

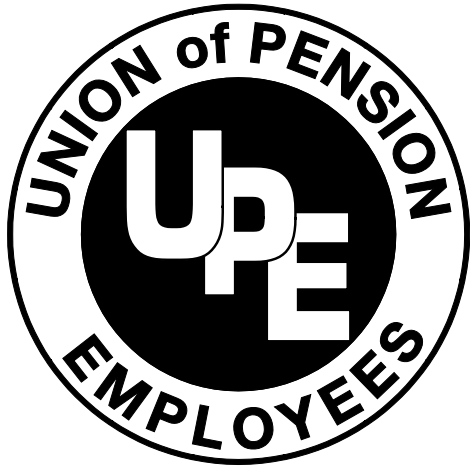
# Collective Bargaining Agreement

Between the

Pension  
Benefit  
Guaranty  
Corporation



and the



Union of  
Pension  
Employees

Effective May 3, 2011

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## **PREAMBLE**

The Union of Pension Employees (“UPE” or “Union”) and the Pension Benefit Guaranty Corporation (“PBGC,” “Agency,” or “Employer”) (jointly referred to as the “Parties”) recognize the following statement of findings and purpose by Congress:

- **The Congress finds** that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers concerning conditions of employment; and
- **The public interest demands** the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishments of the operations of the Government.
- **Therefore,** labor organizations and collective bargaining in the Federal Service are in the public interest.

In carrying out Congress’ purpose, the Parties have negotiated the following Agreement. This Agreement is made and entered into by the Parties with a view toward enhancing labor-management relations. The Parties have endeavored to create a useful, employee-friendly, document, written in plain language.

This agreement is effective May 3, 2011, and, unless extend by mutual agreement of the Parties, expires May 2, 2015.

# ARTICLE 1

## RECOGNITION AND COVERAGE AND UNIT CLARIFICATION

### **Section 1: Recognition**

PBGC recognizes UPE as the exclusive representative of all professional and non-professional bargaining unit employees without regard to Union membership. The bargaining unit also covers temporary employees serving on appointments of ninety (90) days or more.

### **Section 2: Coverage**

The Federal Labor Relations Authority (FLRA) on March 4, 2009, in Case No. WA-RP-09-0013 certified the Union as exclusive representative for a bargaining unit of all professional and nonprofessional employees of the PBGC, but excluding management officials, supervisors and employees described in 5 U.S.C. §7112 (b) (2), (3), (4), (6) and (7).

### **Section 3: Unit Clarification**

The Parties understand that bargaining unit determinations are made by the FLRA. However , the Parties wish to use an informal process for addressing bargaining unit determinations that exclude positions from the bargaining unit. The Parties will attempt to resolve the matter informally. If the Parties are not able to resolve the matter informally, the Union may file a clarification of the unit petition with the FLRA

## ARTICLE 2

### ARBITRATION

#### **Section 1: Scope**

This Article governs arbitration of grievances as processed under the Grievance Article. Arbitration shall only be used to decide unresolved grievances. This Article is not applicable to negotiation impasses, negotiability disputes, or other labor-management disputes not specifically provided for herein unless mutually agreed otherwise.

#### **Section 2: Nature of Arbitration**

Arbitration decisions shall be binding on the Parties. Either Party may file exceptions with the FLRA.

#### **Section 3: Arbitration Process**

##### A. Common Provisions:

1. Written Notice – Either Party may invoke arbitration by serving written notice to the other Party via e-mail or in-person delivery. The Employer shall serve notice on the Union. The Union shall serve notice upon the Director, Human Resources Department or his/her designee.
2. Location of Hearing – Arbitration hearings will normally take place during regular business hours at PBGC headquarters.
3. Witnesses – Employees who serve as witnesses for either Party will be on duty time during the hearing.
4. Grievability/Arbitrability – The Employer will notify the Union in writing of any allegations of non-grievability or non-arbitrability within thirty (30) days after the Union has invoked arbitration. Failure to raise non-grievability or non-arbitrability within this period serves to waive the Employer’s rights to raise these issues with the arbitrator.
5. Burden of Proof – In arbitration, the following will apply:
  - a. The Employer will bear the burden of proof in supporting the final rating below the level of “meets expectations” by a preponderance of the evidence.
  - b. The grievant will bear the burden of proof in supporting the final rating at or above the level of “meets expectations.”

- c. The Employer has the burden of proof in sustaining disciplinary, adverse actions and performance based actions.
  - d. A Party meets its burden of proof when it establishes the matter at issue by a preponderance of the evidence. Neither Party will be required to show the opposing Party's actions or claims were arbitrary or capricious in order to sustain its burden.
- 6. Fees – The Employer agrees to pay for up to the first two days of one arbitration per year (including the arbitrator's fee, travel, per diem, recording and transcript services, and any other incidental costs). Otherwise, the Parties shall share the arbitrator fees and other incidental costs fifty-fifty (50-50) for the remainder of the arbitration and any other arbitration during that year. Any expenses incurred in providing necessary or desired witnesses shall be borne by the requesting Party. Attorney fees will be granted where specifically authorized by Statute.
- 7. Applying the Agreement –The arbitrator, in applying the Agreement, shall have no power to add to, subtract from, or modify the terms of this agreement.
- 8. Precedent – In reaching a decision, the arbitrator shall consider applicable precedent from administrative and judicial forums. Arbitration awards from individual, joint or group grievances are non-precedential.
- 9. Arbitrator's Award – The arbitrator shall limit his/her award to the issue(s) presented at arbitration and where a violation of this Agreement is sustained, the arbitrator will fashion relief to achieve what the Agency action would have been but for the violation. The arbitrator may order any relief that is just and proper, consistent with this Agreement, and permissible under law.
- 10. Disputes Over Application of Arbitration Award – Any dispute over the application of the arbitrator's award shall be returned to the arbitrator for resolution.
- 11. Failure to Pursue – Failure to pursue a grievance shall render the grievance and arbitration request null and void. A moving Party fails to pursue when the Party does not, for a period of six (6) months, actively pursue any grievance referred to arbitration.
- 12. Back Pay Act:
  - a. When an employee is entitled to receive back pay from an arbitrator's award or settlement by the Parties of matters raised under this Article, such pay will be provided to the employee within thirty (30) days of the award or the effective date of any written settlement agreement. In the event the Employer fails to timely pay the employee, interest shall accrue commencing on the thirty-first (31st) day, at the rate in effect under the Internal Revenue Code of 1986, §6621.a.1.

- b. In rendering decisions on back pay, interest, and attorneys' fees, an arbitrator shall conform to the provisions of the Back Pay Act, 5 U.S.C. §5596, where applicable.

B. Arbitration Procedure:

1. Selection of the Pool – Within thirty (30) days of implementation of this Agreement, the Parties will exchange lists of the names of ten (10) arbitrators they deem acceptable to serve as arbitrator for disputes under this Agreement. Up to five arbitrators common on both Parties' lists will be informed of their selection to serve as a member of a rotating panel. If there are not five (5) names common to both lists, the Parties will repeat the process until five (5) common names have been identified. If a vacancy is created, the Parties will repeat the selection process to fill the vacancy. Any fees or costs in establishing the pool of arbitrators will be borne by the Employer.
2. Invocation – A Party has seven (7) days, from receipt of the Agency's final grievance decision, to invoke arbitration. Failure to invoke arbitration within this period waives a Party's right to adjudicate the matter in arbitration.
3. Selection of the Arbitrator – Once the pool has been identified, as arbitrations are invoked, arbitrators will be selected alphabetically by their last name.

## ARTICLE 3

### AWARDS

#### Section 1: Performance Awards

- A. Absent budgetary constraints, the Employer will fully utilize the awards budget to reward deserving employee performance. The amount allocated for performance awards shall be determined by the performance awards allocation for the Agency. The Employer will apply the percentages for performance awards equitably within each rating category as described below:
1. Outstanding - Each employee who receives a rating of Outstanding as his or her rating of record for an annual performance appraisal will be granted an award ranging from the amount of a Quality Step Increase (QSI), up to 5% of their salary, including locality pay. If the employee is at Step-10 of his/her grade, the minimum award will range from 3.5% of the employee's salary, including locality pay, up to 5% of salary, including locality pay.
  2. Exceeds Expectations - Employees who receive an Excellent performance appraisal rating of record will be granted an award of 2% to 3% of their salary, including locality pay.
  3. Meets Expectations – Employees who receive a Meets Expectations performance appraisal rating of record will be granted an award of ½% to 1% of their salary, including locality pay.
- B. An employee who is rated Outstanding may request a QSI. If the Employer does not grant the request, it will advise the employee in writing. The Employer will simultaneously provide a sanitized copy to the Union that identifies the department. In granting QSI's the Employer will be fair and impartial and follow merit system principles.
- C. Time Off – Employees may elect to receive part of a performance award in the form of an equivalent amount of time based on one (1) hour for each 0.05% awarded, except that the amount of time-off is subject to the aggregate limitation prescribed in Section 3.D. of this Article.
- D. If the Employer does not pay at least the minimum amount identified in the rating categories above to eligible employees, the Employer will provide an amount of time to each employee eligible for a performance award that is equivalent to the amount that an award is reduced from the minimum. The amount of time off will be based on one hour for each 0.05% of salary awarded, except that the amount of time off is subject to the aggregate limitation prescribed in Section 3.D. of this Article.

## **Section 2: Special Achievement Awards**

- A. Bargaining unit employees may receive Special Achievement Awards through the PBGC-UPE Joint Awards Committee (Committee). The Committee will decide all individual and group awards for bargaining unit employees.
- B. The supervisor or any other PBGC employee may nominate an employee or team for an award. (An employee is free to draft a self-nomination, but another PBGC employee must endorse it.) A nominator will provide any nominee a copy of the nomination when it is submitted. The nomination will outline in writing what the employee or team did to meet the criteria for this award as described below in Section 2.F. of this Article. In addition, absent unusual circumstances acceptable to a majority of the Committee, the nomination must address a one-time non-recurring achievement that occurred or came to fruition or obtained a result within the three (3) months prior to the nomination (an employee's receipt of an award for a special achievement act does not pre-empt management's obligation to accurately rate the employee for the performance year). The nomination will be delivered to the Committee. The Committee is described below in Section 2.G.
  - 1. Where an employee is nominated for an individual award by someone other than his or her supervisor, the Committee will ask the supervisor of the work that is the basis of the nomination to review the nomination, to verify the facts outlined in the nomination, and address whether the acts which occurred meet the criteria for an award and at what level.
  - 2. Where a team is nominated by someone other than a management official to whom the team reported, the Employer will designate an official to review the nomination, verify the facts outlined in the nomination and address whether the acts which occurred meet the criteria for an award and at what level. The supervisor/official will respond to the Committee's request for this data within the time frame established by the Committee. Where the nomination is for a team the nominator will address the specific contributions made by each individual team member. Individual team members may receive different award amounts and different award tier levels.
- C. There are three (3) Special Achievement/Special Performance Act Award tier levels for individual and team awards alike:
  - 1. Tier 1: \$450 to \$750 (for special achievements that advanced PBGC's mission, goals and objectives);
  - 2. Tier 2: \$751 to \$1,125 (for exceptional achievements that advance PBGC's mission, goals and objectives); and
  - 3. Tier 3: \$1,126 to \$3,000 (for exceptional achievements that significantly advance PBGC's mission, goals and objectives in a notable manner).



- D. Special Achievement Awards will be distributed quarterly. The monies allocated for bargaining unit Special Achievement Awards will be at least 9% of all monies allocated for all awards, excluding amounts allocated to Committee.
- E. Employees who are approved to receive Special Achievement Awards have the option of receiving all cash or time-off, except that the amount of time-off is subject to the aggregate limitation prescribed in Section 3.D. of this Article. Each hour of time-off equates to 0.05% of a person's salary including locality pay.
- F. The Special Achievement Awards program is intended to provide monetary recognition to eligible individual employees or teams of employees for one time (1), non-recurring exceptional achievements or a Special Performance Act that advances the Corporation's mission, goals, or objectives. The Special Achievement/Special Performance Act Awards Committee will evaluate nominations based upon the effort expended; the quality of the work performed; the innovative nature of the project; the initiative and independence that the nominee demonstrated (as appropriate) in designing and carrying out the project; the duration of the project; and the contribution of the project to furthering the PBGC's mission, goals and objectives.
1. All nominations must include written responses to the following:
    - a. Describe the achievement that is the subject of the nomination;
    - b. Describe the nominee's(s) specific efforts and contributions to the achievement and include a description of how the achievement exceeded the nominee's(s) normal day-to-day job responsibilities. (For team awards, each team member's contributions must be detailed);
    - c. Describe how the achievement advanced the Corporation's mission, goals, or objectives. For example, did the achievement provide a specific and tangible improvement to customer service? Did the achievement provide a measurable cost savings to the Corporation?; and
    - d. Approximately how much time did the nominee(s) devote to the achievement?
  2. The amount awarded within each tier will depend upon the number of approved nominations during the applicable call period. To the extent that the total approved nominations exceed the total award dollars allocated for the call, the awards will be prorated. All approved nominations within a tier will be awarded the same dollar amount during a particular call period.
- G. The PBGC-UPE Joint Awards Committee (Committee):

The PBGC-UPE Joint Awards Committee (Committee) will be composed of eight (8) members, four (4) appointed by each Party. Initially, each Party will appoint two (2) members for twelve (12) month terms and two (2) members for twenty-four (24) month terms. Thereafter, appointments, except for replacements, will be appointed to a two (2)

year term with each Party replacing members whose terms have expired. The goal is to replace two (2) Union and two (2) Employer members every year. Members should serve full terms, but either Party may replace their appointees for reasons they consider sufficient. Replacements will serve the unexpired term of the members they replace.

