holidays.** State and local holidays will normally be treated as regular workdays if they fall within an employee's basic workweek. However, the Employer may release employees on administrative leave for a state or local holiday when the employees of the Service office, installation, or post of duty are actually prevented from working by one of the following circumstances:

(1) **Building Closures.** The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating.

(2) **Local Transportation.** Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location.

(3) **Related Duties.** The duties of the employees consist largely or entirely of dealing directly with employees or industrial establishments or local government offices, and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

ARTICLE 43 - Probationary Employees

A. **Performance Standards and Review.** Probationary employees will be advised in writing of the applicable critical elements and performance standard at the beginning of the probationary period. The supervisor will explain the requirements of each probationer's position and answer any questions the employee may have. The supervisor will review the performance of the probationary employee and provide counseling regarding any performance deficiencies. If the employee is not performing satisfactorily, he will be so advised by the supervisor. The supervisor will inform the employee how to correct his performance. The parties understand that a probationary employee may be terminated whether or not the supervisor has followed these procedures.

B. **Non-retention and Notice.** Although termination of a probationary or a temporary employee is not an adverse action, the Service agrees that when it deems advance notice of termination to be in the best interests of the operations of the Service, the affected employee will be given two (2) weeks advance notice prior to the effective date of such action. When an employee is selected for an Officer Corps position, prior experience in an Officer Corps position within the INS qualifies towards the probationary period to the extent consistent with applicable law and regulation.

ARTICLE 44 - Equal Employment Opportunity

A. **Definition.** The Employer will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race,

color, religion, sex, national origin, age, or disability, except where required by statute or pursuant to bona fide occupational qualifications.

B. **Bargaining Obligations.** Where the development and implementation of the Employer's Equal Employment Opportunity Plans and Programs involve changes in personnel policies, practices, or working conditions, the Employer will fulfill its bargaining obligations with the Union under Chapter 71 -- Labor-Management Relations—of Title 5, United States Code.

C. **Discrimination Claim Procedures.**

(1) **Claims.** Any employee who believes that he or she has been discriminated against on the grounds set forth in Section A, above, may file any one of the following:

(a) Grievance. A grievance pursuant to the provisions of Article 47 of this Agreement;

(b) EEO Pre-complaint Counseling. A complaint of discrimination with the Service subsequent to required EEO pre-complaint counseling; or

(c) MSPB. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by Section A.

(2) **Elected Procedure.** An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely files either a formal complaint of discrimination, an MSPB appeal, or a grievance in writing in accordance with the provisions of this Agreement.

(3) **Grievance Appeal.** The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

D. **Grievance Filing Deadlines.** An employee may file a grievance pursuant to this Article within fifteen (15) days following:

(1) **Incident.** The date of the alleged discriminatory incident; or

(2) **Awareness.** The date upon which the aggrieved became aware of the alleged discriminatory incident or situation; or

(3) **Final Interview.** The date of the employee's final interview with the Equal Employment Opportunity Counselor.

E. **Use of EEO Counselors.**

(1) **Consultation.** Employees are encouraged but not required to consult with an Equal Employment Opportunity Counselor prior to filing a grievance under this Article. Such consultation shall take place within forty-five (45) days of the alleged discriminatory incident.

(2) **Counselor Lists.** The names, offices, and telephone numbers of local Equal Employment Opportunity (EEO) Counselors serving the duty station shall be posted on official bulletin boards.

(3) **EEO Counselor Duties.** The EEO Counselor shall:

(a) Counsel. Counsel the aggrieved employee concerning the issues in the matter;

(b) Inquire. Make whatever inquiry into the matter that he or she believes necessary;

(c) Resolve. Seek a solution of the matter on an informal basis;

(d) Document. Keep a record of his or her counseling activities; and

(e) Written Report. Submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved employee, summarizing his/her actions concerning the allegations of discrimination.

(f) Inform of Right to Representative. Advise the aggrieved employee that he or she has the right to have a union representative or other representative of their own choosing present, throughout all stages of the EEO complaint process.

(4) **Final Interview**. The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within thirty (30) calendar days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee.

(5) **Right to File Complaint**. If the final interview is not concluded within thirty (30) calendar days and the matter has not been previously resolved to the satisfaction of the employee, the Counselor shall at that time inform the aggrieved employee of his or her right to immediately file a complaint of discrimination by exercising one of the options in Section C(I).

(6) **Neutrality of EEO Counselor**. The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.

(7) **Confidentiality**. The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.

(8) **Independence of EEO Counselor**. Equal Employment Opportunity Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

(9) **Right to Representation**. At any stage in the processing of an EEO complaint the employee shall have the right to be accompanied, represented, and advised by a representative of his/her choosing.

(10) **Right to Represent Self**. The employee shall also have the right to present the EEO complaint without representation.

F. **Union Right to be Present**. If the employee elects to pursue the complaint under the grievance procedures of this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between Management and the employee concerning the grievance.

G. **Union Notification of Change**. If at any stage of the complaint process under procedures covered by this article, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification.

H. **Conflict with Contract**.

(1) **Notice and Opportunity to Bargain**. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with or appear to conflict with, the provisions of this Agreement, the Employer shall afford the Union reasonable notification and opportunity to negotiate the impact of the Employer's action effectuating the decision.

(2) **Priority of Appellate Decisions**. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (of, i.e., the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts) where the provisions:

(a) Violate applicable law, order, or regulations in effect at the time this Agreement was approved; or

(b) Are themselves discriminatory in their impact on employees; or

(c) Leave no reasonable alternative for taking required action.

I. **Procedures for Selecting EEO Counselors**.

(1) **Employer Responsibility.** The selection of Equal Employment Opportunity Counselors is solely the responsibility of the Employer.

(2) **Volunteers.** Any employee who is interested in serving as an Equal Employment Opportunity Counselor shall notify the appropriate Regional Director, Director of Administrative Center or Equal Employment Opportunity Officer, in writing. Such notification shall include a statement of the employee's qualifications and the reasons for his or her desire to serve in such capacity.

(3) **Conflict of Interest.** In order to avoid conflict of interest, or apparent conflict of interest, Union stewards or Union officials may not serve as Equal Employment Opportunity Counselors.

(4) **Nominations.** Nominations for prospective Counselors may be submitted by the Union, employees, or other interested persons or organizations. Union membership, or lack thereof, shall not provide a basis for nomination or failure to nominate an employee.

(5) **Selection.** Equal Employment Opportunity Counselors shall be selected by the Employer without regard to race, color, sex, religion, national origin, age, marital status, political affiliation, physical or mental disability or Union membership.

J. **EEO Plans.** The Union recognizes that the Employer is responsible for the development of the Equal Employment Opportunity Plans at both the National and Regional levels which must be submitted to the Equal Employment Opportunity Commission for approval.

(1) **Assessment.** The first stage of Equal Employment Opportunity Plan development is the assessment stage in which information is gathered on the existing status of Equal Employment Opportunity within the Service. During this stage, the Union may present, in writing, its views, opinions, and other information on the status of the Equal Employment Opportunity program to the Employer's officials. The assessment views of the Union shall be submitted through the Regional and National Labor Relations Offices of the Employer.

(2) **Union Comment.** After the Employer has formulated its Equal Employment Opportunity plans, draft copies of the plans will be submitted to the Union for comment. The Union's views and comments shall be given due consideration in the preparation of the final plan to be submitted to the Equal Employment Opportunity Commission. Copies of the final plans submitted to the Commission will be provided to the Union.

(3) **Opportunity to Bargain.** If implementation of the Employer's Equal Employment Opportunity Plans involves changes in personnel policies, practices, or matters affecting working conditions, the Union will be given reasonable opportunity to exercise its bargaining rights pursuant to Chapter 71 of Title 5, United States Code prior to implementation.

ARTICLE 45 - EEO Advisory Committees

A. EEO Committees.

(1) **Purpose.** The Employer and Union reaffirm their commitment to the principles of EEO, and to that end agree to support a positive program which has as its objective the realization of that commitment.

(2) **Membership.** An EEO Committee will be established in each District. The Committee will be composed of Management representatives, at least one Union representative per local, and the Special Emphasis Program Managers. For the purposes of this Article, the SEPMs are neither Service nor Union representatives.

(3) **Headquarters Committee.** An EEO Committee will be established at the Headquarters Office to represent HQ employees. The Union may appoint up to three Union representatives to attend the EEO Committee meetings. The Union representatives will be employees in the Headquarters Office.

(4) **Meetings.** The District and Headquarters Office Committees shall meet quarterly.

(5) **Duty Hours.** All Committee meetings will be during regular duty hours and the Employer will, to the maximum extent possible, make shift changes to accommodate attendance by Union representatives.

(6) **Time, Travel and Per Diem.** Because EEO Committees are established as Management Advisory Committees, all Union representatives shall receive official time while attending such meetings. The cost of travel and per diem for a Union representative to attend District EEO meetings will be borne by the Service. Any travel required by a Union representative will be on official time.

B. **Committee Responsibilities.** Advisory Committees established under this Article are to be only advisory and consultative in nature. Specifically, they exist to serve the EEO interests of the local work force by functioning as a continuing link of communication on matters of an EEO nature. Operations and functions of EEO Advisory Committees will consist of:

(1) **Identify Issues.** Identifying and bringing to the attention of local management any personnel policy, practice or procedure which denies equality of opportunity to any group or individual on the basis of race, color, religion, sex, national origin, age or disability.

(2) **Exchange Ideas / Proposals.** Acting as a forum for an exchange of ideas and action proposals on sensitive issues, and matters of concern of an EEO nature.

C. **EEO Statistics.** The Service agrees to furnish semiannually to the Council President two (2) legible copies of raw statistical EEO reports.

D. **Summary of Complaints.** The Service agrees to furnish the Council President an annual summary of the number and types of discrimination complaints received.

ARTICLE 46 - Sexual Harassment

A. **Workplace Atmosphere.** The Employer agrees to provide all bargaining unit employees a work atmosphere free from sexual harassment.

B. **Unwelcome Advances.** Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) **Condition of Employment.** Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;

(2) **Employment Decisions.** Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) **Hostile Work Environment.** Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C. **Employer's Responsibility.**

(1) **Managers and Supervisors.** The Employer recognizes its responsibility for its acts and those of its managers and supervisors with respect to sexual harassment to the extent of and in accordance with applicable law.

(2) **Fellow Employees.** With respect to conduct between fellow employees, the Employer may also be responsible for acts of sexual harassment in the work place, where the Employer knows or should have known of the conduct, unless it can be shown that the Employer took immediate and appropriate corrective action.

(3) **Lost Opportunity.** Where employment opportunities or benefits are granted because of an individual's submission to the Employer's sexual advances or requests for sexual favors, an employee who was qualified for but denied that employment opportunity or benefit has the right to exercise one of the options in Section E (1) below.

D. **Complaint Procedures**

(1) **Investigation.** Where an allegation of sexual harassment is brought to the attention of Management, the Employer will promptly and seriously investigate said allegations.

(2) **Substantiation.** In substantiating an allegation of sexual harassment, an employee need not demonstrate resistance to the harassment or that resistance of the harassment caused loss or denial of tangible job benefits.

(3) **Confidentiality.** Where an employee has brought an allegation of sexual harassment to the attention of Management, the Employer shall treat such allegations as confidential and shall reveal no more information concerning such an allegation than is necessary to conduct a full, prompt, and serious investigation.

E. **Filing a Complaint.** Any employee who believes that he or she has been discriminated against on any of the grounds set forth in this Article may file one of the following:

(1) **Grievance.** A grievance pursuant to the provisions of Article 47 of this agreement.