1. Committee members must recuse themselves from a decision when they submitted the nomination, are the subject of the nomination, or their immediate subordinate or superior is the subject of the nomination.
2. The Committee will issue a call for nominations in October, January, April and July of each year for Special Achievements Awards. The Committee will establish procedures and time lines for submission and processing of award nominations with the following exceptions:
  - a. Award nominations accepted in response to each call must be decided on within the quarter in which the call was issued;
  - b. All members will be on duty time when carrying out their responsibilities;
  - c. Members may vote by conference calls, e-mail, or in writing in lieu of attending a meeting, however, proxies will not be allowed;
  - d. The Committee meetings will occur in private, except for a facilitator and any staff needed for support; and
  - e. The Committee will generally allocate the funds so as not to exceed one-fourth of the annual Benchmark Amount in any one call.
3. The Committee will review a nomination to determine whether it meets the criteria outlined in this Article. The Committee may obtain additional information, and may invite employees with technical expertise to answer questions. If the Committee decided that an award is warranted, the Committee will then determine the amount of the award. The Committee will notify nominated employees and the nominator of its decisions, including any votes, in writing or by e-mail. A nominee or nominator has a right to seek review of the Committee's decision to the following extent:
  - a. Unanimous decision of the Committee not to grant an award or to grant either the lower or higher level award is final and non-appealable. A decision of no award will be accompanied by an explanation from the Committee as to its decision and the nominee or the nominator may resubmit the award within thirty (30) days).
  - b. A majority decision of the Committee to grant the lower or higher level award is final and non-appealable. A majority decision of the Committee not to grant an award may be reconsidered by the Performance and Recognition Review Board (Review Board) if the employee so requests within fifteen (15) days of the Committee's decision.

- c. If a majority of the Committee's members cannot reach agreement on an action (i.e., whether or not to issue an award or what level the award should be), the nomination will be automatically referred to the Review Board for final decision.
- 4. The Committee, to improve the effectiveness and efficiency of the award determinations, may refine or sharpen the Special Achievement Award criteria as long as the original concept or intent outlined in Section F. of this Article is not changed. Where the Committee cannot reach agreement on what criteria to change or how criteria are to be changed, recommendations will be forwarded to the Review Board for final decision.
- 5. The Review Board has the authority to the extent described in subsections G.3. and G.4. above.
  - a. The Review Board will comprise an Employer-designated representative, the UPE Local President or designee, and a third member whom they will choose. If the Employer's representative and Union President cannot agree on the third member, the procedures established for arbitrator selection located in Article 2, Arbitration, will be used. The selected arbitrator will serve until an agreement is reached. The costs associated with engaging the arbitrator as the third-party member of the Committee will be borne equally by the Union and the Employer.
  - b. Where the Employer-designated representative and Union President/designee agree on an action, the agreed action will be the final and non-appealable decision of the Review Board. Where they cannot agree, a final decision will be made by agreement between the third member of the Board and either of the other two (2) members.

**Section 3: Time-Off Awards**

- A. The Parties agree that time-off as an incentive award is a positive recognition option. Time-off awards are excused absences granted to employees, without charge to leave or loss of pay, as an award in recognition of superior accomplishment or other personal effort contributing to the quality, efficiency or economy of Government operations. Time-off awards may be granted to any PBGC full or part-time employee. They may be granted to an individual, or a group of individuals.
- B. Time-off awards are intended to recognize a variety of employee contributions. They represent another option available for recognition of employee excellence in performance and service. Time-off awards may be used alone, or in combination with monetary or non-monetary awards. Time-off awards may be used to satisfy, in whole or part, performance-related award requirements. Examples of employee achievements that could be considered for a time-off award include, but are not limited to:
  - 1. An act of heroism;

2. High quality contribution to a difficult or important project or assignment;
  3. Using initiative and creativity to improve a product, activity or service;
  4. Ensuring that the mission of the unit is accomplished during a difficult work period by successfully completing work or a project assignment while maintaining the employee's own workload; and
  5. Sustained high-level performance for an extended period, as reflected, for example, in a rating of record.
- C. For each fiscal year, each department and executive office will have a time-off hourly awards bank.
- D. A full-time employee may be granted up to forty (40) hours of time off during a single fiscal year for time-off awards, regardless of the category in which the award is granted. A part-time employee may be granted up to the average number of hours of work in his/her weekly scheduled tour of duty for time-off awards in a single fiscal year, regardless of the category in which the award is granted.
- E. Time-off awards must be taken in fifteen (15) minute increments. The minimum award amount is four (4) hours.
- F. In determining the amount of a time-off award, the recommending official shall consider the benefits realized by the Government from the employee's contribution. The award amount should be in proportion to the benefits realized. The scale in Appendix B to PBGC Directive PM 20-2 may be used as a guide to determine the appropriate time-off award. When considering the amount of a time-off award to be granted as part of a combined award, the recommending official should be sensitive to the perceptions that could arise from combining large time-off awards with substantial cash awards. Each hour of a time-off award will be considered to be valued at 0.05% of a person's salary.
- G. Employee preference may be considered when determining whether to approve or recommend a time-off award or cash award. Employee preference must be considered when the time-off award is proposed to satisfy performance-related award requirements.
- H. A time-off award shall not convert to a cash payment under any circumstances, nor may it be transferred to another agency if the employee leaves PBGC without using the awarded time.
- I. Use of time-off awards must be approved by the employee's immediate supervisor and is subject to workload constraints as determined by the supervisor. Supervisors are encouraged to schedule, and employees are encouraged to take, the time-off award in a single absence.

**Section 4: On-The-Spot Awards**

- A. “On-The-Spot Awards” are cash awards which serve to enhance employee morale and encourage high quality service through an immediate cash award system to recognize employees who perform quality service in an exceptional manner.
- B. The On-The-Spot award can be granted to recognize personal accomplishments that result in quality service to colleagues or clients, either within or outside the employee’s organization. For example, an employee who volunteers for extra or emergency assignments while maintaining his or her own workload, or an employee who is willing to use initiative and creativity to solve an unusual customer problem might be recipients of this award.
- C. All employees are eligible for On-The-Spot awards. Employees should be nominated no more than seven (7) days after the occurrence of the achievement being recognized, and the award should be paid within ten (10) days of the occurrence. An employee may not receive more than two (2) On-The-Spot cash awards per fiscal year.
- D. Net amounts of On-The-Spot awards may not exceed \$250 and may be granted in \$50 increments. On-The-Spot awards must allow for taxes, so the taxes will be added to the net amount to arrive at the gross amount of the awards. The gross amount of the award will be counted for purposes of utilizing the funds available. When a department/office has expended its On-The-Spot funds for a fiscal year, no other cash awards may be granted in that fiscal year.
- E. The supervisor or any other PBGC employee may nominate an employee by completing PBGC Form 200. A brief statement of the basis for the nomination must be placed in the space provided on the form. Nominations by other than the employee’s supervisor must be concurred in by the employee’s supervisor.
- F. When an On-The-Spot award has been approved, the employee will be presented the award. The employee will present the original Form 200 to the Payroll/Travel office for payment.

**Section 5: Non-Monetary Awards**

- A. The Parties agree to utilize non-monetary awards as a way to recognize employees and have agreed on proposed programs.
- B. The Parties further agree that programs should reflect the needs of individual departments as jointly identified by employees and managers. To the degree that the budget rules and equity allow, such jointly developed programs will be supported by the Parties. The Employer and the Union shall have equal roles in deciding the basis for non-monetary awards and shall jointly administer the program and jointly decide on the awardees.

**Section 6: PBGC Annual Awards Ceremony**

If the Employer hosts an awards ceremony to recognize the contributions of all employees, employees who attend the ceremony will be permitted to do so on duty time. If the Employer establishes an events planning committee for the ceremony, the committee will include bargaining unit employees appointed by the Union, whose number shall be at the sole discretion of the Employer. As part of the ceremony, the committee will consider what role the Union shall play in the ceremony.

**Section 7: Organizational Performance Awards**

Employees who receive a Meets Expectations or higher rating of record may be recognized through the receipt of an Organizational Performance Award. The employee may receive up to 5% of his/her basic salary, as determined by the Employer, for his/her individual contributions in meeting or exceeding organizational performance measures.

## **ARTICLE 4**

### **BUSINESS CARDS**

#### **Section 1: Provision of Business Cards**

The Employer will provide business cards to employees whose positions require frequent contact with the public. Business cards will be replenished when the employee has a change of name, department or telephone number or when he/she has demonstrated a business necessity for a new supply.

#### **Section 2: Authorization of Payment**

Supervisors shall authorize payment for business cards for those employees who have frequent work related face-to-face contact with the public, to include plan administrators and sponsors, plan participants, outside contractors or contacts related to court appearances. Business cards shall be of a standard design, to include a generic working title, and shall be reissued on an as-needed basis.

## **ARTICLE 5**

### **CHILD CARE**

#### **Section 1: Subsidized Child Care**

The Employer will provide a subsidized child care program in accordance with Public Law 107-67, §630. The Employer will subsidize child care for employees whose total family income does not exceed \$76,000.

#### **Section 2: Ongoing Monitoring**

Beginning as soon as possible after the signing of this Agreement, each party shall appoint three (3) representatives to monitor the subsidized Child Care Program. The representatives for management and the union shall monitor the effectiveness of the Child Care Program and shall keep their respective appointing officials apprised of its implementation, use and effectiveness.



## **ARTICLE 6**

### **CONDUCT OF LABOR-MANAGEMENT REPRESENTATIVES**

#### **Labor-Management Representatives**

The Parties recognize that a productive labor-management relationship is substantially dependent on an atmosphere of professional dealings and mutual respect, and agree that they shall be obligated to act accordingly. Though violations of this Article are not grievable, the Parties agree to discuss any alleged violations in an attempt to maintain a professional productive relationship.

## ARTICLE 7

### CONTRACTING OUT

#### **Section 1: Furnishing Information**

- A. Commencing within sixty (60) days after the effective date of this Agreement, the Employer shall annually provide the Union with a list of all contractors and consultants who perform work that may ordinarily be performed by bargaining unit employees. The list shall include a synopsis of the agree-to statement of work for each contractor. The Union does not waive its right to receive additional information, pursuant to 5 U.S.C. §7114(b)(4), provided the Union identifies the particularized need for each request.
- B. The Employer will provide the Union with a copy of each contract solicitation document package that involves work of the type that could be done by bargaining unit employees when that package is released by the contracting officer.

#### **Section 2: Evaluations and Decisions to Contract Out**

- A. Whenever directed by a higher authority in the Executive or Legislative branches to consider or evaluate the efficacy of contracting out or privatizing any work or function that is currently being performed by bargaining unit employees, the Employer shall immediately notify the Union in writing and provide copies of all pertinent documentation. The Employer shall, thereafter, promptly provide the Union with a copy of all subsequent communications between it and such higher authority concerning such matters.
- B. If the Employer decides to contract out work being performed by bargaining unit employees as of the date of this Agreement, it shall immediately notify the Union. After notification, if the Union so desires, the Employer will negotiate the implementation of that decision and its effect on bargaining unit employees.
- C. The Employer shall not convert to contract work performed by bargaining unit employees until it has notified the Union and for sixty (60) days thereafter. Moreover, if the Union elects to bargain, the Employer shall not convert to contract work performed by bargaining unit employees until the completion of bargaining unless doing would be “consistent with the necessary functioning of the Agency,” as that phrase is interpreted by the FLRA.
- D. In compliance with the Federal Acquisition Regulation (FAR), the Employer shall insert the following clause in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contract that result from the solicitations, whether or not a cost comparison is conducted:

1. The Contractor shall give Government personnel who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.
2. Within ten (10) days after contract award, the Employer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.
3. The Contractor shall report to the Employer the names of individuals identified on the list who are hired with ninety (90) days after contract performance begins. This report shall be forwarded with one hundred and twenty (120) days after contract performance begins.

## ARTICLE 8

### DATA REQUESTS

#### Section 1: Data Requests

In accordance with law, the Employer shall furnish to the Union, upon request data which is:

- A. normally maintained by the Agency in the regular course of business,
- B. reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and,
- C. which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

#### Section 2: Process

- A. A request for data must state the Union's particularized need for the information including why it needs the requested information, the uses to which the Union will put the information, and the connection between those uses and the Union's representational responsibilities. The Employer may contact the Union, either orally or in writing, to seek clarification of the request. If necessary, the Parties will discuss alternate time-efficient means to respond to data requests. If the Union submits more than one (1) data request on the same date, it will indicate which data request has priority. Data requests will be processed in chronological order unless the Union indicates otherwise.
- B. The Employer shall provide information requested within twenty-one (21) days of the date of the request. In the event the Employer is unable to provide all the information within the time period, it may request an extension of time. The Union will normally grant the Employer at least one extension of time, not less than fourteen (14) days in duration.
- C. If a request is denied, in whole or in part, the Employer shall provide the Union detailed information on why the data is denied.

#### Section 3: Definition of Data

Data includes any written or electronically formatted record, existing voice-mail message, report, memorandum, note, message, e-mail correspondence and data in any backup systems. The Employer shall provide data in its custody, possession, or under control of the Employer, its officers, managers, supervisors, and employees including documents in storage or archived; so long as the data are consistent with requirements in Section 1 of this Article.

## ARTICLE 9

### DETAILS AND TEMPORARY PROMOTIONS

#### Section 1: Details

- A. Definition: A detail is the temporary assignment of an employee to a different position or to a different set of duties for a specific period, with the employee returning to his/her regular duties at the end of the detail. A detail can be to a position at the same or lower grade level, to a higher grade level or to unclassified duties. The detailed employee continues to officially be the incumbent of the position from which detailed. Details do not require that the employee meet either time-in-grade or qualifications under the Office of Personnel Management's (OPM) Qualification Standards Handbook.
- B. Procedure and Records:
1. Details of two (2) pay periods or less need not be documented.
  2. The Employer shall document any detail in excess of two (2) pay periods in the employee's Official Personnel Folder (OPF). Additionally, the supervisor may consider appropriate forms of recognizing the employee's performance during the detail.
  3. Initially, details to higher graded positions may only last for up to one hundred and twenty (120) days.
  4. An employee who is detailed to a position at a higher grade for more than two (2) complete pay periods and is qualified for the higher grade will be temporarily promoted and shall be paid at the higher grade upon the effective date of the temporary promotion.

#### Section 2: Temporary Promotions

- A. Definition – A temporary promotion is a temporary assignment of an employee to a position with a higher grade than the employee's position of record. The Employer may make a temporary promotion to a classified position to promote the efficiency of the Employer's operation and/or for such reasons as to assure accomplishment of the Agency's mission. Any employee being temporarily promoted must meet all the time-in-grade qualifications under OPM's Qualifications Standards Handbook regardless of the duration of the temporary promotion.
- B. Procedures and Records:
1. Temporary promotions must be documented with an SF-50.

2. Temporary promotions of one hundred and twenty (120) days or less may be made non-competitively.
3. Temporary promotions for more than one hundred and twenty (120) days will be accomplished in compliance with this Agreement, merit promotion rules and regulations. These competitive actions may be made for a period not to exceed five (5) years; extensions may only be granted with approval from OPM as provided for in 5 C.F.R. §335.102(f).
4. The employee shall be paid at the higher grade upon the effective date of the temporary promotion.

**Section 3: Return to Permanent Position**

When an employee returns to his/her permanent position from either a detail or a temporary promotion, the employee and the supervisor shall discuss any changes that have taken place in the workplace in the employee's absence and any need for training or refamiliarization. Employees who are on formally documented details may be relieved of responsibility by the Employer for work assigned in the position of record, provided that such work is not encompassed by the detail.

**Section 4: Back Pay for Temporary Promotions**

In the event that the Parties mutually agree or a third-party determines that back pay for a temporary promotion is warranted for a period of greater than five (5) years, the Employer shall request authorization from OPM to extend the promotion period, as provided by regulation.

**Section 5: Employee Requested Details**

The Employer shall consider employee requests for details. Examples are details to other federal agencies, e.g. the Department of Justice or the U.S. Trustees' Office.

## ARTICLE 10

### DISCIPLINARY AND ADVERSE ACTION

#### Section 1: Standards and Definitions

- A. The Employer may take disciplinary and adverse actions for such cause as will promote the efficiency of the service. In order to take disciplinary and adverse actions for off-duty misconduct, the Employer must demonstrate a connection between the misconduct and the efficiency of the service. All actions under this Article will normally be taken in a timely fashion.
- B. For the purpose of this Article, a disciplinary action is defined as a written reprimand or a suspension of fourteen (14) calendar days or less. An adverse action is defined as a suspension of more than fourteen (14) calendar days, a furlough for thirty (30) calendar days or less, a reduction in grade or pay, or a removal.
- C. The standard of proof in any arbitration over an action covered by this Article shall be the preponderance of the evidence.
- D. The Employer recognizes its obligation to maintain a workplace that is free from unlawful discrimination. The Employer may not take disciplinary or adverse action against an employee on the basis that they have participated in protected activity, such as, filed an EEO complaint, grievance, or provided testimony or information to the Office of the Inspector General. Participation in protected activity does not in-and-of-itself preempt the Employer from taking appropriate disciplinary action for other causes.

#### Section 2: Progressive Discipline

- A. The Employer will consider taking informal steps (e.g., closer supervision, on-the-job training, and oral admonishments) before taking disciplinary or adverse action. Should these informal steps not be effective, a supervisor may take into account such informal steps when preparing more formal actions.
- B. Removal actions shall normally be preceded by such progressive measures as reprimands, suspension of less than fourteen (14) calendar days and suspension exceeding fourteen calendar days, unless the matter giving rise to the removal action is so flagrant and/or serious that discharge for the first or second offense is warranted under *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981).
- C. Disciplinary and adverse actions normally will be initiated by the employee's immediate supervisor, shall be for such cause as will promote the efficiency of the service, and shall be consistent with *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981).

### **Section 3: Disciplinary Actions**

- A. Letter of Reprimand – A letter of reprimand is the least severe form of disciplinary actions. It will be in writing and signed by an employee’s immediate supervisor or a higher management official, state specifically and in detail the reasons for the reprimand, and notify the employee of his/her grievance rights as set forth in the Grievance Article. Once in effect, the reprimand will remain in the employee’s OPF for one (1) year except that it may be removed earlier at the issuer’s discretion upon determination by the issuing supervisor that the reprimand has served its intended purpose and the employee has corrected his/her behavior. An employee may petition at any time after six (6) months but not more frequently than once every three (3) months thereafter, for an early removal of a reprimand. A decision to retain the reprimand in the employee’s OPF is not grievable.
- B. Suspension Without Pay for Fourteen (14) Days or Less – Whenever a supervisor proposes to suspend an employee for fourteen (14) days or less, the supervisor will provide the employee with written notice of the proposed suspension. That notice will:
1. State the specific reasons for the proposed suspension;
  2. Give the employee the right to request a copy of the material relied upon to support the proposed suspension;
  3. Indicate that the employee has the opportunity to furnish information to the deciding official orally and in writing within fourteen (14) days of receiving the notice; and,
  4. Indicate that the employee is entitled to a representative.
- C. Requests for extensions of time by the employee and/or the employee’s representative will be given reasonable consideration by the deciding official.
- D. If, subsequent to the employee’s response to a proposed suspension, the Employer conducts a supplemental investigation that results in additional documentation supporting or weighing against the action, the Employer will provide such newly-identified documents to the employee and his/her representative, if not otherwise protected from disclosure. Within seven (7) days of receiving the documents, the employee or his/her representative may submit written comments as to the merits of the newly-identified documents and/or why their inclusion in the decision process warrants an additional opportunity for an oral reply. The Employer may, at its sole discretion, grant a subsequent opportunity for an oral reply, except that the Employer shall provide an opportunity for a subsequent oral reply if denial of an oral reply would constitute harmful error.
- E. Nothing in this Section shall preclude a deciding official from examining pre-existing documents such as the employee’s OPF or performance appraisals that the employee knew or should have known existed.



- F. For suspension actions under this Section, where an employee chooses to reply, the reply will be heard by a higher level management official than the official who issued the notice of proposed action, except when the proposing official is a Department Director or above. When the proposing official is a Department Director or above, the proposing official will designate a person to hear the employee's reply and to make a recommendation on the proposed action. A reply, if made, shall be summarized with copies given to the employee and his/her representative. The employee/representative shall be given seven (7) days from the date of receipt of the summary to provide written comment on the summary. Any such response will be submitted, by the employee and/or the representative, to the deciding official. The employee's comment(s) will be included with the summary of the oral response.
- G. The final decision in any suspension covered by this Section shall be made by a Department Director, except when the proposing official is a Department Director or above. When the proposing official is a Department Director or above, the proposing official shall issue the final decision. The deciding official will make a decision on the proposed suspension as soon as practicable after all replies by the employee provided for in this Section. The decision will contain the Employer's findings with respect to each reason and specification made against the employee in the notice of proposed action, will set forth the reasons for any action and will inform the employee of his grievance rights as set forth in the Grievance Article.

**Section 4: Adverse Actions**

- A. Procedure – Whenever a supervisor proposes to initiate an adverse action against an employee, the supervisor will provide the employee with a written notice of the proposed action that notice will:
  - 1. State the specific reasons for the proposed action;
  - 2. Give the employee the right to request a copy of any material relied upon to support the proposed action that the supervisor wishes the deciding official to consider;
  - 3. Indicate that the employee has the opportunity to furnish information to the deciding official orally and in writing within twenty-one (21) days of receiving the notice; and
  - 4. Indicate that the employee is entitled to a representative.
- B. Requests for extensions will be given reasonable consideration.
- C. Where an employee chooses to reply, the reply will be heard by a higher level management official than the official who issued the notice of proposed action, except when the proposing official is a Department Director or above. When the proposing official is a Department Director or above, the proposing official will designate a person to hear the employee's reply and to make a recommendation on the proposed action. An

oral reply, if made, shall be summarized with copies given to the employee and his/her representative. The employee/representative shall be given seven (7) days from the date of receipt of the summary to provide written comments on the summary. Any such response will be submitted by the employee or his/her representative to the deciding official. The employee's comment(s) will be included with the summary of the oral response.

- D. If, subsequent to the employee's response to a proposed suspension, the Employer conducts a supplemental investigation that results in additional documentation supporting or weighing against the action, the Employer will provide such newly-identified documents to the employee and his/her representative, if not otherwise protected from disclosure. Within seven (7) days of receiving the documents, the employee or his/her representative may submit written comments as to the merits of the newly-identified documents and/or why their inclusion in the decision process warrants an additional opportunity for an oral reply. The Employer may, at its sole discretion, grant a subsequent opportunity for an oral reply, except that the Employer shall provide an opportunity for a subsequent oral reply if denial of an oral reply would constitute harmful error.
- E. Nothing in this Section shall preclude a deciding official from examining pre-existing documents such as the employee's OPF or performance appraisals that the employee knew or should have known existed.
- F. The final decision in any adverse action covered by this Section shall be made by a Department Director, except when the proposing official is a Department Director or above. When the proposing official is a Department Director or above, the proposing official shall issue the final decision. The deciding official will make a decision on the proposed action no sooner than thirty (30) days after the employee received the notice of proposed action, unless the Employer reasonably believes that the employee has committed a crime that may result in imprisonment. The decision will contain the Employer's findings with respect to each reason and specification made against the employee in the notice of proposed action, will set forth the reasons for any action and will inform the employee of his/her statutory appeal rights and right to grieve the decision.

**Section 5: Information Concerning Proposed Disciplinary and Adverse Actions**

In any action taken under this Article, an employee will, at his or her request, be furnished a copy of that portion of all written documents which contain evidence relied upon by the Employer in reaching its decision to propose or impose discipline. This includes the material on which the notice of proposed action is based, including any statements of witnesses, documents, and investigative reports or extracts. Furthermore, the employee will be provided with any such additional material concerning the notice of proposed action which is generated prior to the reply and is furnished to the deciding official.

**Section 6: Examination of Employees (Weingarten Rights)**

- A. At an employee's request, the Union shall be given the opportunity to be present at an investigatory examination by the Employer, so long as the employee reasonably believes that the examination may result in disciplinary action against the employee.
- B. The Employer will notify employees of this right, annually, consistent with law.
- C. If the employee requests Union representation, he/she will be given a reasonable amount of time to secure such representation if the Employer's representative wishes to proceed with the examination.

**Section 7: Access To Witnesses**

The Union or the affected employee (if unrepresented) may notify the Employer of any employee with relevant information concerning any proposed action under this Article against that employee. The Employer will permit any such employee to make themselves reasonably available to provide information to the affected employee/Union.

**Section 8: Maintenance and Use of Disciplinary and Adverse Action Records**

The Employer will remove letters of reprimand from an employee's OPF after one (1) year or when the issuing supervisor notifies the Human Resources Department (HRD) that the reprimand has served its intended purpose and is no longer needed. Unless otherwise required by law, the Employer will destroy records of suspensions of fourteen (14) days or less two (2) years after the action has been finalized, unless a related action is still pending in any forum. Unless otherwise required by law, the Employer will destroy records of suspensions of more than fourteen (14) days, removals, reductions in grade or pay, and furloughs of less than thirty (30) days three (3) years after the action has been finalized, unless a related action is still pending in any forum. Deciding officials will not consider past disciplinary or adverse actions in deciding whether the alleged misconduct occurred, but they may consider existing records of past disciplinary or adverse actions in determining the appropriate penalty. In assessing the penalty, however, the deciding official must give consideration to *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). A stay of disciplinary or adverse action imposed under Section 10, below will not affect the Employer's ability to consider the underlying action in assessing an appropriate penalty for a new action.

**Section 9: Administrative Leave to Prepare Responses**

An employee who receives a proposed disciplinary or adverse action may receive a reasonable amount of administrative leave (during the specified time to reply) following receipt of the proposal to prepare and present a response. Reasonable time, for purposes of this Article, is defined as: up to eight (8) hours for a proposed disciplinary action, up to sixteen (16) hours for a proposed suspension of more than fourteen (14) days, a reduction in grade or pay, and a furlough of less than thirty (30) days, and up to thirty-two (32) hours for a proposed removal. The employee must request use of administrative leave from the supervisor. The Employer will adjust the employee's timeframe for responding if mission requirements prevent the supervisor from

granting the administrative leave for the period requested by the employee. The Employer will grant reasonable amounts of additional administrative leave for the following:

- A. To prepare a supplemental response to proposed disciplinary or adverse action when the Employer has prepared a supplemental investigation; or
- B. When the employee demonstrates good cause for such an extension (e.g., workload considerations).