(2) **EEO Complaint.** A complaint of discrimination with the Service, subsequent to required EEO pre-complaint counseling pursuant to applicable law and regulation prescribed by EEOC; or

(3) **MSPB Appeal.** An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis of the action was discrimination prohibited by Section A, pursuant to applicable law and regulation prescribed by MSPB.

F. **Grievance Deadlines.** An employee may file a grievance pursuant to this Article within fifteen (15) days following:

(1) **Incident.** The date of the alleged discriminatory incident; or

(2) **Awareness.** The date upon which the aggrieved became aware of the alleged discriminatory or situation; or

(3) **Final Interview.** The date of the employee's final interview with the Equal Employment Opportunity Counselor.

G. **EEO Counselors.**

(1) **Optional Consultation.** Employees are encouraged but not required to consult an Equal Employment Opportunity Counselor prior to filing a grievance under this Article. Such consultation shall take place within forty-five (45) days of the alleged discriminatory incident.

(2) **List of Counselors.** The names, offices, and telephone numbers of local Equal Employment Opportunity (EEO) Counselors serving the duty station shall be posted on official bulletin boards.

(3) **Counselor Duties.** The EEO Counselor shall:

(a) Counsel. Counsel the aggrieved employee concerning the issues in the matter;

(b) Inquire. Make whatever inquiry into the matter that he or she believes necessary;

(c) Resolve. Seek a solution of the matter on an informal basis;

(d) Document. Keep a record of his or her counseling activities; and

(e) Written Report. Submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved employee summarizing his or her actions concerning the allegations of discrimination.

(4) **Final Interview.** The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within thirty (30) calendar days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee.

(5) **Right to File Complaint.** If the final interview is not concluded within thirty (30) calendar days and the matter has not been previously resolved to the satisfaction of the employee, the EEO Counselor shall at that time inform the aggrieved employee of his or her right to immediately exercise one of the options set out in Section E (1).

(6) **Neutrality of EEO Counselor.** The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.

(7) **Confidentiality.** The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.

(8) **Independence of EEO Counselor.** Equal Employment Opportunity Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

(9) **Right to Representation.** At any stage in the processing of an EEO complaint, the employee shall have the right to be accompanied, represented, and advised by a representative of his/her choosing.

(10) **Right to Represent Self.** The employee shall also have the right to present the EEO complaint without representation.

H. **Union Right to be Present.** If the employee elects to pursue the complaint under the grievance procedures for this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between Management and the employee concerning the grievance.

I. **Grievance Considerations.**

(1) **Elevated Step.** Where an employee chooses to use the grievance and arbitration procedures provided in this Agreement to process a complaint of sexual harassment, and the person against whom such an allegation is made is designated to provide a response in the grievance procedure, the grievance may be filed directly at the next higher step.

(2) **Closed Hearing.** Where a grievance under this Article is advanced to arbitration, the arbitration hearing - at the option and request of the grievant - shall be conducted as a closed hearing.

J. **Annual Announcement.** The Employer shall annually incorporate the provisions of this Article into an information announcement on the topic of sexual harassment, and said information announcement shall be distributed to all managers, supervisors and employees.

ARTICLE 47 - Grievance Procedure

A. **Purpose.** The purpose of this Article is to provide a fair, simple and expeditious means of processing grievances. This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which come within its coverage, except as specifically provided in B below. However, any employee or group of employees in the unit may present such grievances to the Service and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the Agreement and the exclusive representative has been given an opportunity to be present during the processing.

The initiation or presentation of a grievance by employees will not cause any reflection on their standing with or their loyalty to the Service.

B. **Definition:** A grievance means a complaint either by a unit employee concerning his or her conditions of employment, by the Union in its own behalf concerning conditions of employment of any employee, or alleged contractual violations by the Service, or by the Service concerning alleged contractual violations by the Union. Unless excluded below, such a complaint may concern the adverse impact of:

(1) **Violation of Agreements.** The effect of interpretation, or claim of breach of this master Agreement, or other written agreement between the parties; or

(2) **Violation of Law, Rule, or Regulation.** Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Exclusion

: This procedure does not cover grievances concerning:

- (1) **Beyond Authority.** Matters which are not subject to control by Management of this Service; Matters which are not subject to control by the Union;
- (2) **Political Activities.** Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S. C. (relating to prohibited political activities);
- (3) **Benefits.** Retirement, life insurance, or health insurance;
- (4) **National Security.** A suspension or removal under Section 7532 of Title 5 U.S.C. for reasons of national security;
- (5) **Hiring Authority.** Any examination, certification, or appointment;
- (6) **Classification.** The classification of any position which does not result in a reduction in grade or pay of any employee;
- (7) **Statutory Discrimination Appeal.** A complaint of discrimination which is listed in 5 U.S.C. Section 2302(b)(1) if the employee has elected to use the statutory appeal procedure;
- (8) **Statutory Adverse Action Appeal.** An appeal of an adverse action based on performance under 5 U.S.C. 4302 or for efficiency under 5 U.S. C. 7512 if the employee elects the statutory appeal procedure provided under 5 U.S.C. 7701;
- (9) **Union Appeal of Non-represented Statutory Process.** A Union appeal of an adverse action or an allegation of discrimination against any employee if the Union is not expressly designated by the employee as his or her representative on the matter.
- (10) **Already Filed.** Issues which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures.
- (11) **Probation.** The removal of a probationary employee during his or her probationary period.
- (12) **Temporary Appointments.** The termination of a temporary appointment.
- (13) **Proposed Actions.** Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.

C. **Identical Grievances.** In the case of an identical grievance involving a group of employees one employee's grievance may be selected by the Union for processing. All decisions for that grievance will be binding on the other grievance(s). The Parties agree that for the purposes of this section identical grievances are ones arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances.

D. **Resolve at Lowest Possible Level.** The Service and the Union agree that every effort will be made by Management and the aggrieved party(s) to settle grievances at the lowest possible level. It is agreed that the employee and his or her representative will be given a reasonable amount of time to present the grievance.

E. Procedures for Grievances Filed by Employees:

(1) First Step

Informal grievance must be filed within 22 workdays after the incident occurs. This time limit will not apply where it is established that the employee had no way of being aware of the incident. The grievance shall first be taken orally by the concerned employee with the first level of supervision in an attempt to settle the matter. If the first level supervisor is also the official designated as a Step II official,

the grievance will be filed with that official. The grievant may, if he or she desires, be assisted in the presentation by a Union representative.

The Union representative must be present if the employee so desires. If the employee presents a grievance directly to Service Management for adjustment consistent with the terms of this Agreement, the Union shall be given the opportunity to have an observer present, on official time, at the time of adjustment. Within five (5) workdays after receiving the employee's grievance, the immediate supervisor (or designee) shall complete such inquiry as he or she deems necessary and render his or her decision to the grieving employee. After receiving the decision of the immediate supervisor, the employee may, at his or her option, pursue his or her informal grievance to the next higher level of supervision, if that level is not one of the Management officials cited in Step II. All aforementioned procedures for Step I shall apply at this level for informal resolution of the employee's grievance. The employee may, at his or her option, reduce the grievance to writing

(2) Second Step

If the employee is dissatisfied with the decision of the immediate supervisor and desires to proceed to Step II, the employee (or the employee's union representative acting on behalf of the employee) must submit a written grievance, to the appropriate official as specified below, within ten (10) workdays after receiving the immediate supervisor's decision on the grievance.

Submission of Step II Grievances:

District Office

employees: to the District Director

Telephone Service Center

and Service Center employees: to the Center Director

Asylum Office

employees: to the Asylum Office Director

Foreign Office

employees other than Foreign Districts: To the Officer in Charge

Administrative Center

employees: to the appropriate Assistant Center Director

Regional Office

employees: to the Deputy Regional Director

Regional Counsel

employees: to the Regional Counsel

HQ Non-Operational

employees: to the appropriate Associate Commissioner or Director

HQ Operational

employees: as appropriate, to the Associate Commissioner for Enforcement or the Associate Commissioner for Examinations

The employee shall set forth in precise terms exactly what his or her grievance is; all the facts relating thereto, including the names of any individuals against whom the grievance is made; the Article and Section of the Agreement which is in dispute; the reason for his or her dissatisfaction, and the corrective action desired. The Grievant will also include documents and evidence related to the grievance. When the Union is designated as the representative of an employee in a grievance, the employee will also furnish the name and address of the representative to the Service in writing. The employee will also furnish the name and address of any witnesses.

Within fifteen (15) workdays after receiving the grievance, the Deciding Official (or designee) shall hold such meetings and complete such inquiry as he or she deems necessary and shall render his or her written decision on the grievance. The written decision shall set forth, in precise terms, the basis of the decision.

No letter from an employee designating the Union as his or her representative in pursuing a grievance will be required in those cases where the Union is presenting a grievance concerning the Union's rights under the contract or law, or in those cases where the Union files a grievance on behalf of an employee and the election of the grievance procedure does not represent a choice between the grievance procedure and other administrative or judicial procedures that may be available to the employee.

(3) Third Step

If the employee is dissatisfied with the decision at Step II and desires to proceed to Step III, the employee (or the employee's union representative acting on behalf of the employee) must submit a written grievance, to the appropriate official as specified below, within ten (10) workdays after receiving the Step II decision.

Submission of Step III Grievances

District and Region Office

employees: to the Regional Director (or his/her designee who is an official above the Step II official)

Administrative Center

employees: to the Administrative Center Director

Telephone Service Center and Service Center

employees: to the Assistant Commissioner, Service Center Operations

Regional Counsel

employees: to the General Counsel

Asylum Office

employees: to the Deputy Asylum Director Headquarters

Foreign District and Office

employees: Director, Office of International Affairs

Headquarters

employees: to the appropriate Executive Associate Commissioner

The written grievance must include the information specified at Step II above, including also a copy of the Step II decision and an explanation as to why that decision was not acceptable to the employee. Within twenty (20) workdays after receiving the grievance, the Deciding Official (or designee) shall complete such inquiry as he or she deems necessary and render a written decision on the grievance. Such written decision shall set forth, in precise terms, the basis for the decision. If the employee is dissatisfied with this decision, he or she may submit the grievance to the appropriate Local for a decision by the Union as to whether to process the case through arbitration as provided in Article 48.

If a dispositive issue in the grievance involves interpretation of this agreement, either the Step III Official or the Union may refer the grievance to the national parties for an interpretation of the contract within thirty (30) days of the Step III decision. A joint response from the national parties will be binding on the local/regional parties, absent which the matter shall proceed to arbitration.

F. **Requested Relief Granted.** In no case in which the precise relief requested is granted, will the grievance be continued on to the next Step, including the invoking of arbitration.

G. **Exceptions to Step I.** Except as otherwise specified below, all employee grievances are to be initiated at Step I of the grievance procedure within the time frame as stated at Step I:

(1) **Policy of Director.** Grievances that are based on the written decision or policy of the District Director are to be initiated at Step II of the grievance procedure within the time frame specified at Step I.

(2) **Reprimands.** Grievances concerning written reprimands are to be initiated at Step III of the grievance procedure within the time frame specified at Step I.

(3) **Suspensions and Adverse Actions.** Grievances concerning suspensions and adverse actions are to be initiated at the arbitration stage of the grievance procedure as provided at Article 31.

(4) **MP&RP Violations.** Employee grievances concerning alleged violations of the Merit Promotion and Reassignment Plan (MP&RP) are to be filed and processed as follows:

(a) Step A. Such grievances are to be filed in writing with the Head of the Human Resources Office that serviced the particular promotion/vacancy action at issue within 22 work days. The Head of the servicing Human Resources Office shall conduct whatever inquiry or review he or she deems appropriate and render a written decision on the grievance within 15 work days after receipt of the grievance.

(b) Step B. If the grievant is not satisfied with the decision of the Head of the servicing Human Resources Office, he or she may pursue the grievance further by filing a Step III appeal with the appropriate Administrative Center Director (or the INS Director of Human Resources for grievances in which the position/vacancy at issue is serviced by the INS Headquarters Human Resources Office) within 10 work days after receipt of the decision of the head of the servicing Human Resources Office. Such appeal must include a copy of the decision received from the Head of the servicing Human Resources office.

H. **Grievability / Arbitrability.** When the Service or the Union has reason to believe that a grievance is not grievable or arbitrable, it will endeavor to so inform the other party as soon as possible. If the Union or the Service elects to proceed to arbitration of the grievance, such grievability/arbitrability questions are to be decided as a threshold issue by the arbitrator who decides the merits of the grievance. The final written decision of the arbitrator in such a case shall consist of two parts. In the first part, the arbitrator shall decide the grievability/arbitrability issue in the case. In the second part, he or she will pass upon the merits of the grievance. If the arbitrator should determine that the grievance is either not grievable or not arbitrable, however, the decision shall consist of one part, the determination on grievability/arbitrability, and no consideration of the merits of the grievance shall be provided.

If either party raises an arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification as to the arbitrability issue shall be borne by the party raising the question.

I. **Procedures for Grievances Filed by the Union or the Service:**

(1) District Level Disputes:

(a) Step A. If a dispute arises between a Local of the Council and a District, Service Center, Telephone Service Center, Asylum Office, or Administrative Center, either the President of the Local or the Head of the particular organizational component (or their respective designees) may file a written grievance with the other party, provided such grievance is filed within twenty-two (22) workdays after the event giving rise to the grievance. This time limit will not apply where it is established that the grieving party had no way of being aware of the incident. Any such grievance must include the relevant facts, the provisions of any law, rule, or contract allegedly violated, and the relief being sought. The party against whom the grievance was filed shall render a written decision on the grievance within fifteen (15) workdays after receipt of the grievance.

(b) Step B. If the decision on the grievance is unacceptable, the matter may be escalated to the appropriate Council Vice-President or the appropriate Regional Director for reconsideration within 15 workdays of receipt of the Step I decision. A copy of the original grievance and response shall be included in the grievance when it is escalated to the next step. The Council Vice-President or Regional Director (or

their respective designees) shall render a written decision on the grievance within 15 workdays of receipt. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described at Article 48.

(2) **Regional Level Disputes.** If a dispute arises between one or more Locals and a Region, either the appropriate Council Vice President or the Regional Director (or their respective designees) may file a written grievance with the other party within 22 workdays after the event giving rise to the grievance. This time limit will not apply where it is established that the grieving party had no way of being aware of the incident. The party against whom the grievance was filed shall render a written decision on the grievance within 15 workdays after receipt of the grievance. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described at Article 48.

(3) **National Level Disputes.** If a dispute arises between the Council and Headquarters, either the Council President or the Associate Commissioner for Human Resources and Development (or their respective designees) may file a written grievance with the other party within 22 workdays after the event giving rise to the grievance. This time limit will not apply where it is established that the grieving party had no way of being aware of the incident. The party against whom the grievance was filed shall render a written decision on the grievance within 15 workdays after receipt of the grievance. If the grievance is not resolved to the mutual satisfaction of the parties, either party to the grievance may refer the matter to arbitration within the time frame as described at Article 48.

J. Time Limits.

(1) **Extensions.** All time limits herein may be extended by mutual agreement of the parties involved. If a grievant should fail to meet an applicable time limit for moving a grievance forward, the grievance shall be deemed to have been withdrawn. If a deciding official fails to meet the time limit for rendering a decision on the grievance, such failure shall entitle the grievant to advance the grievance to the next step (including arbitration, if appropriate) within the applicable time frame for such action as measured from the date the deciding official should have rendered his or her decision.

(2) **Service of Process.** All time limits of this grievance procedure, including arbitration, shall be controlling. Service of grievances and the decisions thereon, including arbitration notices, shall be accomplished either by personal delivery or by U.S. Mail-Return Receipt Requested. As applicable, time limits shall begin to run from the date of receipt of the document that triggers the particular time limit. Service will be deemed timely if the required document is either personally delivered or postmarked within the specified time limit. The parties agree that they will act in good faith in receipting for documents and will not attempt to evade the service of documents upon them.

ARTICLE 48 - Arbitration

A. **Invoking Arbitration.** If the Service and the Union fail to settle any grievance processed under the negotiated grievance procedures, such grievance, upon written request by the Union or the Service, may be submitted to arbitration within fifteen (15) workdays from the date the Service or the Union's final decision is received. In cases involving suspensions of less than fifteen (15) days or adverse actions, requests for arbitration must be filed after receipt of the Notice of Decision, but not later than fifteen (15) workdays after the effective date of the action. Requests for arbitration filed by the Union will be submitted to the Servicing Labor Relations Officer. Issues involving Service wide interpretation or application of this agreement will be filed with the Chief Labor Employee Relations Policy Section at Headquarters.

B. Selection of Panels. The parties agree to the establishment of three Regional panels to handle arbitrations under this Article. Each Regional panel shall consist of ten (10) arbitrators. The Regional representatives of the parties will nominate ten (10) arbitrators. If both sides nominate the same arbitrator, he/she will automatically become a member of the panel. Otherwise, the parties will alternate strikes until ten (10) arbitrators are chosen.

(1) **Replacements.** Should any arbitrator ask to be removed from the panel, the parties will each nominate three new arbitrators. If one or more names are on both lists, they will be selected and added to the list. Otherwise, the parties will alternate strikes until the arbitrator is chosen.

(2) **Removal.** During the life of the agreement, either party at the national level may unilaterally remove three (3) arbitrators from the panels by providing the other party with written notice. Such removal shall not be effective until thirty days after receipt of the written notice by the other party. Any additional removals must be done by mutual agreement. Selection for a replacement will be done by the procedures outlined above.

(3) **Rotation.** Arbitrators will be used alphabetically on a rotational basis. If an arbitrator is not available within a mutually agreeable time, the parties may agree to select the next arbitrator on the list.

Headquarters Arbitrations. For arbitrations involving Headquarters, the parties will request the name of the next arbitrator on each Regional list and select the arbitrator using alternate strikes.

C. Threshold Issues. In cases where there is a threshold issue, such as jurisdiction, the parties may agree that an initial decision be requested on the threshold issue.

(1) **Arbitrators Decision.** The parties may agree to use stipulations and / or briefs to obtain the arbitrator's decision on the threshold issue. If there is no agreement and either party elects to proceed to arbitration of the grievance, such grievability / arbitrability questions are to be decided as a threshold issue by the arbitrator. If the arbitrator should determine that the grievance is either not grievable or not arbitrable, the decision shall consist of one part and no consideration of the merits of the grievance shall be provided.

(2) **Postponement.** If either party raises an arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification, as to the arbitrability issue, shall be borne by the party raising the question.

D. Transcripts. Each party will inform the other no later than fourteen (14) calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and management will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other party change its mind prior to the close of the arbitration hearing and indicate its desire for a copy, it shall then be responsible for half of the costs.

E. Proceedings. The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than twenty-two (22) workdays after the conclusion of the hearing unless the parties mutually agree to extend the time limit. Each party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance. At the request of

either party, the Service or the Union shall be provided a complete list of the other's known witnesses no later than five (5) days prior to the hearing, along with a brief synopsis of the anticipated testimony.

F. **Docket Review.** Discussion of any cases where arbitration has been requested and pending in the Region will be conducted upon advance request. Such discussions may include possible settlements in pending cases or in pending grievance matters.

G. **Expedited Procedure.** The parties recognize the importance of promptly handling demotions, indefinite suspensions, suspensions of 30 days or more and removal cases. These timelines may be used in other cases where it is mutually agreeable. For such cases, the parties have agreed to ask the arbitrator to adhere to the following time lines:

(1) **Hearing.** Arbitrators are to conduct a hearing within fifteen (15) working days of selection.

(2) **Briefs.** Post hearing briefs will be submitted within fifteen (15) workdays after completion of hearing or receipt of transcript unless the parties agree to an extension.

(3) **Decision.** Arbitrators are to render a decision within fifteen (15) workdays of closing of the record. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing whichever is later.

H. **Costs.** The arbitrator's fee and the expenses of the arbitration, if any, shall be borne equally by the Service and the Union. Fees to be paid by the Service will be governed by existing regulations.

I. **Cancellation.** The parties will share cancellation costs equally when notice is provided at least 96 hours prior to the scheduled hearing date. The party seeking the cancellation will pay arbitration costs incurred for canceling less than 96 hours prior to any hearing.

J. **Location.** The arbitration hearing will be held, if possible, on the Service's premises during the regular day shift of the basic workweek. The arbitration will normally be held within the commuting area of the grievant unless the grievant has transferred from the site of the dispute; and in such cases the hearing will be held at the site of the dispute unless both parties agree to hold it in another location.

K. **Participants.**

(1) **Duty Status.** All participants in the hearing shall be on administrative leave, if they would otherwise be in a duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Service will adjust the employee's schedule so that the employee would be in a duty status.

(2) **Travel and Per Diem.** Where the grievant or relevant witnesses are not within the commuting area of the hearing site, the Service will pay travel and per diem. Should there be a disagreement as to the relevance of a witness where travel and per diem is required, the Union will pay travel expenses and the issue will be presented to the arbitrator who will decide on the relevancy of the testimony. If the arbitrator decides that the witness is relevant, the arbitrator will so state in the decision and the agency will pay travel and per diem at a rate no greater than that authorized by government travel regulations.

L. **Binding Awards.** The arbitrator's award shall be binding on the parties unless either party files exceptions with the Federal Labor Relations Authority, under the regulations prescribed by the Authority. However, any adverse action appeals shall be presented to the appropriate appellate jurisdiction.

ARTICLE 49 - Effective Date and Duration

A. **Effect.** This Agreement supersedes the 1997 Collective Bargaining Agreement. This new Agreement shall take effect on the date that it is signed by the Commissioner and the President of the American Federation of Government Employees (or their respective designees) and shall remain in effect for three (3)

years from that date. If either party subsequently desires to renegotiate this contract, it will furnish written notice to the other party containing the proposed changes not less than one hundred and eighty (180) days but not more than two hundred and ten (210) days prior to the termination of this Contract. If neither party desires to renegotiate the Agreement, the parties shall execute new signatures and dates, and the Agreement shall be renewed for a one (1) year period.

B. **Renegotiation.** In the event notice is given by either party, renegotiations shall begin within sixty (60) days from the date of receipt of notice of the proposed changes.

Ground rules shall be negotiated one hundred and fifty (150) days prior to the expiration date of the Agreement. Any matters remaining in dispute at the expiration of the contract shall be forwarded to the appropriate third (3rd) party for resolution.

ARTICLE 50 - Negotiation of Supplemental Agreements

A. **Supplemental Procedures.** AFGE Locals designated by the Union shall be allowed to negotiate a Supplemental Agreement covering all eligible employees in the District, provided that the Local shall have initiated its request for bargaining over a Local Supplemental Agreement no later than eighteen (18) months after the effective date of this Master Agreement. It is understood there will be only one Supplemental Agreement per District. For the purpose of this Article, the Headquarters Office, Service Centers, Asylum Offices, Administrative Centers, and Regional Offices will each be treated as a District and may negotiate a Supplemental Agreement covering all bargaining unit employees assigned to those locations. All Supplemental Agreements are to be immediately forwarded to the Council President and the Labor Relations Office at the Service's headquarters for review and approval following their execution by the Local Parties. Supplemental Agreements automatically go into effect 90 days after submission if there have been no revisions requested by either party.