**Section 10: Stay of Disciplinary and Adverse Actions**

A request to stay the action must be requested before the effective date of the action.

- A. Upon request from the Union or the employee (if unrepresented), the Employer will stay disciplinary or adverse actions as follows:
  - 1. Until 7 days after the final grievance decision if arbitration is not invoked; or
  - 2. Upon invocation of arbitration, the sooner of 150 days from the date of the decision letter or upon receipt of an arbitrator's decision.
- B. The stay of discipline authorized by sub-section 10.A. shall not apply to reprimands or removal decisions.
- C. Where a deciding official issues a removal decision, the employee may within two (2) workdays apply to the Director of the Agency, through HRD, to stay the removal. Unless the Director of the Agency or designee orders a stay, the removal will be implemented three (3) workdays after the employee applies.
- D. Where the Employer has decided to remove an employee or terminate the employment of an employee, and the Union invokes arbitration, the Union may apply to the arbitrator selected to hear the case for an order that the employee be temporarily reinstated for a specified period of time or until a final decision has been rendered in the arbitration. The arbitrator will consider the application as soon as possible. The arbitrator selected may order temporary reinstatement where it clearly appears that:
  - 1. the grounds for the removal are frivolous,
  - 2. the Agency acted arbitrarily,
  - 3. the removal is in retaliation for protected activity, or
  - 4. the penalty is disproportionate to the alleged misconduct.

**Section 11: Information to Union**

The Employer will provide the Union, upon request, sanitized copies of discipline and adverse action proposals and decisions issued to unit employees. The Union President, or designee, will

submit a written request for the documents to HRD, in writing, no more often than quarterly for the actions issued during the previous quarter.

## **ARTICLE 11**

### **DISTRIBUTION OF WORK**

To the extent possible, and consistent with management's right to assign work, the Employer will:

- A. Assign work based on an employee's level of experience, skills and job classification.
- B. Solicit qualified volunteers for cases and projects that management deems high profile. The Employer will consider the volunteers when it chooses individuals for the assignments.
- C. Ensure that assignment of work or denial of work assignments will not be made as a reward or penalty to an employee but in accordance with the Employer's needs and operational goals.
- D. Consider factors so that, to the maximum extent possible, work will be distributed fairly and equitably to qualified and experienced employees.
- E. Upon request, provide feedback to those volunteers who were not chosen for high profile cases or projects. The supervisor's decision to not choose an employee shall not be considered a negative factor.

## ARTICLE 12

### EMPLOYEE ASSISTANCE PROGRAM

#### **Section 1: Availability of an Employee Assistance Program**

- A. PBGC will provide an Employee Assistance Program (EAP) as required and defined in applicable regulations to assist employees who may be experiencing some personal difficulties that may or may not affect their job performance. Such problems may include, but are not limited to, alcoholism, drug abuse, emotional problems or other personal problems. This program will be provided through an agreement with an outside organization of professional counselors.
- B. When the Employer intends to solicit for a new EAP contract, it will invite the Union to make recommendations regarding the criteria for selection.

#### **Section 2: Participation in the Employee Assistance Program**

- A. The Employer will encourage employees, on a case-by-case basis, to voluntarily seek counseling, referral and information from the EAP on a confidential basis as soon as it is reasonably believed that they may be experiencing a problem that is covered by the Program.
- B. Employees may voluntarily seek counseling, referral and information from the EAP on a confidential basis. The confidentiality of medical/counseling records of all employees will be preserved in accordance with the Privacy Act and other applicable law or regulation.

#### **Section 3: Use of Leave Program**

Employees utilizing the services of the EAP will be granted sick leave or leave without pay for this purpose on the same basis as any other illness when absence from work is necessary.

#### **Section 4: Promoting the EAP**

- A. PBGC and UPE will cooperate with each other in encouraging employees to avail themselves of the services provided by the EAP and by attempting to utilize these services to rehabilitate employees who seek assistance.
- B. PBGC will make employees aware of the services provided by the EAP at new employee orientation and annually. Annually, the Employer will provide a briefing to Union representatives on the EAP upon request.

## **ARTICLE 13**

### **EMPLOYEE ORIENTATION**

#### **Section 1: Orientation**

The Union will be given a reasonable period of time, normally not to exceed twenty (20) minutes, to address new employees who are in the bargaining unit. This Union orientation will take place during the same time and location the Employer conducts its initial orientation of new employees. The Union will have the right to discuss the contract, current labor-management issues, its benefits programs, the laws and regulations on Federal sector labor relations, its internal structure and any other subject that does not slander or libel a Government official or connote Employer sponsorship of the Union and is otherwise consistent with law, rule, and regulation.

#### **Section 2: Meetings**

The Parties agree that the Agency will provide a Union-designated representative with a schedule identifying the upcoming Employee Orientation date(s), at least 30 days in advance of the scheduled date. If there is a change in scheduling, the Agency will provide, at least, five (5) business days advance notice to the Union of the change and the new date.



## **ARTICLE 14**

### **EMPLOYEE PROTECTION FROM UNREASONABLE SEARCH**

#### **Protection from Unreasonable Search**

The Employer shall comply with the United States Constitution, all applicable laws, rules and regulations and this Agreement, when it determines that it is necessary to conduct searches of the employee, his or her work area, personal computer or voice mail messages.

## ARTICLE 15

### EMPLOYEE RIGHTS AND CIVIC RESPONSIBILITIES

#### Section 1: Right to Seek Remedial Relief

- A. Consistent with applicable law, rule, regulations and this Agreement, the initiation of a grievance pursuant to Article 19 or a complaint or application for benefits of the exercise of rights by an employee will not cause any reflection on his/her standing with his/her supervisor or his/her loyalty or desirability to the organization.
- B. Employees and Union representatives who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation or reprisal.
- C. The Employer will not impose any restraint, interference, coercion or discrimination, or reprisal against any employee in the exercise of his/her right to designate a Union representative for the purpose of representing to the Employer any matter of dissatisfaction or of representing the employee to any Government agency or official other than the Employer.

#### Section 2: Union Membership

Nothing in this Agreement will require an employee to become or remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for payment of dues through payroll deductions or by voluntary cash dues payment by a member.

#### Section 3: Right to Join or Assist Union

As provided by 5 U.S.C. §7102, each employee shall have the right to form, join, or assist any labor organization or to refrain from any such activity, freely without fear of penalty or reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such rights include the following:

- A. The right 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 or other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities, and
- B. The right to engage in collective bargaining with respect to conditions of employment through an exclusive representative chosen by employees.

**Section 4: Freedom to Disclose Unlawful Activity and Engage in Private Conduct**

The Employer agrees that any employee who has the authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority:

- A. take or fail to take personnel action with respect to any employee or applicant for employment as reprisal for:
  - 1. A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences a violation of any rule, law, or regulation, or mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to the health and safety of fellow employees or the public, if such disclosure is not otherwise prohibited by law; or
  - 2. A disclosure to the Office of Special Counsel, or to the Inspector General of an agency or another employee designated by the Agency Director to receive such disclosures, or information which the employee or applicant reasonably believes evidences a violation of any rule, law, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public and employee health or safety.
  - 3. The burden of proof will be on the employee to establish that reprisal has occurred.
- B. discriminate against any employee for conduct exercised within the scope of his/her first Amendment rights consistent with applicable law, rule, regulations and this Agreement.

**Section 5: Political Activities**

All employees may participate in political activities to the extent allowable by law. An employee may not, however, receive a political recommendation in connection with examinations for, or appointments to, positions in the competitive service, or to effect personnel actions.

**Section 6: Civic Responsibility**

The Union and the Employer recognize and jointly encourage employees as individual citizens and as members of a community to contribute voluntarily to worthwhile organizations as part of their personal responsibilities as citizens.

**Section 7: Rights Regarding Solicitations for Contributions**

Employees may voluntarily participate in and respond to lawful drives or solicitations for monetary contributions, including, for example, the Combined Federal Campaign, Savings Bond Drive and Blood Drive. Participation and contributions shall be totally voluntary. There shall be no pressure or coercion, and there shall be no discrimination or reprisal against any employee for non-participation or non-contribution. No supervisor or manager shall solicit a subordinate.

## ARTICLE 16

### EMPLOYER RIGHTS

**Section 1: Governance and Precedence of Laws, Regulations, Orders, Directives, and Notices**

In the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and regulations of appropriate authorities; by published Agency orders, directives, and notices in existence at the time this Agreement was approved; and subsequently published Agency orders, directives, and notices required by law, Executive Order, or by the regulations of appropriate authorities. Where provisions of Agency orders, directives, or notices are in conflict with this Agreement, the provisions of this Agreement shall govern.

**Section 2: Management Rights**

Nothing shall affect the Employer's right:

- A. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- B. In accordance with applicable laws, to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
- C. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
- D. With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion, or any other appropriate source; and
- E. To take whatever action may be necessary to carry out the Agency mission during emergencies.

**Section 3: Employer-Made Rules**

The right to make rules and regulations is an acknowledged function of the Employer. In making rules and regulations relating to personnel policy, procedures, practices and matters of working conditions affecting unit employees the Employer shall meet its obligations as contained in the provisions of this Agreement or law or regulation.

**Section 4: Notice to Union of Management Decisions**

The Employer agrees that, in order to foster a positive ongoing relationship with the Union, it will timely inform the Union of decisions made when such decisions impact on the employees.

## ARTICLE 17

### EQUAL EMPLOYMENT OPPORTUNITY

#### **Section 1: Commitment to Equal Employment Opportunity**

- A. The Employer and the Union in fulfilling their respective responsibilities are committed to providing each employee equal employment opportunity regardless of an individual's race, color, religion, sex (including sexual harassment, and pregnancy), national origin, age, or disability.
- B. An employee who meets with an EEO official or files an EEO complaint will be free from restraint, coercion, interference, reprisal or other discrimination. In addition, EEO Counselors shall be free from restraint, interference, coercion, discrimination or reprisal in carrying out their duties.
- C. The Parties further agree that the Equal Employment Opportunity Program shall be administered in compliance with applicable laws, regulations, and PBGC directives.

#### **Section 2: EEO/Diversity Program Plans (MD-715)**

- A. The Employer agrees to solicit and consider the views and suggestions of the Union when it formulates its EEO/Diversity program plans.
- B. Upon request, the Employer will provide a copy of any EEO reports and statistics generated under MD-715, statistical data concerning the number and types of discrimination complaints in process, and the progress in meeting goals for the employment of women, minorities, and individuals with disabilities.

#### **Section 3: EEO Counselors and Counselor Activity**

- A. When the Employer recruits non-supervisory staff to fill collateral-duty EEO Counselor positions, it will solicit nominations of employees from the Union in addition to any other efforts made to identify interested candidates.
- B. An interview panel composed of an EEO representative and the Union President, or their designees, will be formed. The panel will interview all candidates, and recommend candidates for selection. The Director of EEO will appoint collateral duty EEO Counselors. The Employer will not appoint any Union official or stewards as a collateral duty EEO Counselor.
- C. The Union will be notified by the Employer of the names of the employees selected as EEO Counselors. The pictures of EEO Counselors will be posted on appropriate bulletin boards.

- D. Collateral duty EEO Counselors shall be afforded a sufficient amount of duty time to carry out those duties assigned to them in discharging their EEO roles. They shall receive proper and appropriate training as required by EEOC regulations.
- E. The EEO Director or designee may, upon the Counselor's request, provide the Counselor with a written assessment of performance as an EEO Counselor.

**Section 4: Representation in EEO Matters**

- A. If an employee meets with an EEO Counselor or files an EEO complaint, the employee shall have the right to be accompanied, represented and advised by a representative of his/her own choice when there is no apparent conflict of interest. The chosen representative may assist the complainant during all phases of the EEO complaint process.
- B. The employee and his/her representative shall be afforded a reasonable amount of official time for the preparation of his/her complaint. All such time shall be requested from his/her supervisor in advance.

**Section 5: Information and Notices to the Union**

The Union shall be given reasonable notice of all action to be taken in the resolution of EEO complaints when such action affects the conditions of employment of the bargaining unit employees.

**Section 6: LMRC Role in Discussing EEO Matters**

At the request of either Party, the Labor-Management Relations Committee (LMRC) will have EEO as an agenda item. If requested as part of the agenda, the Employer may discuss the following:

- A. Proposed changes in the Annual EEO Plan (MD-715);
- B. MD-715 accomplishments to date;
- C. The nature and time processing of complaints on hand; and,
- D. Ways that future EEO matters may be effectively resolved to the benefit of the employee and the Employer without the need for possible litigation.

**Section 7: EEO Complaint Process**

- A. Any employee who believes that he/she has been discriminated against on the basis of race, color, sex, national origin, age or disability must contact an EEO Counselor within forty-five (45) calendar days of the date the alleged discrimination occurred.
- B. If an employee's EEO concerns cannot be resolved during the informal counseling stage, he/she may file either a formal EEO complaint or a grievance but not both.

**Section 8: Employees with Disabilities**

Policy Regarding Reasonable Accommodations: The Employer will reasonably accommodate qualified employees with disabilities who can perform the essential functions of their position(s) with or without an accommodation unless such accommodation would impose an undue hardship on the operations of the Corporation. Reasonable accommodation will be processed in accordance with law, regulation and the Agency's reasonable accommodation policy. The Employer will meet its bargaining obligations before it implements procedural changes to the current accommodations program.