B. **Master Agreement Controlling.** It is understood by the parties to this Agreement that this is the Master Agreement and that only a Supplemental Agreement may be negotiated at the local level. The Master Agreement is governing and controlling and nothing may be included in the local Supplemental Agreement which is in conflict with this Agreement. Where provisions of a Supplemental Agreement are in conflict with the terms of this Master Agreement, the terms of the Master Agreement shall govern. It is further understood that local Supplemental Agreements shall not repeat or paraphrase any provisions of this Master Agreement. Where a local union represents employees in more than one District, the negotiation of a single local Supplemental Agreement is appropriate if mutually agreeable to the local union and each activity head.

C. **Subject Matter.** Matters appropriate for local supplemental bargaining shall be limited to the following matters:

- (1) physical working conditions such as safety, sanitation, heat, ventilation, smoking policy, parking, lockers, eating facilities, work clothing where applicable, etc.;
- (2) opportunities for job related training;
- (3) leave scheduling;
- (4) break periods for work shifts;
- (5) procedures for equitably assigning overtime work;
- (6) flexible tours of duty;
- (7) alternative work schedules as specified in this agreement;
- (8) official time provisions (such as banks of official time) for Local officers and stewards to the extent such provisions more precisely define the reasonable-time limitation which the master agreement imposes;
- (9) the circumstances under which rough duty attire/uniforms may be worn;

- (10) casual dress days;
- (11) procedures for enforcing pay caps on overtime earnings on other than a yearly basis (e.g., a monthly, quarterly or other short-term basis);
- (12) office space for Local Unions, including furniture, equipment, and E-mail access for the Local Union;
- (13) local training committees; and
- (14) up to fifteen additional matters of local concern as may be identified by each party to the particular local supplemental negotiations.

Any matters in addition to the foregoing may be negotiated only with the approval of the Parties at the national level. Requests for approval to negotiate such additional matters are to be jointly submitted to the President of the Council and to the Chief of the Labor and Employee Relations Policy Section at the Service's headquarters.

D. **Negotiability Disputes.** If a negotiability dispute involves a question solely as to whether a proposal conflicts, repeats, or paraphrases provisions of the master Agreement, it may be referred by either party to both the Headquarters Office and the National President of the National INS Council. The parties will discuss such a referral within ten (10) working days to attempt to resolve the issue. If the issue is not resolved, it may be presented as a Council or national-level Service grievance over the interpretation and application of the Master Agreement.

E. **Expiration and Renegotiation.** Supplemental Agreements predating this Master Labor Agreement will remain in force, as qualified below, until they either expire according to their terms or they are superseded by a new Supplemental Agreement. Any Supplemental Agreement negotiated under the provisions of this Article shall have a term of three (3) years from its effective date. Except for the subject matter limitations set forth in section C above, the Parties understand and agree that the provisions of a Supplemental Agreement predating this Master Labor Agreement may be carried over to new Supplemental Agreements as long as they do not conflict with the terms of this Master Labor Agreement.

ARTICLE 51 - Impasses in Supplemental Negotiations, Impact Bargaining, and Mid-Term Negotiations.

A. **Impasses During Negotiation.** During Supplemental Negotiations, Impact Bargaining or Mid-Term Negotiations, when it has been determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the parties shall once more attempt to resolve any existing impasse item.

B. **Mediation.** If such consideration does not result in the resolution of the impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either of these parties.

C. **Referral to National Parties and Impasses Panel.** Any impasse which remains unresolved following mediation may be submitted to the Associate Commissioner Human Resources and Development, and the National President of the National INS Council for consideration prior to referral to the Federal Service Impasses Panel. Referral to the Panel will be in accordance with existing Department of Justice instructions and rules established by the Panel.

D. **Agreements Allowed.** The procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement with the assistance of the Mediator or the Panel.

ARTICLE 52 - Total Quality Management

A. **TQM Philosophy.** Total Quality Management (TQM) is both a philosophy and a way of doing business that emphasizes continuous improvement in the quality of service and work performed by employees, and the quality of work life of employees.

The Service and the Union agree that it is in the interest of the service and employees to jointly pursue TQM initiatives. Such initiatives may entail review and analysis of Service policies and practices and changes to same when required in the interest of improved quality. TQM is also based in the belief that employees are a valuable resource and possess the knowledge and ability to solve work problems and improve work processes.

B. **Principles.** The Service and the Union recognize that it is mutually advantageous for them to work together in the interest of improved quality. The parties also recognize that a TQM effort should provide for:

- (1) A firm Management and Union commitment at all levels, especially at the top;
- (2) An emphasis on the accomplishment of the Service mission through open communication and understanding and meeting the needs and requirements of our "customers";
- (3) Fostering and promoting open communications among the Union, management and employees;
- (4) A mechanism for ensuring employee awareness of quality initiatives and TQM principles;
- (5) A mechanism to ensure that employees have the appropriate skills to implement the quality initiatives adopted;
- (6) Direct management, employee, and Union involvement and participation through Process Action Teams (PATs); and
- (7) Utilization of bargaining unit volunteers whenever possible.
- (8) Participation on a Process Action Team will be considered in evaluating an individuals annual performance rating, and elements or rating factors will be adjusted to account for time spent participating on a PAT.

C. **Reservation of Rights.** Nothing in this Article is intended to interfere with or waive any right of the Union or the Service under this negotiated agreement or under applicable statutes and regulations.

D. **Memorandum of Understanding.** The parties' memorandum of understanding dated October 21, 1992 is attached as Appendix 4 to this contract.

ARTICLE 53 - Employee Assistance Program

A. **Assist Employees.** Under the Employee Assistance Program (EAP) the Employer agrees to continue efforts to identify, counsel and assist in rehabilitating employees with alcohol, drug related, or personal problems which may adversely affect job performance. The union agrees to cooperate fully with the Employer in this program, while complying with the provisions for confidentiality in safeguarding client information.

B. **Information to Union.** The Employer agrees to provide an orientation for union officials concerning EAP policies, referral procedures and program resources.

C. **Rehabilitation.** The Employer recognizes its responsibility to identify and make reasonable effort at rehabilitation of employees with alcohol or drug problems at an early stage. Employees undergoing a prescribed program of treatment will be granted sick leave for this purpose on the same basis as any other illness which requires absence from work.

D. **Discipline.** The Employer and the Union jointly agree that employees entering the EAP are not immune from disciplinary action. However, the fact that an employee is actively pursuing, or indicates a commitment to enter an established program of rehabilitation will be given weight in considering appropriate disciplinary action.

E. **Annual Review.** The EAP authorities will meet annually with designated union representatives in reviewing the agencies yearly statistical report and general program effectiveness.

F. **Child Care / Elder Care.** The Service will continue to provide and or support various activities in order to meet the ongoing child and elder care needs of

employees. These may include, but are not limited to, such things as child/elder care and parenting information, child/elder care resource and referral information, workshops, and counseling as available through the Employees Assistance Program. It is agreed that the responsible officials will grant emergency annual leave requests and consider emergency requests for leave without pay brought about by unexpected changes in child care or elder care arrangements, consistent with Service needs. Consistent with Service needs, the Service agrees to utilize programs that may assist employee with child care or elder care needs; for example, part-time employment, job sharing, leave, flextime, etc. The Service recognizes that it may be necessary for employees to contact child care and elder care providers during duty hours.

ARTICLE 54 - Contracting

A. **Briefings.** Management will brief Council representatives concerning any decisions to contract out work currently performed by bargaining unit employees of the Service. The briefings are to provide information about contracting out studies under OMB Circular A-76.

B. **Site Visits.** The Service will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by bargaining unit employees. A Union representative may attend such a site visit.

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

Signature Page

APPENDIX 1 - Merit Promotion Plan I

The Merit Promotion Plan presently in negotiation will become part of this Agreement as Appendix I when approved by both parties.

APPENDIX 2 - Dues Withholding

Section I Definitions

A. **Dues:** The regular, periodic amount determined by the Union to be required of the member to maintain good standing in the Union. This amount is certified by the Union on the SF-1187 form and excludes special assessments, back dues, fines, and similar items not considered to be dues. A multi-level dues structure may be utilized.

B. **SF-1187:** "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues."

C. **SF-1188:** "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues."

D. **Payroll Office:** National Finance Center, Department of Agriculture.

E. **Servicing Human Resources Office:** Regional Human Resources Office for Regional employees and Operating Services Branch of the Human Resources Office for Headquarters Office employees.

Section II Eligible Employees

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

A. **Bargaining Unit Employee.** Be in the Unit covered by this Agreement;

B. **Member in Good Standing.** Be a member in good standing with the Union;

C. **Regular Salary.** Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and

D. **Request.** Request the allotment on the prescribed form (SF-1187) which has been certified by the authorized Union official.

Section III Responsibilities of the Union

The Union shall:

- A. **Voluntary Nature.** Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
- B. **Provide SF-1187.** Purchase and distribute the SF-1187 Form to its members;
- C. **Certify SF-1187.** Certify on the SF-1187 Form the amount of dues to be withheld each biweekly pay period, and identify the Local to receive the dues deductions;
- D. **Forward SF-1187.** Promptly forward completed SF-1187 forms to the appropriate servicing Human Resources Office;
- E. **List of Authorized Signatures.** Furnish written notification to the servicing Human Resources Office concerning the names and titles of Local Union officials authorized to certify the SF-1187 form; and
- F. **Written Notification.** Provide the appropriate servicing Human Resources Office with written notification concerning:
 - (1) **Changes.** Changes in the amount of Union dues;
 - (2) **Terminations.** The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of such determination; and
 - (3) **Transfers.** The name of any employee on check off who transfers from one Local to another; any change in the Local who receives dues deducted from check; and any change in the amount to be deducted occasioned by the transfer to a new Local.
- G. **Multiple Locals.** In Districts where there is more than one Local, each Local in a District shall have the right to process SF-1187's.

Section IV

Responsibilities of the Employer

The Employer shall:

- A. **Screen SF- 1187.** Screen each Form SF-1187 to ensure that only eligible employees are on the dues withholding listing. The servicing Human Resources Office will also screen each promotion action to remove employees who are promoted or transferred out of the unit.
- B. **Certify SF-1187.** Receive in the appropriate servicing Human Resources Office the SF-1187 form from the Union; certify on the SF-1187 form that the employee is a member of the bargaining unit; stipulate the bargaining group the employee is a member of by certifying the appropriate group in the upper right-hand corner of the SF-1187; and promptly forward the SF-1187 Form to the Payroll Office for processing.
- C. **Reinstate from Temporary Assignments.** Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit.
- D. **Reinstates from Non-pay Status.** Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (for example, leave without pay).

Section V

Procedures

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

A. **Withholding of Dues.**

- (1) **Arrange Withholding.** Upon receipt of a properly completed SF-1187 form from the servicing Human Resources Office, the Payroll Office shall arrange to withhold the Union dues in accordance with existing pay periods (26 biweekly periods) and procedures under which employees are regularly compensated.

(2) **Effective Date.** The dues deduction will be effective as soon as possible, but in no case will be later than two (2) full pay periods following receipt of the SF-1187 form by the Payroll Office.

(3) **Existing Withholdings.** Employees who meet the eligibility requirements for dues withholding (stated in Section II) and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF-1187 form to come under the provision of this Agreement; PROVIDED, that this Agreement does not necessitate any change being made to their current allotment.

B. Changes in Dues.

(1) **Union Certification Required.** The amount of dues certified on the original allotment form (SF-1187) will remain unchanged until an authorized Union official provides written certification to the servicing Human Resources Office that the amount of dues has changed. New SF-1187 forms will not be required.

(2) **Once per Year.** Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once every twelve (12) months.

(3) **Effective Date.** Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt by the Payroll Office of the Union's certification of changes in its dues.

C. Termination of Allotments.

(1) **Automatically:**

(a) Loss of Recognition. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;

(b) Termination of Agreement. When the dues withholding agreement is terminated;

(c) No longer Eligible. When an employee ceases to be eligible for inclusion in the Union in good standing, effective with the first complete pay period after receipt by the Payroll Office of written notice from the authorized Union official.

(2) **Voluntarily:**

(a) Employee Revocation. An employee may submit a written request, SF-1188, for the revocation of an allotment at anytime. He or she may submit the request, in duplicate, to the servicing Human Resources Office. Revocations will be effective the first full pay period following March 1, if the request is received in the servicing Human Resources Office by March 1.

(b) Procedures. Revocations by employees shall be in duplicate, preferably on the SF-1188 form, and shall be forwarded by the employee to the servicing Human Resources Office. The servicing Human Resources Office Payroll Unit will process the SF-1188 and retain a copy for the payroll records. A copy shall be returned to the employee at the address provided on the SF-1188. The servicing Human Resources Office shall provide the names and local numbers of voluntary terminations to the Council Secretary Treasurer.

D. Remittances of Dues.

(1) **Composite Checks.** All non-Border Patrol Locals which indicate composite participation will neither receive checks nor employee listings. However, if the Union code in the employee's master record does not indicate composite participation, the Local will continue to receive a check and listing. A maximum of three (3) composite checks (one from each payroll computation cycle) with supporting summary listings will be forwarded to NST AFGE, 80 F Street, N.W., Washington, D.C. 20001.

(2) **Magnetic Tape.** A magnetic tape for the non-Border Patrol Locals will be made available to AFGE. This tape will contain detailed information to support all deductions and charges reflected on the three (3) composite checks, as well as those employees in the composite Locals who did not have sufficient funds to allow a deduction. The magnetic tape will also contain a code indicating the employee's

current pay status, and a code indicating whether the deduction resulted from the processing of a Time and Attendance Report or as a result of a payroll adjustment.

(3) **Code Combinations.** The expected code combinations to be recorded on the SF-1187 for proper processing are as follows:

11 - NINSC Council, to be included in composite check to AFGE.

01 - NINSC Council, to be included in check to Local.

Section VI

Cost of Withholding

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

Section VII

Under Payments and Over Payments

Rejections

. The Immigration and Naturalization Service does not assume responsibility for the maintenance in good standing in the Union of the employee. Any SF-1187 submitted to the servicing Human Resources Office that Management does not process will be returned to the Union with the reasons why this was not accepted. The Union reserves the right to discuss the exclusions with Management personnel.

Administrative Errors

. Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the employee organization is not scheduled to receive a remittance check after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance.

APPENDIX 3 - Side Letter on Intent of Article 7.C.(2): Official Time

In regard to the Form "Request for Official Time for Union Activities" agreed to in this Article, the parties understand that the entry by the Union representative under "Place of Contact/Phone # " does not require that such activity be conducted at that particular location. The entry is intended to provide Management with a means of recalling the employee in accordance with Article 6C. Further, any reasonable explanation for deviating from the indicated location will be considered on its merits and the representative will not be considered to be abusing the official time solely because of such a deviation.

APPENDIX 4 - TQM Memorandum of Understanding

This is a memorandum of understanding between the Immigration and Naturalization Service (INS) and the National Immigration and Naturalization Service Council (Council), American Federation of Government Employees, regarding Total Quality Management (TQM) in INS. This memorandum of understanding is intended to clarify the role of the Union, employees and Management in the TQM process, and is effective immediately. This memorandum does not absolve managers of meeting their responsibilities under the labor relations law, and is intended to serve as our joint commitment to the successful implementation of the TQM process

The parties agree that TQM training shall be provided to Council officers and officers of its locals to promote understanding of the TQM process, and to facilitate the participation of employees and the Union in same. A one day joint training session will be conducted by Headquarters and a National Union representative in approximately 10 locations for managers, employees, and union officers. Additional training will be provided for up to three National Council Officers at a contractor location. Where training on TQM is provided by the District, Service Center, or Regional Office, Local Union representatives will be invited to attend. When TQM training is scheduled, the Service will notify the local president who will provide management with the names of two union officials not previously trained in the TQM matters to be covered in the training. The individuals on that list will be invited to attend.

The parties agree that the Union shall be represented on each process action team (PAT) involving bargaining unit employees, that official time for such purposes shall be authorized, along with travel and per diem for participation in training or PATS, as may be necessary. Union representatives shall participate in PATS as observer\contributors, and will normally not be voting members of the team. When TQM meetings involving bargaining unit employees are to be conducted, and no union representative is designated, the Local President or his or her designee will be invited to attend. It is understood that union representatives for process action teams at the District level shall be from that District. Any official time required for union representatives to participate in TQM related activities shall be approved without reference to the blocks of hours authorized under the negotiated agreement.

Employees shall be provided an informational notice, the terms of which should be negotiated between the parties, explaining TQM and the roles of employees, the Union and managers or supervisors in the TQM process.

The Headquarters LMR office shall provide the Council President with briefings during consultations as to the status of the TQM program and any process action team groups meeting at the headquarters which do not involve bargaining unit employees. Similar briefings shall be provided at the District and Regional level Consultations, for Local Presidents and the Council's Regional Vice Presidents. Nothing in this memorandum of understanding is intended to interfere with or waive any right of the Union or the Service under the negotiated agreement or applicable statutes and regulations.

APPENDIX 5 - Side letter on Intent of Article 53:Employee Assistance Program

The parties have agreed to the following understand relating to the provisions of Article 53 – Employee Assistance Program:

A. The wording of Article 53 is without prejudice to the following two positions of the Service:

1. That law enforcement officers are subject to a higher standard of conduct than other personnel in the bargaining unit; and
2. That law enforcement officers whose drug related problems arise from the use of illicit drugs may not be entitled to the same consideration for employee assistance as personnel with different problems.

B. The parties recognize that the Union retains the right to challenge these determinations of management in any appropriate forum.

APPENDIX 6 - Side Letter on Web Gear Equipment

Service Requirements have resulted in the necessity for uniformed officers to carry additional equipment. The parties recognize that this may create safety and health problems. The parties agree to establish a working group to develop a policy addressing this issue. Said working group shall be established within 180 days of the effective date of this agreement and charged to report and recommend a policy within 270 days of the effective date of this agreement.

APPENDIX 7 - Memorandum of Understanding on Ethics

This memorandum memorializes the agreements of the parties concerning implementation of the Department of Justice Supplemental Standards of Ethical Conduct, 5 CFR §§ 3801, et seq.

The parties agree that, consistent with the collective bargaining agreement between the Immigration and Naturalization Service (INS) and the National INS Council, the INS has discharged its duty to negotiate concerning the implementation and impact of the supplemental standards of ethical conduct referenced in the foregoing paragraph. Nothing in this agreement is intended to conflict with, contradict, or

waive any right of the parties or employees under the collective bargaining agreement between the Immigration and Naturalization Service and the National INS Council.

The parties further agree that, as a one-time exception to the policy set forth in section 380I.106(b)(1)(i) of the Supplemental Standards of Ethical Conduct, the INS will allow employees, who are engaged in the off-duty practice of law consistent with Article 13, Sections A and D, of the collective bargaining agreement and who are identified on the attached list, to continue such practice as long as the conditions of their practice remain consistent with Article 13, Section A. Section A of Article 13 prohibits outside employment by INS employees when such employment would "result in, or create the appearance of a conflict of interest with official duties or with official business of the Service; or tend to impair that employee's mental or physical capacity to perform official duties and responsibilities." In addition, before undertaking any new matter, the INS employees authorized to continue their off-duty practice law under this agreement must seek a conflict-of-interest check with their supervisors and an INS ethics official as required of other Department employees engaged in unpaid outside practice.

Any bargaining unit employee included on the list submitted to the agency on January 29, 1999 who is denied authorization for continued outside employment in the practice of law may pursue the matter through the negotiated grievance procedure. Further where restrictions on an employee's outside employment in the practice of law would cause undue personal or family hardship, and or unduly prohibit the employee from completing a professional obligation entered into prior to entering government service, employees may request and receive authorization for such outside employment pursuant to the terms of the cited standards of ethical conduct.

Signed 6/9/1999 by: Charles J. Murphy for the Union
Edwin S. Campbell Jr. for the Service

Specifically, employees engaged in the outside practice of law consistent with Article 13, Sections A and D, are those employees whose off-duty practice was approved consistent with Article 13, section D, or whose requests to engage in the off-duty practice of law were not answered within the time limit set forth in Article 13, Section D, provided that the specific natures of the practices for which approval was requested were consistent with Article 13, Section A.

Outline of Contract

ARTICLE 1 - Recognition

ARTICLE 1 - Recognition

Bargaining Unit

Gender Language.

ARTICLE 2 - Effect of Law and Regulation

A. Existing or Future Laws.

B. Government Wide Rule or Regulation.

C. Service Policy.

D. Effect of Invalidation.

E. Scope.

F. Intent of Restatement.

ARTICLE 3 - Employee Rights

A. Right to Join and Participate.

(1) Employee Participation.

(a) Representation.

(b) Collective Bargaining.

(2) Management Non-participation.

B. Private Counseling.

C. Contributions / Gifts.

(1) Voluntary.

(2) Gifts.

D. Right to Communicate.

(1) Human Resources Office

(2) EEO Office

(3) Supervisor / Management

(4) EEO Counselors;

(5) Safety and Health Office.

ARTICLE 4 - Management Rights

A. Negotiating.

(1) Permissive Subjects.

(2) Procedures.

(3) Appropriate Arrangements.

B. Authority of Service Officials.

(1) Mission, Budget, Organization

(2) According to Law:

(a) Hiring and Discipline.

(b) Assign Work / Contracting.

(c) Selections

(d) Emergencies.

ARTICLE 5 - Union Rights

A. Exclusive Representative.

B. Representation at Formal Discussions.

(1) Formal Discussions.

(2) Notice.

C. Representation at Investigatory Interviews.

D. Right to Present Views.

E. Existing Agreements.

ARTICLE 6 - Status of Employee Representatives

A. No Restraint.

B. Designation of Stewards.

C. Authorization for Representational Duties.

D. Steward and Officer Lists / Management Directories.

ARTICLE 7 - Use of Official Time

A. Authorized Uses.

(1) Representation.

(2) Grievances.

(3) Labor-Management Meetings.

(4) Arbitrations & Appeals.

(5) Adjustment of Grievances.

(6) Committee Meetings.

(7) Respond to Management.

(8) Technical Representative.

(9) Observer.

(10) Respond to Congress.

(11) Partnership.

(12) Treasurer.

(13) EEO Briefings.

(14) Other Functions.