## **ARTICLE 18**

### **FITNESS FOR DUTY EXAMINATIONS**

#### **Requirements**

The Employer may require an employee to undergo a fitness for duty medical examination in compliance with law and regulation whenever there is a direct question about his/her continued capacity to meet the physical or medical requirements of the position. Such an examination may be ordered for instances of job-related injuries/illnesses and for those that are not job-related.



## ARTICLE 19

### GRIEVANCES

#### Section 1: General Provisions

- A. This Article establishes the exclusive procedure available to employees, the Union, and the Employer for resolving grievances. This procedure provides for the prompt and equitable resolution of grievances. Filing a grievance shall not reflect unfavorably on any party to the grievance. Supervisors and employees will make sincere efforts to resolve workplace disputes informally and at the lowest level possible.
- B. A grievance is defined as any complaint:
1. By any employee concerning any matter relating to the employment of the employee, including matters covered by this Agreement;
  2. By the Union concerning any matter relating to the employment of any employee;  
or
  3. By an employee, the Union, or the Employer concerning:
    - a. The effect or interpretation, or a claim of breach of the Agreement; or
    - b. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.
- C. The Federal Service Labor Management Relations Statute (FSLMRS) excludes grievances on matters such as, but not limited to, those related to prohibited political activities, retirement, life insurance or health insurance and the classification of any position which does not result in the reduction in grade or pay of an employee.
- D. This Agreement excludes grievances on the following:
1. Matters outside the control of the Employer, such as decisions, rules, and regulations of higher authority;
  2. Content of published Agency policies and directives;
  3. Non-selection for promotion from a group of properly rated and ranked candidates;
  4. Action terminating a temporary promotion, if the promotion has been in effect less than two (2) years;
  5. Termination of an employee during a probationary or trial period;

6. Termination of a temporary appointment;
7. Preliminary warning (such as a written counseling or warning) of an action, which, if taken, would be grievable unless there is a showing of adverse impact from the preliminary warning alone;
8. Proposed disciplinary, adverse or performance-based action;
9. Non-adoption of a suggestion; and
10. Non-receipt of a discretionary award.
11. The issuance of a performance improvement plan (PIP). If the Employer later alleges that the employee failed to satisfactorily complete the PIP and proposes adverse action the employee may contest the validity and propriety of the PIP in any reply or appeal.

## **Section 2: Informal Resolution**

Disputes can arise from misunderstandings which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The Parties believe that normal day-to-day discussions between employees and their supervisors are the most constructive means of developing effective work relationships. Supervisors and employees will make sincere efforts to resolve work place disputes informally. Informal attempts to resolve workplace disputes do not preclude employees from filing a grievance if it is not resolved.

## **Section 3: Election of Forum**

Employees who have a discrimination claim, whistle-blower claim, or who are contesting a suspension for more than fourteen (14) calendar days, a demotion, a furlough for more than thirty (30) calendar days, or a removal may pursue those actions, either through the negotiated grievance procedure or through the appropriate statutory appeals procedure (e.g. EEO or MSPB or Office of the Special Counsel). Employees must elect only one forum. Whichever procedure the employee timely files first will be the elected forum, and the sole procedure available. An employee exercises a non-revocable, final choice when the employee or his/her representative files either a timely grievance at Step 2, or a timely notice of appeal or complaint.

## **Section 4: Representation**

The Union may represent employee(s) during the grievance process. Employees may also present individual, joint, or group grievances to the Employer without Union representation. In such cases, HRD will notify the Union of any grievance meeting. An employee's right to self-representation does not include the right to take the matter to arbitration. If an employee represents him/herself in a grievance, the Employer will provide the Union a sanitized copy of the grievance and the decision.

**Section 5: Alternative Dispute Resolution (ADR)**

- A. ADR is an alternative method of resolving disagreements that often aids in resolving issues at the lowest level of supervision and helps preserve a positive relationship between the employee and Employer. ADR supplements, but does not replace, the grievance process. Participation in ADR is completely voluntary, although where appropriate, employees and supervisors are encouraged to utilize ADR. The Parties agree to consider grievances whose characteristics may be suitable for ADR. Mediation shall be the method of ADR used under this Agreement.
- B. The Employer agrees to bear all costs associated with ADR, under Section 5 of this Article.
- C. The Employer agrees to use mediators, to the extent possible, from either the Federal Mediation and Conciliation Service (FMCS) or the Federal Sharing Neutrals Program.

**Section 6: Types of Grievances**

There are four (4) types of formal grievances: individual grievances, joint grievances, group grievances, and institutional grievances.

- A. Individual Grievances – A grievance filed by one (1) employee that seeks particular relief for that employee.
- B. Joint Grievances – Involves two (2) or more employees, under the same supervision, involving a matter with a similar fact pattern.
- C. Group Grievances – Involves two (2) or more employees with different supervisors, involving a matter with a similar fact pattern.
- D. Institutional Grievances – Involves a grievance filed by the Union or by the Employer.

**Section 7: Individual, Joint and Group Grievance Procedures**

- A. An employee must initiate a grievance by completing the PBGC grievance form and submitting it to HRD within twenty-one (21) days from either the date of the incident giving rise to the grievance or the date the employee became aware of the incident which gave rise to the grievance. HRD will dismiss, as untimely, grievances not filed within the twenty-one (21) day period and advise the grievant and his/her Union representative accordingly.
- B. If the grievance form is incomplete, the form will be returned to the submitter for completion. If the matter giving rise to the grievance continues or recurs, the employee may amend the grievance.
- C. Step 1 (Informal Grievance) – Immediate Supervisor/ Deciding Official

1. Upon receipt of a properly filed grievance HRD will, within seven (7) days, contact the grievant, his/her Union representative and the Deciding Official to schedule a meeting. If the grievant does not request a meeting, the Deciding Official will, within fourteen (14) days from HRD's initial contact, review the grievance and issue a written decision.
2. If the grievant requests a meeting, the meeting will be held, normally, within fourteen (14) days of HRD contact. Following the meeting, the Deciding Official will, within fourteen (14) days, issue a written decision.
3. If the grievant requests ADR, by making an election on the grievance form, and the Parties subsequently agree to ADR, the following procedures will be followed:
  - a. The grievance will be suspended through the ADR process, either until the Parties resolve the grievants' concerns, acknowledge that agreement is not possible, or one of the Parties elects to withdraw from the ADR process. The grievance time frame will begin again once HRD is notified that mediation is unsuccessful.
  - b. The Step 1 deciding official will issue a written response to the grievance, within fourteen (14) days from the date HRD is notified that ADR process has been terminated. This is the end of the informal process. The grievant may file a formal grievance at Step 2 if he/she is dissatisfied with the Step 1 grievance decision.

D. Step 2 (Formal Grievance) – Department Director or Designee/Deciding Official

1. If the grievant is dissatisfied with the step one (1) decision he/she may, within seven (7) days of receiving the Step 1 decision, present a Step 2 grievance the PBGC grievance form to HRD. This action constitutes the employee's irrevocable election of forum in which to resolve the grievance. A step 2 grievance may not introduce new issues nor include issues resolved at Step 1.
2. Upon receipt of the Step 2 grievance HRD will, within seven (7) days, contact the grievant, his/her union representative and the Deciding Official to schedule a meeting. If the grievant does not request a meeting, the Step 2 official will, within fourteen (14) days from HRD's initial contact, review the grievance and issue a written decision.
3. If the grievant requests a meeting, the meeting will be held, normally, within fourteen (14) days of HRD contact. Following the meeting, the Deciding Official will, within fourteen (14) days, issue a written decision.
4. The Union may invoke arbitration if the grievant is dissatisfied with the Step 2 decision.

**Section 8: Institutional Grievances**

The Parties will not file unfair labor practice charges with the FLRA over matters that are the subject of or related to matters raised as institutional grievances.

- A. Filing – A Party has twenty-one (21) days, from either the date of the action that gave rise to the grievance or the date it learned of such action, to file an institutional grievance. Untimely grievances will be dismissed. The Employer will file an institutional grievance with the UPE President, or designee. The Union will file an institutional grievance with the Director, HRD or designee. All grievances must be in writing, must clearly state the nature of the grievance, the date on which the grievant became aware of the problem; the specific laws, regulations, or CBA provisions alleged to have been violated, and requested remedies.
- B. The responding party will render a written decision within twenty-one (21) days of receipt of the grievance.
- C. Appeal to Arbitration – The grieving Party may invoke arbitration if it is dissatisfied with the grievance decision or if the grievance decision is not issued within the agreed time frame.

**Section 9: Request for Information**

The Parties shall follow the procedures set out in Article 8, except that the Employer will postpone issuing a decision on a grievance until a decision on the information request is issued. If the Employer provides new information to the Union, the Union may, within five (5) days, amend the grievance to include the new information. If a grievance is amended, the timeline for the deciding official's response shall be extended commensurate with the postponed decision.

**Section 10: Grieving Disciplinary and Adverse Actions**

A decision letter issued under the Disciplinary and Adverse Actions Article will be considered as the Employer's Step 1 decision on a grievance. The grievance will be decided by an official at or above the level of the individual who issued the disciplinary or adverse action decision.

**Section 11: Modification of Time Limits and Other Adjustments**

The Parties agree that by mutual consent expressed in writing:

- A. The time limits in this Article may be extended;
- B. Any step of this grievance procedure may be waived; and,
- C. Any written step response may be waived.

**Section 12: Settlements**

Settlement of any grievance at any level shall be consistent with the terms and conditions of this Agreement.

**Section 13: Copies of Settlements and Decisions to the Union**

The Employer agrees to provide the Union with a sanitized copy of all final decisions and settlement agreements rendered on grievances filed under this Article.

## ARTICLE 20

### HEALTH AND SAFETY

#### Section 1: General

The Employer will provide a safe and healthy work environment for employees. As such, the Employer will comply with all applicable provisions of the General Standards of the Occupational Safety and Health Administration (OSHA).

#### Section 2: Employee Responsibilities

- A. Employees who believe that an unsafe or unhealthy working condition exists in the workplace are encouraged to inform their supervisor, the Facilities and Services Department (FASD) staff, or their Union representative.
- B. In the case of an immediate threat to life or danger of serious physical harm, employees must immediately report the situation to his/her supervisor, to another supervisor who is immediately available or to the Safety Officer.
- C. Where a dangerous condition arises at an employee's work station, he/she will notify the appropriate supervisor and request permission to move to a safer or healthier location. Where the employee does not receive permission to move, the employee will immediately report to the PBGC Safety Officer in FASD and request instruction.

#### Section 3: Inspections

- A. Safety Inspections – The Employer will conduct a health and safety inspection annually and as necessary for each building that is occupied by bargaining unit employees. These safety inspections will be directed by a safety officer of the Employer, or designee, who will be accompanied by a designated representative of the Union. Where the designated Union representative is an employee, the representative may participate in the inspection without charge to leave.
- B. Accessibility Inspections – The Employer will inspect each PBGC facility to ensure that it meets the accessibility requirements of employees and customers with disabilities. Any facility that does not comply with existing regulations and standards will be corrected.
- C. Copies of written reports on safety and accessibility inspections will be provided to the Union.

#### Section 4: Health and Fitness Services

- A. The Employer agrees to maintain an occupational health program, that provides services such as first aid, emergency and first responder services; testing for blood pressure, glucose monitoring, allergy injection, flu, tetanus, and pneumococcal; conduct health

screening for hypertension, diabetes, cardiac risk (cholesterol, triglycerides, LDL, HDL, blood sugar (glucose)), vision, colorectal cancer, tuberculosis screening, hearing, glaucoma, spirometry/pulmonary test, osteoporosis, mammogram, stroke and prostate screening, individualized health counseling and an online general/comprehensive health risk assessment (HRA). Examinations for Sickle Cell Anemia, Cooley's Anemia and Tay Sachs disease will be provided by the Employer when there is a reasonable level of interest and funds are available. The Employer will advise employees of the availability of such services in a timely manner so that those employees who are interested will be able to take advantage of these services.

- B. When the health unit determines that, due to illness or incapacitation, an employee must leave work and is incapable of getting home alone, the Employer will allow a volunteer employee up to 90 minutes of administrative leave to transport the employee, provided the absence does not cause a disruption in the volunteer employee's work or the work unit of the employee. The volunteer employee must request and receive approval from his/her supervisor. This provision shall not be grievable.
- C. Wellness Programs
  - 1. Employees are encouraged to take advantage of fitness/wellness programs. New employees will be informed about the services of the Health Unit and availability of fitness/wellness programs during employee orientation. To promote employee wellness, the Employer shall provide all employees with the opportunity to participate in a smoking cessation program at least once per year.
  - 2. The Employer will provide counseling and assistance to employees on health issues such as lifestyle nutrition, avoidance of harmful substances and positive mental health.
- D. The Employer will provide an on-site fitness center, including space, office equipment, supplies, telephones and maintenance services. Employees who choose to take advantage of the fitness center will do so during off-duty hours.
- E. The Employer will offer cardiopulmonary resuscitation (CPR) training to all interested employees. The Union will encourage its members to take the course. A list of employees trained in CPR, including their work areas and telephone numbers, will be published on PBGC's intranet site and on all Employer bulletin boards.

**Section 5: Lactation Facility**

- A. The Employer will provide a lactation facility for use by employees. The facility will be available, generally between the hours of 8:00 am and 4:00 pm.
- B. The facility will be in a separate room with a chair, table, refrigerator, electrical outlets, appropriate lighting, and access to a sink.
- C. Equipment and Cleaning: The Employer will provide a lactation pump, waste disposal container, paper towel dispenser, and soap dispenser. The facility will be cleaned nightly



by the building's cleaning staff; however, employees using the facility are responsible for cleaning up after each use.