B. Block Time.

(1) Council President

(2) Executive Vice President

(3) Vice Presidents

- (4) **Fair Practices Coordinator**
- (5) **Staff Assistants**
- (6) **Local Union Officers**
- C. **Required Procedures:**
 - (1) **Advance Notice.**
 - (2) **Form G-826 Procedures.**
 - (3) **Supervisory Approval.**
 - (4) **No Internal Union Business.**
- D. **Restriction on Block Time.**
 - (1) **Internal Union Business.**
 - (2) **Leave.**
- Presumptive Rating.
- Recall to Duty.
- E. **Travel Time.**
- F. **Council Representatives.**
 - (1) **Labor-Management Meetings.**
 - (2) **Safety and Health Committee Meetings.**
 - (3) **Other Meetings with Management.**
- G. **Administrative Time for Training.**
 - (1) **Limits.**
 - (a) Offices of Less than 50 - Fifteen days
 - (b) Offices of 50 to 299 - Thirty days
 - (c) Offices of 300 to 500 - Forty days
 - (d) Offices of More than 500 - Sixty days
 - (e) Council - Thirty days
 - (2) **Procedures.**
- H. **Arbitration Travel and Per Diem.**
- I. **Council Trips.**
- J. **Travel and Per Diem for Union Representatives.**
- ARTICLE 8 - Facilities and Services**
- A. **Union Use of Service Facilities.**
 - (1) **Meeting Space.**
 - (2) **Non-duty Hours.**
 - (3) **Elections.**
 - (4) **Membership Drives & Materials.**
- B. **Facilities for Representation.**
 - (1) **Meeting Space.**
 - (a) Grievances / Appeals.
 - (b) Caucusing.
 - (c) Agreement Administration.
 - (2) **No Internal Union Business.**
- C. **Bulletin Boards**
 - (1) **Prominent and Accessible.**
 - (2) **Exclusive Use.**
 - (3) **Restrictions.**
- D. **Access to Employees.**
 - (1) **Employee Lists.**
 - (2) **Employee Orientation.**
- E. **Reference Materials.**
 - (1) **Employee Use of CFR and AM.**
 - (2) **CFR and AM.**
 - (3) **Council Copy of AM.**
- F. **Locker Rooms.**
- G. **Contract Copies.**

- (1) **Employee Copy.**
- (2) **Printing.**
- (3) **Council and Local Copies.**
- H. **Union Representatives Permitted on Government Property.**
- I. **Telephones.**
- J. **Space & Equipment.**
- K. **Electronic Mail.**
- L. **INSERTS.**
- M. **Telephone Cards.**
- N. **Copy Machines.**
- O. **Fax Machines.**

ARTICLE 9 - Impact Bargaining and Mid-Term Bargaining

- A. **Notice of Proposed Change.**
- B. **Bargaining Procedures.**
 - (1) **National Level Bargaining:**
 - (a) Notice of Proposed Change.
 - (b) Demand to Bargain / Information.
 - (c) Union Proposals.
 - (d) Negotiations.
 - (e) Delays / Breaks.
 - (f) Bargaining Teams.
 - (g) Additional Team Members.
 - (h) Travel & Per Diem.
 - (i) Equipment.
 - (2) **Regional Level Bargaining:**
 - (a) Notice of Proposed Change.
 - (b) Demand to Bargain / Information.
 - (c) Union Proposals.
 - (d) Negotiations.
 - (e) Consistent with Master.
 - (f) Delays / Breaks.
 - (g) Travel & Per Diem.
 - (3) **Local Level Bargaining:**
 - (a) Notice of Proposed Change.
 - (b) Demand to Bargain / Information.
 - (c) Union Proposals.
 - (d) Negotiations.
 - (e) Bargaining Team.
 - (f) Travel & Per Diem.
 - (g) Consistent with Master.
- C. **Service of Notices and Demands.**
- D. **Good Faith.**
 - (1) **Resolve to Reach Agreement.**
 - (2) **Duly Represented.**
 - (3) **Reasonable Times.**
- E. **Impasses.**
- F. **Post Implementation Bargaining.**
- G. **"Covered by the Agreement".**
 - (1) **Tours of Duty.**
 - (2) **Work Sites.**
 - (3) **Discipline Regulations.**
 - (4) **Overtime.**
 - (a) Eligible Employees.
 - (b) Distribution Procedures / Caps.

ARTICLE 10 - Partnership and Labor-Management Relations

- A. **Information and Questions.**
- B. **National Consultations.**
- C. **Regional Consultations.**
- D. **Local Consultations.**
- E. **Labor Management Partnerships**
 - (1) **Cooperative Relationship.**
 - (2) **Partnership Councils.**
 - (3) **Duty Status.**
 - (4) **Avert Traditional Bargain.**
- F. **Status of Partnership Agreements.**

ARTICLE 11 - Protecting Against Prohibited Personnel Practices

- A. **Definitions.**
 - (1) **Prohibited Personnel Practice.**
 - (2) **Personnel Action.**
 - (a) Appointment.
 - (b) Promotion.
 - (c) Adverse / Discipline / Corrective Actions.
 - (d) Detail / Transfer / Reassignment.
 - (e) Reinstatement.
 - (f) Restoration.
 - (g) Reemployment.
 - (h) Performance Evaluation.
 - (i) Pay / Benefits / Awards / Training.
 - (j) Change in Duties.
- B. **Prohibited Actions.**
 - (1) **Discrimination.**
 - (a) Race / Color / Religion / Sex / National Origin.
 - (b) Age.
 - (c) Sex.
 - (d) Handicapping Condition.
 - (e) Marital Status / Political Affiliation
 - (2) **Non-merit Considerations.**
 - (a) Job Evaluations.
 - (b) Character / Suitability.
 - (3) **Political Activity.**
 - (4) **Obstruct Competition.**
 - (5) **Influence Withdrawals.**
 - (6) **Unauthorized Preference.**
 - (7) **Relatives.**
 - (8) **Whistleblower Reprisal.**
 - (a) Disclosures.
 - (i) Violation of Law / Rule / Regulation
 - (ii) Mismanagement / Waste / Abuse
 - (b) Special Counsel / Inspector General.
 - (i) Violation of Law / Rule / Regulation
 - (ii) Mismanagement / Waste / Abuse
 - (9) **Appeal Reprisal.**
 - (10) **Outside Conduct.**
 - (11) **Violation of Merit System Principles.**
- C. **Information to Congress.**
- D. **EEO Affirmative Action.**
 - (a) Race / Color / Religion / Sex / National Origin.
 - (b) Age.

- (c) Sex.
- (d) Handicapping Condition.
- (e) Marital Status / Political Affiliation

E. **Redress Procedures.**

- (1) **Elect Statute or Grievance.**
- (2) **Effect of Election.**
- (3) **MSPB Appeal of Grievance.**

F. **Exclusive Grievance Procedure.**

ARTICLE 12 - Notice to Employees

A. **Copy for Union Representative.**

- (1) **Adverse Action.**
- (2) **Disciplinary Action.**
- (3) **Reduction-in-Force.**
- (4) **Denial of WIGI.**
- (5) **Fitness for Duty Exam.**
- (6) **Involuntary Reassignment / Transfer.**

"The copy may at your option be furnished to your Union representative."

B. **New Employees.**

- (1) **Union Information.**
- (2) **Right to Join.**
- (3) **Contract.**

C. **Leave and Earnings Statements.**

D. **Workplace Injuries.**

ARTICLE 13 - Outside Employment

A. **Permission.**

B. **Request.**

- (1) **Identity Employer.**
- (2) **Nature of Work.**
- (3) **Pay.**
- (4) **Hours / Schedule.**

Voluntary Work.

- (1) Pro Bono Practice of Law
- (2) Other Volunteer Work.

C. **Timeframes.**

D. **Approval.**

E. **Applicable Law.**

F. **Practice of Law.**

ARTICLE 14 - Retirement

A. **Retirement Counseling.**

B. **Disability / Deferred Annuity.**

C. **Withdrawal.**

D. **LEO Retirement.**

ARTICLE 15 - Development and Training

A. **Employee Development.**

B. **Employee Initiative.**

C. **Fair and Equitable / Service Needs.**

D. **Schedule Variations.**

E. **Individual Development Plan.**

F. **Eliminated Positions.**

G. **Out-service Training.**

- (1) **In Advance.**
- (2) **Job-Related.**
- (3) **Not Available within Service.**
- (4) **New Program Unavailable.**

- (5) **Reasonable Inquiry.**
- (6) **Funds Available.**
- (7) **Not for Degree.**
- (8) **Operational Needs.**
- H. **Training Records.**
- I. **Union Recommendations.**
- J. **Fair and Equitable Selection.**

ARTICLE 16 - Classification

- A. **Union Participation.**
- B. **New Classifications.**
- C. **Union Representation.**
- D. **Desk Audits.**
- E. **Position Descriptions.**
- F. **Request for Desk Audit.**
- G. **Effect of Lower Graded Duties.**

ARTICLE 17 - Safety and Health

- A. **Safe and Healthful Working Conditions.**
- B. **Safety and Health Committees.**
 - (1) **Membership.**
 - (2) **Meetings.**
 - (3) **Purpose of Meeting.**
- C. **Union Participation.**
- D. **Duty to Report Unsafe Conditions.**
 - (1) **Review and Report Unsafe Conditions.**
 - (2) **Director Decision.**
 - (3) **Grievance.**
 - (4) **Identical Grievances.**
 - (5) **Injury Logs.**
- E. **Vehicle Safety.**
- F. **Service Handbook.**
- G. **Special Hazards / Imminent Risk.**
- H. **Weather Shelter.**
- I. **Meal Breaks / Lunch Rooms.**
- J. **Day Care / Housing.**
- K. **GSA Facilities.**
- L. **Immunizations.**
- M. **Unsafe Condition Move.**
- N. **Safe Staffing.**
- O. **Employee Responsibility for Safety.**
- P. **Assistance for Handicapped Employees.**
- Q. **Federal Employee Health Benefits (FEHB).**
 - (1) **Open Season.**
 - (2) **Health Plans.**
 - (3) **Biweekly Health Benefits Rates.**
- R. **TB Screening.**

ARTICLE 18 - Injury Compensation

- A. **Workplace Illness / Injury.**
- B. **Continuation of Pay / Leave.**
- C. **C. Pamphlets and Forms.**
 - (1) **"When Injured at Work".**
 - (2) **"Authorization for Examination and/or Treatment" (CA-16).**
- D. **Document Review.**

ARTICLE 19 - Fitness for Duty Examination

- A. **Fitness for Duty Examination.**

B. Right to Union Representation.

ARTICLE 20 - Disabled Employees

A. Light Duty.

B. Restored to Duty.

ARTICLE 21 - Personnel Records

A. Official Personnel Folders.

B. Copy of Documents and Right to Respond.

C. Unauthorized Disclosure.

D. Procedures to Review.

E. Derogatory Material.

F. Results of Investigation.

ARTICLE 22 - Performance Appraisal

A. Authority of Arbitrator.

B. Revised AMs.

ARTICLE 23 - Reduction-in-Force, Transfer of Function and Reorganization

A. Workforce Adjustments.

B. Definitions.

(1) Reduction-in-Force.

(2) Transfer of Function.

(3) Reorganization.

C. Employee / Union Notification.

D. Minimize Adverse Impact.

E. Advance Notice.

F. Applicable Laws.

G. Retention Registers.

H. Offers of Employment.

I. Management Responsibilities.

(1) Inform Employees.

(2) Written Notification.

(3) Placement Assistance.

(4) Retirement and Severance.

J. Minimize Adverse Impact.

K. Automation and Technology Changes.

L. Transfer of Function to Other Agency.

M. Eliminated Positions.

ARTICLE 24 - Firearms and other Weapons

A. Authorization to Carry.

(1) Management Right.

(2) Specific Authorization.

B. Employee Responsibility.

(1) Laws, Regulations and Policy.

(2) Policy Training.

C. Quarterly Qualifying.

D. Effect on Inspectional Overtime.

ARTICLE 25 - Uniforms and Appearance

A. Employee Suggestions.

B. Union Notification.

C. Uniform Allowance.

D. Uniform Selection.

(1) Short or Long Sleeve / Neckties.

(2) Rough Duty Uniform.

(3) Leather / Synthetic Equipment.

E. Uniform Inspection.

F. Uniformed Officers

- (1) **Groomed Appearance.**
 - (a) Hair Grooming.
 - (b) Hair Length.
- (2) **Facial Hair.**
 - (a) Beards.
 - (b) Sideburns.
 - (c) Moustaches.
- (3) **Jewelry.**
- (4) **Tattoos.**
 - (a) Obscene / Offensive.
 - (b) Grievance Procedures.
- G. **Fatigue Clothing.**
- H. **Female Uniforms.**
- I. **Raid Jackets / Vests.**
- J. **Non-uniformed Beards.**
- K. **Non-uniformed Appearance.**
- L. **Nametags.**
 - (1) **Numbered Name Plate.**
 - (2) **Extensions.**
 - (3) **Other Actions.**
 - (4) **Written Statement.**

ARTICLE 26 - Travel

- A. **Reimbursement.**
 - (1) **Federal Travel Regulations.**
 - (2) **Changed Rates.**
- B. **Definitions.**
 - (1) **"Regular duty station"**
 - (2) **"Temporary duty station"**
 - (3) **"Official duty station"**
- C. **Travel Status.**
 - (1) **Regularly Scheduled Workweek.**
 - (2) **Compensable Hours.**
- D. **Regular Commute.**
- E. **Local Travel / Temporary Duty Station.**
 - (1) **Local Mileage.**
 - (2) **Home to Temporary Station.**
 - (3) **POV Examples.**
 - (a) Residence to Temporary Duty Station.
 - (b) Regular Duty Station to Temporary Duty Station.
 - (4) **Established Rotational Assignments Excepted.**
 - (5) **Overtime Assignments.**
- F. **Per Diem.**
 - (1) **Eligibility.**
 - (2) **Partial Per Diem.**
- G. **Travel Advances.**
 - (1) **Sufficient Notice.**
 - (2) **Government Credit Card Advance.**
 - (3) **Imprest Fund.**
- H. **Necessity Travel.**
- I. **Accommodate Handicapped Employees.**
- J. **Ordered Overtime Travel.**
 - (1) **Concurrent Authorization.**
 - (2) **Official Business.**
 - (3) **Dependent on Public Transport.**

(4) **Infrequent Public Transport / Darkness.**

K. **Government Owned Vehicles.**

ARTICLE 27 - Overtime - (Other than Uncontrollable Overtime and LEA)

A. **Fair and Equitable Rotation.**

B. **Performance of Duties.**

C. **Maintain Records.**

D. **Laws, Regulations, and Policies.**

E. **Effect on Performance Appraisal.**

F. **Reopener for Inspection Overtime.**

G. **Overtime Cap.**

H. **Overtime Hours Limit.**

I. **Break in Overtime Hours.**

J. **Light Duty.**

K. **Overtime Assignment Procedures.**

ARTICLE 28 - Details and Temporary Duty Stations

A. **Procedures to Assign.**

(1) **Management Right.**

(2) **Limits.**

(a) **Law, Regulation, and Contract.**

(b) **Advance Notice.**

(c) **Utilize Volunteers.**

B. **Definitions.**

(1) **Temporary Assignment.**

(2) **Detail.**

(3) **Rotation.**

C. **Temporary Promotions.**

D. **Record of Detail / Personal Favoritism.**

E. **Volunteer Lists.**

F. **Undercover Employees.**

G. **Time Limit.**

H. **Union Representatives.**

I. **Selection Procedures.**

(1) **Volunteers.**

(2) **Selection.**

(3) **Local Bargaining.**

ARTICLE 29 - Hours of Work

A. **Determination of Work Hours.**

(1) **Basic Workweek.**

(2) **Inspections Workweek.**

(3) **Basic Workday.**

(4) **Effect of Holidays.**

(5) **Posted Schedules / Individual Changes.**

(6) **Break Between Shifts.**

(7) **Voluntary Schedule Adjustments.**

(8) **Break in Work Hours.**

(9) **Shift Trades.**

(10) **Meal Breaks / Lunch Rooms.**

(11) **Duty Rosters.**

B. **Definitions.**

(1) **Tours of Duty.**

(2) **Shifts.**

C. **Alternative Work Schedules**

Establishment of Alternative Work Schedules.

(2) **Concepts.**

- (a) Definitions:
Alternative Work Schedule (AWS)
Compressed Work Schedule
Flexible Work Schedule
- (b) Legal Restrictions.
 - (i) Reduced Productivity.
 - (ii) Diminished Service.
 - (iii) Increased Cost
- (c) Inspections Limitations.
 - (i) Inspectional Requirements.
 - (ii) Overtime.
- (3) **Overtime.**
- (4) **Consultations.**
- (5) **Negotiations.**

ARTICLE 30 - Formal Meetings and Investigative Interviews

- A. **Formal Discussions.**
- B. **Investigatory Interviews.**
 - (1) **Weingarten Rights.**
 - (a) Reasonable Belief.
 - (b) Employee Request.
 - (2) **Annual Notice.**
- C. **Written Memorandum.**
- D. **Written Notice / Witnesses.**
 - (1) **Office of Internal Audit.**
 - (2) **Witness.**
- E. **Scheduling of Interview.**
- F. **Travel for Interview.**

ARTICLE 31 - Disciplinary and Adverse Actions

- A. **Discipline Definition.**
- B. **Adverse Action Definition.**
- C. **Oral Admonishment.**
- D. **Union Representative / Information.**
- E. **Addressee.**
- F. **Unfounded Complaints.**
- G. **Financial Obligations.**
- H. **Discipline / Adverse Action Procedures.**
 - (1) **Just Cause.**
 - (2) **Letter of Reprimand.**
 - (3) **Notice of Proposed Action.**
 - (4) **Timeliness.**
- I. **Appeal.**
 - (1) **Reprimands and Short Suspensions.**
 - (2) **Adverse Actions.**
- J. **Grievance.**
 - (1) **Reprimands.**
 - (2) **Suspension or Adverse Action.**
 - (3) **Appeal Arbitrator.**
 - (4) **Appeal Performance Based Action.**
- K. **Unwarranted Discipline.**
- F. **Investigative Interview Travel.**

ARTICLE 32 - Actions Based Upon Unacceptable Performance

- A. **Performance Based Actions.**
- B. **Performance Improvement Plan.**
 - (1) **Identify Problems.**

- (2) **Explain Standards.**
- (3) **Allow Improvement.**
- (4) **Provide Assistance.**
- C. **Advance Written Notice.**
 - (1) **Identify Unacceptable Performance.**
 - (2) **Identify Critical Elements.**
 - (3) **Time to Review and Respond.**
 - (4) **Right to Representation.**
 - (5) **Written Decision.**
- D. **Established Performance Standards.**
- E. **Right to Review Documents.**
- F. **Performance Based Action Procedure.**
 - (1) **Notice, Information and Response.**
 - (2) **Decision.**
- G. **One Year Limit.**
- H. **Record Retention.**
- I. **Final Decision.**
- J. **Appeal.**

ARTICLE 33 - Career Ladder Promotions and Within Grade Increases

- A. **Promotions.**
- B. **Grade Increases.**
 - (1) **Not Acceptable Level of Performance.**
 - (2) **Delayed Determination.**
 - (a) 90 Day Review.
 - (b) New Position.
- C. **Performance Assistance.**
 - (1) **Identify Problems.**
 - (2) **Explain Requirements.**
 - (3) **Warn of Consequences.**
 - (4) **Provide Assistance.**

ARTICLE 34 - Quality Step Increase

- A. **Definition.**
- B. **Purpose.**
- C. **Consideration.**
- D. **Determination.**
- E. **Effective Date.**
- F. **Union Consultations.**

ARTICLE 35 - Annual Leave

- A. **Right to Use.**
- B. **Earn and Accrue.**
- C. **Request Procedures.**
- D. **Timely Leave Approval.**
- E. **Procedure to Schedule in Advance.**
- F. **Priority Approval.**
 - (1) **Accrued Leave.**
 - (2) **Seniority.**
 - (3) **Children's Vacation.**
 - (4) **Previous Requests.**
- G. **Three Consecutive Weeks.**
- H. **No Seasonal Exclusion.**
- I. **Religious Holiday.**
- J. **Reason for Leave.**
- K. **Canceled / Changed Leave.**
 - (1) **Employee Initiated Change.**

- (2) **Operational Need.**
- (3) **Restoration of Canceled Leave.**

L. **Emergencies**

- (1) **Procedure.**
- (2) **Extension.**

M. **Habitual Tardiness.**

N. **Advance Annual Leave.**

O. **Bereavement Leave.**

- (1) **Spouse / In-laws.**
- (2) **Children.**
- (3) **Parents.**
- (4) **Brothers / Sisters / In-laws.**
- (5) **Grandparents / Grandchildren.**
- (6) **Family Equivalent.**

P. **Leave Bank.**

ARTICLE 36 - Sick Leave

A. **Earn and Accrue.**

B. **Purposes for Sick Leave.**

- (1) **Medical Appointments.**
- (2) **Incapacity.**
- (3) **Family Care.**
- (4) **Family Death.**
- (5) **Contagious Disease.**
- (6) **Adoption.**
- (7) **FEFFLA**

C. **Sick Leave Request Procedures.**

- (1) **Anticipated Sick Leave.**
- (2) **Unanticipated Sick Leave.**

D. **Evidence of Illness.**

E. **Annual Leave for Illness.**

F. **Advanced Sick Leave**

- (1) **Requirements.**
 - (a) Medical Certificate
 - (b) Repayment.
 - (c) Maximum Advance.
 - (d) Minimum Absence.
- (2) **Conditions for Advanced Sick Leave.**
 - (a) Charged to Employee.
 - (b) Temporary Employees.
 - (c) Retiring Employees.