**Section 6: Workers' Compensation Program**

Employees must file claims for work related injuries or illnesses in compliance with 5 U.S.C. Chapter 81, Federal Employees' Compensation Act. Employees may consult with the Employer or the Union for assistance in filing a claim.

**Section 7: Computers, Equipment and Office Furnishings, Carpet Installation**

- A. The Employer will provide, where feasible, glare reduction screens for any employee who requests one for use with his/her terminal. If employees who request such a device are not provided with one, priority will be given to employees whose request is based on medical documentation.
- B. The Employer will ensure that computer terminals, monitors, keyboards, and mouse pads are moveable and adjustable.
- C. The Employer will provide adequate ventilation and cooling in all work areas containing terminals or hardware, and will ensure that the temperature in such areas is safe.
- D. The Employer will provide adjustable, ergonomic chairs to all employees. The Employer will provide an ergonomic keyboard, an ergonomic mouse, wrist protection devices and other ergonomic devices to an employee who has a documented health need for such tools or devices.
- E. The Employer will maintain and periodically inspect a representative sample of computers and computer terminals to ensure they meet the safety standards called for in the manufacturers' recommendations and under government regulations.
- F. The Employer shall provide information to all employees about healthful practices and use of terminals and keyboards to avoid eye strain or fatigue or repetitive stress injury on its intranet site.
- G. Employees who work at a computer terminal for more than an hour at a time may do other work for a minimum of ten (10) minutes.
- H. The Employer will monitor the availability of improved technology, products and techniques that may be ameliorative to employees who are required to operate a terminal for a substantial part of a work day and promptly make such products or techniques available to employees who actually suffer or are at substantial risk (as determined by medical advice) of strain or injury.
- I. When and where the Employer decides to install more than four hundred (400) square feet of carpet at any one time in an employee occupied space using carpet adhesive, such installation and application shall take place during non-work hours during the week and at any time on Saturday or Sunday. Any employee who is concerned about ill effects

should notify the Employer. The Employer will upon request, make reasonable efforts to relocate the employee.

**Section 8: Temperature Conditions**

- A. The Employer will ensure that the Landlord, in accordance with the lease, maintains on a regular and continuing basis, a ventilation system and building air ventilation rates that meet the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards, including existing ASHRAE standards that specify the minimum cubic feet per minute of outdoor air per person. In the event the indoor air constitutes or presents a hazard under these standards, the Employer will require the Landlord to fix such hazards or conditions as soon as practicable.
- B. The Employer will ensure that the Landlord, in accordance with the lease, maintains a comfortable range of temperature in work areas. Employees who experience either hot or cold temperature extremes may contact FASD staff so that an appropriate adjustment can be made. If the temperature extreme remains uncomfortable for sixty (60) minutes after FASD has been notified, the affected employees may notify their supervisor and normally will be permitted to move to another work area, if available, where the temperature is comfortable.

**Section 9: Safety and Emergency Education**

- A. The Employer will provide, annually, safety information to employees focusing on fire, security and other possible safety hazards via email and published articles in Agency newsletters.
- B. The Employer will maintain an Emergency Evacuation Plan on PBGC's intranet.

**Section 10: Notifications**

- A. The Employer will inform all employees through the electronic mail system of the chemicals that will be used in its space (such as pesticides, chemical cleaning materials, and other chemicals that will be applied in maintenance purposes) as soon as it is made aware that chemicals will be used. This notice will also include any warning statements given to the Employer by the Landlord.
- B. After notification is provided to all employees, any employees with known sensitivities to specific substances should contact FASD so that work to be performed can be scheduled at appropriate times to accommodate the employees' conditions.
- C. Where the Employer determines that there is a reasonable likelihood of harm, employees will be moved to safe areas while their area remains contaminated.

**Section 11: Assignment in Case of Imminent Danger**

- A . The right to direct employees and to assign work is an authority of the Employer. Employees have the obligation to comply with orders issued by supervisors, and should grieve the matter afterwards if they believe the order to be improper.
  
- B. The employee has the right to object to performing assigned tasks because of a reasonable belief that, under the circumstances, the tasks could pose an imminent danger of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek corrective action through normal hazard reporting and abatement procedures. In these instances the employee must report the situation to his/her supervisor, another supervisor who is immediately available, or the Safety Officer. For purposes of this section, imminent danger means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures (29 C.F.R. 1960.2(u)). Employees should realize that, should they leave the work site without approval and it is later determined that an imminent danger of death or serious bodily harm did not exist, they may be subject to appropriate disciplinary action.

**Section 12: Reporting Requirements**

Upon request, the Union shall be provided with a copy of the annual Occupational Safety and Health Administration's Health and Safety Report.

## ARTICLE 21

### HIV/AIDS IN THE WORKPLACE

#### **Section 1: General**

Every employee shares responsibility for ensuring that PBGC is a safe, healthy, and discrimination-free workplace. To reinforce understanding of and compliance with this policy, PBGC will conduct training and education programs for all PBGC staff on the medical and human resource management dimensions of HIV/AIDS in the workplace.

#### **Section 2: Guidelines for Managers, Supervisors, and Employees**

The following guidelines are intended to assist managers, supervisors, and employees in maintaining a work environment that is responsive to workplace issues related to HIV/AIDS (Human Immuno-Deficiency Virus/Acquired Immune Deficiency Syndrome).

- A. PBGC will not discriminate against any applicant or employee who is HIV infected or who has AIDS.

Individuals with HIV/AIDS will be treated the same as any other individual with an illness or disability in accordance with PBGC policy, the Collective Bargaining Agreement, and the Rehabilitation Act of 1973. Mistreatment, harassment, malicious gossip, or hurtful actions in the workplace will not be tolerated. Employees with questions or concerns should contact an EEO Counselor.

- B. An employee's health condition is private and confidential.

An employee with the HIV infection or AIDS is under no obligations to disclose his/her condition to a manager or any other employee of PBGC. Managers and supervisors are expected to take every precaution to protect the confidentiality of information regarding any employee's health condition, including HIV/AIDS, as required by law. Managers and supervisors should contact the HRD for additional guidance.

- C. Employees with HIV/AIDS have the right to continue working as long as they are able to continue to perform the essential functions of their jobs satisfactorily (with reasonable accommodation if necessary) and do not pose a safety threat to themselves or others in the workplace.

Managers and supervisors are expected to make reasonable accommodations for individuals with HIV/AIDS, such as with any other employee with a disability, to enable them to meet established performance criteria. Reasonable accommodation may include, but is not limited to, flexible or part-time work schedules, leave of absence, work restructuring, or job reassignment. The HRD staff is available to provide assistance in identifying reasonable accommodation options.

- D. Employees will continue normal working relationships with any employee who is recognized or perceived as being HIV positive or having AIDS.
1. Current medical and scientific evidence released by the Centers for Disease Control (CDC) state that “the kind of nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission of HIV/AIDS.” Therefore, only routine requests for transfer will be considered, not requests based on fear and/or discrimination.
  2. Managers and supervisors are encouraged to contact HRD for assistance in providing employees with general information about the HIV infection or AIDS. Any employee who is unduly concerned about contracting AIDS should be referred to the Health Unit or the Employee Assistance Program for additional counseling.
- E. An employee with HIV/AIDS may continue their health and life insurance coverage, apply for disability retirement, and/or request leave in the same manner as any other employee.

Continued coverage in these benefit programs will not be jeopardized because of an employee’s medical condition. Under the Family and Medical Leave Act, an employee is entitled (if supported by appropriate medical documentation) to twelve (12) weeks of unpaid leave in a twelve (12) month period either due to his/her own HIV/AIDS related illness or to care for an immediate family member who is ill. Contact HRD for additional information about retention of health and life insurance coverage, eligibility for disability retirement, and/or procedures for requesting leave.

**Section 3: Local Resources**

Information regarding local resources is available from the Employee Assistance Program office and the Health Unit.

## ARTICLE 22

### HOLIDAYS

#### **Section 1: Holidays**

Employees are entitled to paid time off on federal holidays. Employees who are directed to work on federal holidays will receive holiday pay when eligible under 5 U.S.C. §5546.

#### **Section 2: Effect on Alternative Work Schedules**

Employees participating in the flexible 5/4-9 alternative work schedule are entitled to an “in lieu of” holiday when a holiday falls on a non-workday (i.e. the employees regularly scheduled AWS day off). Normally in such cases, the employee’s “in lieu of” holiday is the basic workday immediately preceding the non-workday. If the non-workday is Monday and the holiday occurs or is observed on that Monday, the following Tuesday is the “in lieu of” holiday. In either case, such full time employees will receive eight (8) hours of pay for the holiday.

#### **Section 3: Work on Holidays**

- A. When business necessity requires employees to work on an established federal holiday, the supervisor will determine what work needs to be done and solicit volunteers from among employees in the appropriate work unit qualified and able to perform the needed work. If more employees volunteer than are necessary to perform the work, the employee(s) selected will have the greatest length of PBGC service. If there are no qualified volunteers, the work will be assigned to the least senior employee(s) in the appropriate work unit qualified and able to perform the work. Furthermore, involuntarily assigned employees will be excused where they provide significant hardship reasons and the Employer can meet its need otherwise. The Employer has the discretion to determine whether significant hardship exists; however such discretion must be reasonable exercised.
- B. PBGC will notify those employees who will be required to work on a scheduled holiday as soon as possible, normally five (5) workdays in advance. When an unforeseen emergency occurs preventing five (5) workdays notice as much notice as possible will be given to affected employees.

## **ARTICLE 23**

### **HOURS OF WORK AND WORK SCHEDULES**

#### **Section 1: General**

Consistent with the Employer's mission and customer service objectives, the Employer will strive to make the work environment as flexible as possible subject to applicable law, regulation, and the Employer's directive governing Hours of Work and Work Schedules. To that extent, the Parties agree to comply with the Agency's Hours of Work and Work Schedules directive, along with the following additional provisions in this Article.

#### **Section 2: Work Schedules**

- A. Subject to supervisory approval, employees may participate in one of the following flexible schedules: Gliding, 5-4/9 or Maxiflex. Employees occupying certain positions or performing certain duties may be excluded from participation in either the 5-4/9 or Maxiflex schedule.
- B. The Employer must notify the Union before making final determinations regarding classes of bargaining unit positions restricted from the 5-4/9 or Maxiflex schedule (i.e. employees in identical occupations or identical positions).
- C. Disapproval of an employee's requested biweekly Maxiflex schedule is not grievable.
- D. All bargaining unit employees not working a 5-4/9 or Maxiflex schedule will be on a gliding schedule.

#### **Section 3: Credit Hours Program**

Only those employees on a Gliding or 5-4/9 schedule may earn or use credit hours.

#### **Section 4: Sign-in/Sign-out**

Employees are responsible for fulfilling the obligation to account for their basic work requirements each pay period. If working at a location with other PBGC employees, (e.g. the Principle Office (PO)), employees are required to personally sign-in and list their arrival time sequentially. Upon completion of the employee's tour of duty for that day, employees must list their actual departure time when signing-out. This may be done electronically if the agency implements electronic time keeping.

If an employee is working at an alternative work location, the employee will sign-in/out by sending an e-mail to his/her supervisor or designee at the start and end of his/her tour of duty for that day.

**NOTE: This Article supersedes Article 23 (Hours of Work and Work Schedules) of the Collective Bargaining Agreement dated May 3, 2011.**

**Section 5: Lunch Period**

- A. All employees working greater than six (6) hours , except those assigned to organizations whose lunch break is optional, must take a thirty (30) minute unpaid lunch break during their tour of duty, within the agency's established hours for lunch breaks.
- B. Employees on a Gliding or 5-4/9 schedule must complete their lunch break, whether required or optional, by 2:30 p.m.
- C. Employees on a Gliding or 5-4/9 schedule may, with prior supervisory approval, extend their lunch break up to an additional 90-minutes, provided the time is made up by the end of that day's flexible time band or leave is taken.
- D. Time used in excess of the thirty (30) minute lunch break, must be documented.

**Section 6: Travel Outside the Administrative Workweek**

Employees required to travel outside of the administrative workweek to events that cannot be scheduled or controlled administratively by PBGC will be compensated consistent with applicable law.

**Section 7: Assignment of Overtime Work**

- A. The Employer will distribute overtime equitably among qualified employees within each appropriate work unit. Where the nature of a particular task does not lend itself to equitable distribution among qualified employees , the Employer will strive to achieve equitable distribution through future assignment distribution. Where an employee has been offered an overtime opportunity and turns that opportunity down, he/she will have been considered to have received an opportunity for distribution of overtime work.
- B. The Employer will staff overtime assignments with volunteers, unless there are no qualified volunteers available, or, due to the nature of the tasks, this is impractical (e.g., a case or project assigned to one (1) employee). Where there are more qualified volunteers for the overtime than there are assignments available, the employee(s) with the greatest amount of service at PBGC will be given the assignment.
- C. Where the supervisor is not able to find volunteers to serve the overtime, he/she will:
  - 1. identify qualified employees in the appropriate work unit;
  - 2. rank the employees in terms of PBGC seniority; and,
  - 3. assign the least senior employee(s) the overtime assignment.
- D. An employee who did not volunteer, but was ordered to work may be relieved of the assignment if he/she can find a suitable replacement acceptable to the supervisor. The employee may also be relieved of the assignment where they can demonstrate a significant hardship. In all cases, however, the Employer reserves the right to assign overtime work.
- E. Employees will normally be given notice of overtime assignments outside the administrative work week two (2) business days before the upcoming work week or as soon as practicable.



## ARTICLE 24

### INTERIM NEGOTIATIONS

Interim negotiations are negotiations between the Employer and the Union that involve other than term collective bargaining negotiations. The Parties agree that the terms of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by law.

#### **Section 1: Situations Giving Rise to Interim Negotiations**

Six (6) situations give rise to interim negotiations:

- A. Articles subject to reopener provisions;
- B. Mid-Point negotiations;
- C. Employer-initiated actions that give rise to changes in working conditions;
- D. Changes in law or Government-wide regulation that affect employees;
- E. Union-initiated bargaining; and
- F. Bargaining that the Parties agree upon by mutual consent.

#### **Section 2: Reopener**

- A. The parties agree to reopen the Articles governing Hours of Work, Offices, Telework, Performance Management, Contracting Out and Student Loans no later than six (6) months, or some other mutually agreed date, following the signing of this Agreement
- B. Upon reopening negotiations for those Articles listed in Section 2.A above, the Parties agree to the following ground rules, and any other applicable provisions of this Agreement:
  - 1. Each Party will designate a Chief negotiator who will have appropriate collective bargaining authority.
  - 2. The parties are entitled to the same number of negotiators at the bargaining table. Prior to deciding on the number of management members, the Parties will discuss the appropriate size of the respective negotiating teams.
  - 3. Official time for negotiations under this Section shall be governed by 5 U.S.C. §7131(a) and Article 52 (Union Representatives and Official Time) of this Agreement.

4. Negotiations shall be completed within sixty (60) days of commencement. The Parties may agree to, by not more than sixty (60) days, extend the time frame for completion of negotiations.
5. When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiations on these matter(s).
6. Negotiability issues will be resolved in accordance with the FSLMRS and FLRA case law.
7. Impasses shall be resolved by the process established by the FSIP.

**Section 3: Mid-Point Negotiations**

- A. Each Party may elect to renegotiate two (2) existing Articles and to submit two (2) new proposals for negotiations. No other Articles or topics will be discussed in mid-term negotiations.
- B. Either Party may request to engage in mid-term negotiations by submitting written notice not more than one hundred and twenty (120) days and not less than sixty (60) days prior to the mid-point of this Agreement. The Articles in this Agreement will remain in effect until superseded. If neither Party submits notice to engage in mid-point negotiations, the current Agreement will remain in effect for the remainder of its term, unless otherwise subject to Interim Negotiations.
- C. The Parties agree to follow the ground rules in Section 2.B (Reopener) above. The parties may agree to add or modify the ground rules, if necessary.

**Section 4: Employer-Initiated Changes**

- A. Performance of the Employer's mission will, from time to time, require changes in personnel policies, practices, and other matters affecting working conditions of bargaining-unit employees. Although the Employer has the right to make such changes in the exercise of its rights and for any other reasons associated with the accomplishment of its mission, the Employer recognizes its obligation, consistent with law and applicable regulation, to negotiate with the Union regarding procedures it will observe in exercising its rights, and appropriate arrangements for any adversely affected employees.
- B. When the Employer proposes an action that will affect working conditions, the Employer will notify the Union in writing and, within seven (7) days of the notification, schedule a briefing with the Union to describe and discuss the proposed change. The notice will contain the reason for the change and indicate the proposed implementation date. Following the briefing the Union will have seven (7) days to invoke bargaining and will, within three (3) days thereafter, provide negotiable proposals. Failure to invoke bargaining within this time will constitute a waiver. This will not preclude the Union from

requesting an extension of time to respond when that request is made within the seven (7) day period.

- C. Except as provided by law, the Employer shall not establish, change or implement any personnel policy, practice, or working condition which terminates or conflicts with the specific terms or conditions of this Agreement without first giving the Union an opportunity to bargain. Alternatively, the Union may elect to allow the Employer to proceed with the proposed action and engage in post-implementation bargaining.
- D. At any time during the notification procedure described in this Section, the Parties may informally discuss and undertake efforts to resolve concerns about the proposed changes. Agreements or understandings reached informally shall be documented by appropriate means.
- E. The procedure contained in this Section shall constitute the ground rules for negotiations under this Section, unless the Parties mutually agree to negotiate additional ground rules.
  - 1. Each Party will designate a Chief negotiator who will have appropriate collective bargaining authority.
  - 2. If formal negotiations are required to resolve differences concerning any proposed change, the negotiations will begin no later than twenty-one (21) days after receipt of the notice of change, unless both Parties agree to an extension. The other Party will normally counter within three (3) days, prior to the actual bargaining.
  - 3. If a meeting is required during the negotiations process in this Article, the Union shall be entitled to the same number of negotiators at the bargaining table as management. Prior to deciding on the number of management members, the Parties will discuss the appropriate size of the respective negotiating teams.
  - 4. Official time under this Section shall be governed by 5 U.S.C. §7131(a) and Article 52 (Union Representatives and Official Time) of this Agreement.
  - 5. Negotiations shall be completed within forty-five (45) days of initial notification. However, the Parties may, by mutual agreement, extend the time frame set in the notice for completion of negotiations, upon notice to the receiving party. After one extension by the initiating Party, further extensions must be mutually agreed upon.
  - 6. Proposals must be negotiable and must be directly related to the proposed change. This does not prevent either Party from separately initiating negotiations over indirectly related or unrelated matters, as may be permitted by the FSLMRS and this Agreement. If the Parties agree, negotiations on different proposed changes may be consolidated.
  - 7. At any point in the informal or formal process the initiating Party may elect to withdraw any proposed change, in whole or in part. However, nothing contained

in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject matter as permitted by this Article.

8. When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiations on such matter(s).
9. Issues of negotiability shall be resolved in accordance with the FSLMRS and FLRA case law.
10. Impasses shall be resolved by the process established by the FSIP.

**Section 5: Changes in Law or Government-Wide Regulations**

When a change in law or Government-wide regulation obligates the Employer to bargain with the Union over resulting changes in working conditions, the Parties will bargain using the same procedures described in Section 4.E (Employer-Initiated changes) above.

**Section 6: Union-Initiated Bargaining**

Once every one hundred and twenty days (120) the Union may submit written proposals to bargain about on no more than two (2) new topics. These topics must concern matters that are not contained in or covered in this Agreement, were not discussed in term, mid-point, or other previous bargaining sessions, and do not arise from changes in law or Government-wide regulations. Impasses over Union-initiated bargaining shall be resolved by the FSIP. Time limits and procedures described in Section 4.E above will be utilized, with the roles reversed.

## ARTICLE 25

### LABOR-MANAGEMENT RELATIONS COMMITTEE

The Parties agree that regular communication between the Union and Management can foster a positive relationship and proactively stave-off problems, and help resolve issues before they become formal matters. To this extent, the Parties agree that should Executive Order (EO) 13522: Creating Labor-Management Forums to Improve delivery of Government Services be rescinded or amended to alter the existence of Labor-Management Forums, the Employer and the Union may establish a committee as described below:

#### **Section 1: Purpose and Scope**

The Employer and Union may establish a Labor-Management Relations Committee (LMRC) to enhance labor-management relations within the Corporation through the early identification and informal discussion of significant labor-management issues.

#### **Section 2: Membership**

The members of the LMRC will consist of up to seven (7) Union representatives and up to seven (7) Employer representatives.

#### **Section 3: Procedure**

- A. Frequency of Meetings – The LMRC shall meet at the request of either Party, except that meetings more frequent than quarterly must be mutually agreed upon.
- B. Agenda – Each Party will propose items for the agenda. The Parties will decide which issues to discuss by mutual agreement. In determining what issues are suitable for discussion by the LMRC, each Party will consider whether the issue would be better addressed through formal bargaining. The Parties will not discuss individual grievances or specific EEO complaints.
- C. Subcommittees – The Parties may agree to create subcommittees to gather factual information and develop recommendations about specific issues.
- D. Agreement – The Parties will agree to particular courses of action by mutual consent.

## ARTICLE 26

### LEAVE AND ABSENCE

PBGC will implement family-friendly workplace practices while continuing to ensure accountability for mission accomplishment and quality customer service.

#### **Section 1: Leave Entitlements and Programs**

- A. Annual Leave – Employees accumulate and carry over annual leave in accordance with applicable law and regulations. Employees may use approved annual leave in quarter (¼) hour increments.
- B. Sick Leave – Employees accumulate and carry over sick leave in accordance with applicable law and regulations. Employees may use approved sick leave in quarter (¼) hour increments.
- C. Conversion of Leave – The Employer may convert annual leave to sick leave or sick leave to annual leave or either one to leave without pay at an employee's request and as provided by applicable law and regulation.

#### **Section 2: Scheduling Annual Leave**

- A. Leave Requests and Approval – To the extent circumstances permit, each employee will request all annual and advance annual leave from his/her supervisor at least twenty-four (24) hours in advance, absent extenuating circumstances. Requests must not exceed the amount of annual leave the employee would earn during the remainder of the leave year or current appointment. An employee may not be denied annual leave for reasons other than those related to the employee's work requirements or the employee's work-unit's work requirements. Normally, employees may request leave approval up to six (6) months in advance. Employees may request leave for periods that will occur more than six (6) months in the future in unusual circumstances such as when necessary to take advantage of low-priced vacations, to secure travel or lodging reservations or for special family events. Employees may be approved extended periods of leave, generally requests for three (3) or more consecutive weeks of leave, when those requests do not conflict with other employees' leave requests, and when the requesting employee's work requirements and the work-unit's work requirements permit.
- B. Conflicts in Pre-scheduled Leave – If two (2) or more employees with the same supervisor request overlapping leave periods and cannot be out of the office at the same time, the supervisor will ask the employees to work out their leave schedules informally. If they are unable to do so, the supervisor will grant the request of the employee who asked for leave first, provided the arrangement does not adversely affect work requirements. If both employees made their requests on the same day, the employee with the most PBGC seniority will receive first consideration. When an employee is already on annual leave and requests to extend that leave, the employee's request may be

approved, provided the extension does not interfere with another employee's approved leave plans or interfere with the extending employee's workload or that employee's work-unit's workload.

- C. Changes to Approved Leave – An employee may be permitted to change the period of extended leave that he/she requested where the change would not create a workload problem for an employee who has already requested that period and thereby jeopardize the latter employee's request.
- D. **Unscheduled Leave** – If circumstances do not permit employees to schedule their leave in advance, as might occur if the employee's car breaks down or for some other unforeseen circumstance, employees will give their supervisors as much notice of their pending absence as possible. When an employee is unable to report to work, the employee will attempt to contact his/her supervisor within the first two (2) hours of the employee's regularly scheduled arrival time. If the employee is not able to contact their supervisors directly, the employee shall leave a voice message and/or send an e-mail. The message shall indicate the employee's name, the reason for the absence, the expected duration of the absence, and one of the following: a phone number where the employee can be reached or affirmation that the employee will check his/her voicemail within a reasonable period of time. The purpose of this arrangement is to provide the supervisor a way to notify the employee whether or not leave is approved, and to determine if, in the employee's absence, there are time-sensitive tasks that must be accomplished by another employee.
- E. **Notice of Use-or-Lose Leave** – During the month of September each year, the Employer will publish a reminder to employees of the need to schedule annual leave that might be impacted at the end of the leave year.
- F. **Rescinding Leave** – When considering cancellation of an employees' approved leave, the supervisor will discuss the matter with the employee as soon as is practicable, and will give due consideration to the impact cancellation might have on the employees' leave plans. The employee shall be notified of a decision to cancel approved leave in writing and not less than forty-eight (48) hours, or as soon as reasonably possible, in advance of the beginning of the employee's scheduled leave.
- G. **Leave At Holidays and Other Occasions** – Reasonable effort will be made to accommodate employees who desire leave during holiday seasons, on religious or other holidays, or to attend funerals. Employees are expected to request such leave in advance, except in cases of emergency.

### **Section 3: Scheduling Sick Leave**

- A. **Pre-scheduled Sick Leave Use** – Employees who need sick leave for doctor's appointments and other authorized reasons that they know about in advance will request leave from their immediate supervisor at least twenty-four (24) hours in advance, absent extenuating circumstances. An employee may not be denied pre-scheduled sick leave for

reasons other than those related to the employee's work requirements or the employee's work-unit's work requirements.

- B. **Unscheduled Sick Leave Use** – When employees are unable to report to work they will attempt to contact their supervisors within the first two (2) hours of their regularly scheduled arrival time. Employees will contact their supervisors directly, leaving a message on the supervisor's voice mail when the supervisor is unable to take the call and/or by sending an e-mail if available. If the employee is not able to contact his/her supervisor directly, the message shall indicate the employee's name, the reason for the absence, the expected duration of the absence, and one of the following: a phone number where the employee can be reached, affirmation to call the supervisor personally at a specified time, or to check his/her voice mail within a reasonable period of time.
- C. **Advance Sick Leave** – Department Directors may grant employees who have completed their probationary period up to thirty (30) days of advance sick leave for a serious health condition directly affecting themselves or a family member, provided the employee is expected to return to duty and furnishes the appropriate properly completed PBGC medical certification form. A temporary employee may be granted advance sick leave up to the total sick leave he/she would earn during the remainder of his/her appointment. Advance sick leave will not normally be granted for absences of less than three (3) consecutive workdays, unless the request is for a documented chronic health condition.