G. **Increment Charged.**

ARTICLE 37 - Administrative Leave

A. **Definition.**

B. **Voting in Civil Election.**

- (1) **General Rule.**
- (2) **Additional Time.**
- (3) **Travel Time.**
- (4) **In-person Registration.**
- (5) **Costs.**

C. **Blood Drive.**

D. **Change of Duty Station.**

E. **Court Leave.**

F. **Service Interviews.**

ARTICLE 38 - Home Leave

- A. **Accrual.**
- B. **Granting.**
- C. **Limited Use.**
- D. **Combined with Annual Leave.**
- E. **Management Discretion.**

ARTICLE 39 - Leave Without Pay

- A. **Definition.**
- B. **Matter of Right.**
 - (1) **Disabled Veteran.**
 - (2) **Military Reservist.**
 - (3) **Family Necessity.**
- C. **National Union Office.**
- D. **Administrative Discretion.**
 - (1) **Education.**
 - (a) Related to Position.
 - (b) Acceptable Performance / Expected Return.
 - (2) **Injury / Illness.**
- E. **NINSC Convention.**
- F. **Substitute for Annual Leave.**
 - (1) **Family Death.**
 - (2) **Religious Holiday.**
- G. **Union Representatives.**

ARTICLE 40 - Leave for Family Responsibilities

- A. **Family Considerations.**
- B. **Family Member Definition.**
 - (1) **Spouse / In-laws.**
 - (2) **Children.**
 - (3) **Parents.**
 - (4) **Brothers / Sisters / In-laws.**
 - (6) **Family Equivalent.**
- C. **Maternity Leave.**
 - (1) **Request Procedure.**
 - (2) **Advanced Sick Leave for Maternity.**
 - (3) **Advanced Annual Leave for Maternity.**
- D. **Accommodation of Pregnancy.**
- E. **Continuation of Employment.**
- F. **Paternity and Adoption Leave.**
- G. **Care for Family Members.**
- H. **Leave for the Death of Family Members.**
- I. **Leave for other Family Purposes.**
- J. **Voluntary Leave Transfer Program and Leave Bank Program.**

ARTICLE 41 - Counseling for Performance and Conduct

- A. **Reasonable and Fair.**
- B. **Privacy and Notice.**
- C. **Union Representative.**
- D. **Written Record.**
- E. **Misconduct Record.**
- F. **Performance Record.**

ARTICLE 42 - Holidays and Religious Observances

- A. **Holidays.**
 - (1) **New Year's Day.**
 - (2) **Martin Luther King's Birthday.**
 - (3) **Washington's Birthday.**
 - (4) **Memorial Day.**

- (5) **Independence Day.**
- (6) **Labor Day.**
- (7) **Columbus Day.**
- (8) **Veterans Day.**
- (9) **Thanksgiving Day.**
- (10) **Christmas Day.**
- (11) **Inauguration Day in Washington, D.C.**
- (12) **Federal Statute / Executive Order.**

B. In Lieu of Holiday Observance

- (1) **Federal Statute.**
- (2) **Sunday.**
- (3) **Saturday.**
- (4) **Staffing Needs.**

C. Religious Holidays.

D. Accommodation of Religious Beliefs.

- (1) **Religious Observance.**
- (2) **Compensatory Time.**
- (3) **Leave Procedures..**
- (4) **Premium Pay Excluded.**
- (5) **Unavailable Overtime.**

E. State and Local Holidays.

- (1) **Building Closures.**
- (2) **Local Transportation.**
- (3) **Related Duties.**

ARTICLE 43 - Probationary Employees

A. Performance Standards and Review.

B. Non-retention and Notice.

ARTICLE 44 - Equal Employment Opportunity

A. Definition.

B. Bargaining Obligations.

C. Discrimination Claim Procedures.

- (1) **Claims.**
 - (a) Grievance.
 - (b) EEO Pre-complaint Counseling.
 - (c) MSPB.
- (2) **Elected Procedure.**
- (3) **Grievance Appeal.**

D. Grievance Filing Deadlines..

- (1) **Incident.**
- (2) **Awareness.**
- (3) **Final Interview.**

E. Use of EEO Counselors.

- (1) **Consultation.**
- (2) **Counselor Lists.**
- (3) **EEO Counselor Duties.**
 - (a) Counsel.
 - (b) Inquire.
 - (c) Resolve.
 - (d) Document.
 - (e) Written Report.
 - (f) Inform of Right to Representative.
- (4) **Final Interview.**
- (5) **Right to File Complaint.**
- (6) **Neutrality of EEO Counselor.**

- (7) **Confidentiality.**
- (8) **Independence of EEO Counselor.**
- (9) **Right to Representation.**
- (10) **Right to Represent Self.**
- F. **Union Right to be Present.**
- G. **Union Notification of Change.**
- H. **Conflict with Contract.**
 - (1) **Notice and Opportunity to Bargain.**
 - (2) **Priority of Appellate Decisions.**
- I. **Procedures for Selecting EEO Counselors.**
 - (1) **Employer Responsibility.**
 - (2) **Volunteers.**
 - (3) **Conflict of Interest.**
 - (4) **Nominations.**
 - (5) **Selection.**
- J. **EEO Plans.**
 - (1) **Assessment.**
 - (2) **Union Comment.**
 - (3) **Opportunity to Bargain.**

ARTICLE 45 - EEO Advisory Committees

- A. **EEO Committees.**
 - (1) **Purpose.**
 - (2) **Membership.**
 - (3) **Headquarters Committee.**
 - (4) **Meetings.**
 - (5) **Duty Hours.**
 - (6) **Time, Travel and Per Diem.**
- B. **Committee Responsibilities.**
 - (1) **Identify Issues.**
 - (2) **Exchange Ideas / Proposals.**
- C. **EEO Statistics.**
- D. **Summary of Complaints.**

ARTICLE 46 - Sexual Harassment

- A. **Workplace Atmosphere.**
- B. **Unwelcome Advances.**
 - (1) **Condition of Employment.**
 - (2) **Employment Decisions.**
 - (3) **Hostile Working Environment.**
- C. **Employer's Responsibility.**
 - (1) **Managers and Supervisors.**
 - (2) **Fellow Employees.**
 - (3) **Lost Opportunity.**
- D. **Complaint Procedures**
 - (1) **Investigation.**
 - (2) **Substantiation.**
 - (3) **Confidentiality.**
- E. **Filing a Complaint.**
 - (1) **Grievance.**
 - (2) **EEO Complaint.**
 - (3) **MSPB Appeal.**
- F. **Grievance Deadlines.**
 - (1) **Incident.**
 - (2) **Awareness.**
 - (3) **Final Interview.**

G. EEO Counselors.

- (1) **Optional Consultation.**
- (2) **List of Counselors.**
- (3) **Counselor Duties.**
- (a) Counsel.
- (b) Inquire.
- (c) Resolve.
- (d) Document.
- (e) Written Report.
- (4) **Final Interview.**
- (5) **Right to File Complaint.**
- (6) **Neutrality of EEO Counselor.**
- (7) **Confidentiality.**
- (8) **Independence of EEO Counselor.**
- (9) **Right to Representation.**
- (10) **Right to Represent Self.**

H. Union Right to be Present.

I. Grievance Considerations.

- (1) **Elevated Step.**
- (2) **Closed Hearing.**

J. Annual Announcement.

ARTICLE 47 - Grievance Procedure

A. Purpose.

B. Definition:

- (1) **Violation of Agreements.**
- (2) **Violation of Law, Rule, or Regulation.**

Exclusion:

- (1) **Beyond Authority.**
- (2) **Political Activities.**
- (3) **Benefits.**
- (4) **National Security.**
- (5) **Hiring Authority.**
- (6) **Classification.**
- (7) **Statutory Discrimination Appeal.**
- (8) **Statutory Adverse Action Appeal.**
- (9) **Union Appeal of Non-represented Statutory Process.**
- (10) **Already Filed.**
- (11) **Probation.**
- (12) **Temporary Appointments.**
- (13) **Proposed Actions.**

C. Identical Grievances.

D. Resolve at Lowest Possible Level.

E. Procedures for Grievances Filed by Employees:

- (1) **First Step**
- (2) **Second Step**
- (3) **Third Step**

F. Requested Relief Granted.

G. Exceptions to Step I.

- (1) **Policy of Director.**
- (2) **Reprimands.**
- (3) **Suspensions and Adverse Actions.**
- (4) **MP&RP Violations.**
- (a) Step A.
- (b) Step B.

H. **Grievability / Arbitrability.**

I. **Procedures for Grievances Filed by the Union or the Service:**

(1) **District Level Disputes:**

(a) **Step A.**

(b) **Step B.**

(2) **Regional Level Disputes.**

(3) **National Level Disputes.**

J. **Time Limits.**

(1) **Extensions.**

(2) **Service of Process.**

ARTICLE 48 - Arbitration

A. **Invoking Arbitration.**

B. **Selection of Panels.**

(1) **Replacements.**

(2) **Removal.**

(3) **Rotation.**

Headquarters Arbitrations.

C. **Threshold Issues.**

(1) **Arbitrators Decision.**

(2) **Postponement.**

D. **Transcripts.**

E. **Proceedings.**

F. **Docket Review.**

G. **Expedited Procedure.**

(1) **Hearing.**

(2) **Briefs.**

(3) **Decision.**

H. **Costs.**

I. **Cancellation.**

J. **Location.**

K. **Participants.**

(1) **Duty Status.**

(2) **Travel and Per Diem.**

L. **Binding Awards.**

ARTICLE 49 - Effective Date and Duration

A. **Effect.**

B. **Renegotiation.**

ARTICLE 50 - Negotiation of Supplemental Agreements

A. **Supplemental Procedures.**

B. **Master Agreement Controlling .**

C. **Subject Matter.**

(1) **Physical Working Conditions.**

(2) **Training.**

(3) **Leave.**

(4) **Breaks.**

(5) **Overtime.**

(6) **Flexible Tours of Duty.**

(7) **Alternative Work Schedules.**

(8) **Local Official Time.**

(9) **Rough Duty Uniforms.**

(10) **Casual Dress Days.**

(11) **Overtime Cap Procedures.**

(12) **Office Space / Equipment.**

(13) **Training Committees.**

(14) **Additional Items.**

D. **Negotiability Disputes.**

E. **Expiration and Renegotiation.**

ARTICLE 51 - Impasses in Supplemental Negotiations, Impact Bargaining, and Mid-Term Negotiations.

A. **Impasses During Negotiations.**

B. **Mediation.**

C. **Referral to National Parties and Impasses Panel.**

D. **Agreements Allowed.**

ARTICLE 52 - Total Quality Management

A. **TQM Philosophy.**

B. **Principles.**

C. **Reservation of Rights.**

D. **Memorandum of Understanding.**

ARTICLE 53 - Employee Assistance Program

A. **Assist Employees.**

B. **Information to Union.**

C. **Rehabilitation.**

D. **Discipline.**

E. **Annual Review.**

F. **Child Care / Elder Care.**

ARTICLE 54 - Contracting

A. **Briefings.**

B. **Site Visits.**

C. **Union Notification.**

APPENDIX 1 - Merit Promotion Plan I

APPENDIX 2 - Dues Withholding

Section I - Definitions

A. **Dues:**

B. **SF-1187:**

C. **SF-1188:**

D. **Payroll Office:**

E. **Servicing Human Resources Office:**

Section II - Eligible Employees

A. **Bargaining Unit Employee.**

B. **Member in Good Standing.**

C. **Regular Salary.**

D. **Request.**

Section III - Responsibilities of the Union

A. **Voluntary Nature.**

B. **Provide SF-1187.**

C. **Certify SF-1187.**

D. **Forward SF-1187.**

E. **List of Authorized Signatures.**

F. **Written Notification.**

(1) **Changes.**

(2) **Terminations.**

(3) **Transfers.**

G. **Multiple Locals.**

Section IV - Responsibilities of the Employer

A. **Screen SF- 1187.**

B. **Certify SF-1187.**

C. **Reinstate from Temporary Assignments.**

D. **Reinstates from Non-pay Status.**

Section V – Procedures

A. **Withholding of Dues.**

- (1) **Arrange Withholding.**
- (2) **Effective Date.**
- (3) **Existing Withholdings.**

B. **Changes in Dues.**

- (1) **Union Certification Required.**
- (2) **Once per Year.**
- (3) **Effective Date.**

C. **Termination of Allotments.**

- (1) **Automatically:**
 - (a) Loss of Recognition.
 - (b) Termination of Agreement.
 - (c) No longer Eligible.
- (2) **Voluntarily:**
 - (a) Employee Revocation.
 - (b) Procedures.

D. **Remittances of Dues.**

- (1) **Composite Checks.**
- (2) **Magnetic Tape.**
- (3) **Code Combinations.**

Section VI - Cost of Withholding

Section VII - Under Payments and Over Payments

Rejections

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Administrative Errors

.

APPENDIX 3 - Side Letter on Intent of Article 7.C.(2): Official Time

APPENDIX 4 - TQM Memorandum of Understanding

APPENDIX 5 - Side letter on Intent of Article 53:Employee Assistance Program

APPENDIX 6 - Side Letter on Web Gear Equipment