Normally, no employee shall be required to reveal the identity of the illness which caused the employee to request an advance of sick leave, except that the Employer may not approve advance sick leave without having sufficient information to determine adequate justification. The information required of the employee shall not be any greater than that releasable under FMLA guidelines. When the Employer has reasonable cause to believe that the leave should not be advanced, it may seek additional information from the employee.

- D. **Documentation:**
  - 1. **Requiring a Medical Certificate for Three (3) or More Consecutive Sick Days** – An employee may be required to furnish the appropriate properly completed PBGC medical certification form to substantiate a request for approval of sick leave if the sick leave is for three (3) or more consecutive workdays. If the circumstances surrounding the employee's absence indicate that the services of a healthcare provider were not available or required, the employee's written statement may suffice.
  - 2. **Requiring a Medical Certificate for Fewer Than Three (3) Sick Days** – Employees will not be required to furnish a medical certificate to substantiate a request for approval of sick leave for sick leave periods of less than three (3) consecutive workdays, unless the employee has been given a leave restriction letter. Prior to issuing this letter, and at the earliest opportunity, supervisors should discuss concerns regarding leave usage with the employee. Leave abuse may be present when (a) the proper procedures are not followed in requesting leave; and (b) the



pattern of taking leave is disruptive to the unit's workload; or (c) prior leave patterns may indicate a misuse of leave.

When a supervisor determines that an employee's absences indicate a pattern of possible leave abuse and decides to place an employee under leave restriction, the employee will be advised in writing of the problem and the appropriate restrictions which apply. The leave restriction should deal with the identified leave abuse problem and the procedures which must be followed to obtain leave. Leave restrictions will be in place no longer than three (3) months. At the end of the stated period, the Employer shall review the employee's situation, and shall give the employee written notice of rescission or renewal of the restriction. If the problem persists, the leave restriction may be extended in increments of three (3) months or less. During the restriction, the employee must furnish a certificate from a healthcare provider for each absence from work which he/she desires to charge to sick leave.

3. Requiring a Medical Certificate for a Chronic Condition – An employee will not be required to furnish a medical certificate on a frequent basis if the employee suffers from a chronic condition or injury which does not necessarily require medical treatment although absence from work may be necessary and the employee furnished medical certification of the chronic condition or injury. Such medical certification shall be renewed at least every six (6) months.

#### **Section 4: Other Sick and Related Leave**

Definition of Family Member:

- A. In the following sections, family member means spouse and parents thereof, children including adopted children and parents thereof, parents, brothers and sisters and spouses thereof, and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- B. Leave Under the Family and Medical Leave Act (FMLA)
  1. In accordance with 5 U.S.C. §6381-6387 and 5 C.F.R. Part 630, subpart L, eligible employees are entitled to take up to twelve (12) weeks of unpaid leave per year for any of the following reasons:
    - a. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
    - b. Because of the placement of a son or daughter with the employee for adoption or foster care;
    - c. In order to care for a family member who has a serious health condition;
    - d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

2. Medical documentation is required to support the approval of leave under FMLA. When requesting leave under the FMLA, the employee will submit the appropriate properly completed PBGC FMLA medical certification form.
- C. Care of Newborn or Recently Adopted Child – Absent valid operational reasons (a determination of which is left to the discretion of the Employer), an employee’s request for leave to attend to a newly adopted child or a newborn infant shall be granted for up to six (6) months. Up to twelve (12) weeks of such leave shall be counted as leave entitled to under FMLA (see Section 4.B.1.b. above).
- D. Leave Under OPM’s Federal Employees Family Friendly Leave Policies
1. OPM policies provide that employees may use a total of up to 104 hours (13 workdays) of sick leave to care for or otherwise attend to a family member as a result of: physical or mental illness, pregnancy, childbirth, medical, dental, optical examination or treatment, or to make arrangements necessitated by the death of a family member or to attend the funeral of a family member, and for bereavement purposes.
  2. Notwithstanding an employee’s statutory entitlement to leave under these policies, the FMLA requires that any portion of the 104 hours (13 workdays) of sick leave used under OPM’s Federal Employees Family Friendly Leave Policies for general family care or bereavement purposes in a leave year, must be subtracted from the 12-week entitlement provided for under the FMLA.
  3. In accordance with both FMLA and OPM’s Federal Employees Family Friendly Leave Policies, if an employee has already used twelve (12) weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional thirteen (13) days in the same leave year for general family care purposes. An employee is entitled to use a total of twelve (12) weeks of sick leave each year for all family care purposes.
- E. Adoptions – Employees may use accrued sick leave for purposes related to the adoption of a child. In addition, in accordance with 5 U.S.C. §6307.d, employees may receive advance sick leave up to thirty (30) days for purposes relating to the adoption of a child. This leave is not subject to the thirteen (13) day restriction under the Federal Employees Family Friendly Leave Act.
- F. Visits to the Health Unit – Employees who need to visit the health unit during their working hours will inform their supervisors before reporting to the health unit or as soon thereafter as practicable. If their supervisors are not available, then employees will leave a message on the supervisor’s voice mail and send an e-mail. The voice message and e-mail shall indicate the employee’s name, and will specify that the employee has gone to the health unit.
- G. Pregnancy – In addition to all options provided for elsewhere in this Agreement and under Federal law and regulations, a pregnant employee shall have the following leave options available to cover a period of incapacitation or disability associated with the

pregnancy and/or childbirth. The employee may take her accumulated sick leave to cover this period of incapacitation or disability. The employee may also request annual leave and/or leave without pay (in lieu of or in addition to sick leave) to cover this same period. The period of incapacitation or disability following childbirth will normally last for six (6) to eight (8) weeks but, in all cases, will be dependent on the employee's obstetrician's (midwife's or physician's) examination of the employee and certification of the employee's fitness to return to work.

No arbitrary cutoff date requiring an employee to cease work or to prevent an employee from returning to work due to pregnancy or childbirth will be established. If a cutoff date is established, it must be based on the physical capability of the employee to perform the duties of the job, as determined by the employee's obstetrician, mid-wife or physician.

#### **Section 5: Re-crediting of Annual and/or Sick Leave**

When an employee is required by their supervisor to perform official duties while on approved annual or sick leave, the employee will not be charged the leave, as appropriate, for the time spent performing official duties. Leave is chargeable in 15 minute increments. Accordingly, the period of duty time in 15 minute increments would not be charged leave. For instance, if the employee performs 10 minutes of work, then the employee would be in a duty status for 15 minutes and the 15 minutes would not be counted against the leave.

#### **Section 6: Administrative Leave**

- A. The Employer may grant employees paid administrative leave to attend to matters that are of interest to PBGC, civic duty, or the Federal Service.
- B. Civic Responsibilities – Employees who desire to vote or register in any election or in referendums on a civic matter in their community will be excused for a reasonable time for that purpose.
  - 1. 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, the employee will be excused for enough time to permit him/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. An employee's regular hours of work will be determined based on his/her typical arrival and departure times.
  - 2. Under exceptional circumstances where the general rule does not permit sufficient time, an employee will be excused for such additional time as administratively determined in order for the employee to vote, considering the particular circumstances in his/her individual case, but not to exceed a full day.

For employees who vote in a jurisdiction that requires registration in person, time off to register will be granted on the same basis for voting, except that no such time will be granted if registration can be accomplished on a non-workday and the

place of registration is within reasonable one-day, round trip travel distance of the employee's place of residence.

- C. Hazardous Conditions – All employees are to presume that the office is open each regular workday unless specifically announced otherwise. Although employees are expected to be prepared to deal with most emergencies, conditions might occur which will make the closing of the office necessary. Depending on the circumstances of the particular situation, attempts will be made to make a closing decision and broadcast it as early as possible. Employees should listen to radio or television news and follow OPM's or the Employer's specific instructions.
1. When the workplace is closed for a full day by administrative order, employees not reporting to work will be credited for administrative leave in the amount of their regularly scheduled tour of duty during the closure. When a decision is made to dismiss employees during the workday, employees on duty at the time of the dismissal will be excused without charge to leave. The early dismissal will have no effect on the leave or pay of employees not on duty when the dismissal became effective.
  2. Supervisors should give every consideration to granting unscheduled leave as requested when an employee requests leave because of the impact of hazardous conditions.
- D. If an emergency situation or inclement weather conditions exist which prevent an individual employee from reporting to work when the office is not closed, unscheduled leave, (i.e. annual leave or accrued compensatory time or credit hours) will be granted provided the employee provides a written description of the emergency or condition involved and a reasonable explanation as to why the conditions prevented him/her from getting to work. In unusual cases, and based on the written explanation of the emergency, a department head may grant administrative leave to cover any absence from work for a part of or all of the work day.
1. Supervisors may grant annual leave to employees who have permanent or temporary mobility impairments whenever extreme weather conditions prevent or interfere with the employees' commute to work, regardless of whether OPM has established alternate working schedules due to hazardous weather conditions.
  2. If, after reporting to work, a mobility impaired employee uses approved leave to go home early in extreme weather conditions and the Employer subsequently grants administrative leave to other employees because of these conditions, the employee will be granted the same amount of administrative leave that he/she would have been granted had he/she remained at work until the time the Employer granted administrative leave to other employees.
- E. Military Deaths – An employee may be excused for up to three (3) days without charge to leave to make arrangements for or to attend the funeral of an immediate member of his/her family killed in the line of duty in the Armed Forces.

- F. Blood Donations – Any employee who donates blood or attempts to donate blood to the PBGC sponsored voluntary blood donation program will be granted up to four (4) hours administrative leave for the time spent being evaluated for the donation, donating blood and recuperation. If an employee returns to work after donating blood, but, later that day, determines that he/she needs additional time to recuperate from the donation, he/she will be granted administrative leave up to the total of four (4) hours.
- G. Bone Marrow Screening - Any employee who participates in bone marrow screening under a PBGC sponsored bone marrow screening program will be granted up to four (4) hours administrative leave for the screening process.
- H. Military Leave – Any employee who is a member of the National Guard or other reserve unit of the Armed Forces shall be entitled to military leave for each day of active duty in such organization up to a maximum of fifteen (15) calendar days of any fiscal year. This leave need not be taken on consecutive days. Approval of the military leave provided in the foregoing shall be based on the copy of the orders directing the employee to active duty and a copy of the certification of completion of such duty.
- I. Court Leave – An employee is entitled to Court leave to the extent necessary to serve on a jury or if summoned as a witness in a judicial proceeding in which the United States, the District of Columbia, or a state or local government is a party, except that the employee is not entitled to Court leave to testify on their own behalf. Any fees and/or travel expenses paid to the employee shall be done in accordance with law, rule, regulation, and applicable PBGC directive. The employee entitled to court leave will provide the Employer with appropriate documentation to support the entitlement.
- J. Extended Closings – The Employer shall place employees on administrative leave or may consider, if appropriate to an employee’s work requirements during the period and the employee having an individual telework Agreement, directing the employee to telework when it dismisses a group of employees for emergencies or when the office space is needed for other reasons for a period of up to seven (7) calendar days.
- K. Bone Marrow and Organ Donation – The Employer shall give seven (7) days paid time off (not chargeable to annual or sick leave) for bone marrow donation or thirty (30) days paid time off for organ donations.
- L. Holiday and Picnic – Employees who attend the annual holiday party and/or picnic shall be granted administrative leave to attend each event. Those employees who volunteer to participate in the planning for these events shall do so on duty time.
- M. Union Consultations
  - 1. Employees may, with supervisory approval, be allowed to attend up to two (2) forty-five (45) minute Local meetings annually during work hours to review working conditions. The Union shall provide at least seven (7) days advance notice of the proposed meeting dates.

2. Employees shall, with supervisory approval, be permitted to attend a meeting with the Union for up to one (1) hour during duty time to review Agreements requiring ratification. This provision only applies to those employees for whom the Agreement directly affects.

**Section 7: Other Leaves of Absence Without Pay**

- A. Employees may request extended periods of leave without pay not to exceed one (1) year for leave that would not otherwise fall under another provision of this Agreement. At least one (1) of the following benefits must result from the granting of such a request.
  1. Increased job ability, such as through pursuit of full-time job related study;
  2. Protection or improvement of employee's health;
  3. Retention of a desirable employee; or
  4. Furtherance of a program of interest to the Government. Further, there must be reasonable assurance that the employee will return to duty.
- B. Employee requests will be considered on a case-by-case basis.
- C. The employee shall not have a right to return to duty until the end of the requested period of absence. However, the Employer shall return the employee to duty as soon as possible.
- D. The Employer will grant each employee, upon request, up to twenty-four (24) hours of leave without pay in a twelve (12) month period to attend the employee's children's school or early childhood activities or to take care of routine family medical issues and/or elderly relatives' health or care needs.

**Section 8: Leave Records**

- A. Individual leave records are personal in nature. The Employer will not publicize such records, except in accordance with applicable law.
- B. If the Employer has reasonable cause to believe a medical certificate is questionable, the employee will be informed of the questionable nature of the certificate.
- C. Annual or sick leave balances will not be factors considered in promotion or disciplinary action.

## **ARTICLE 27**

### **LEAVE BANK**

#### **Joint Committee**

In addition to all existing leave transfer programs, the Employer and the Union agree to establish a joint committee, composed of an equal number of Employer and Union representatives, to develop a voluntary leave bank program consistent with 5 C.F.R. 630 Subpart J. This Committee will begin meeting within thirty (30) days after final approval of this Agreement.

If the Committee is unable to complete development of the program within ninety (90) days of commencement, this will be converted to the bargaining process, unless the Union and Employer agree to extend the Committee's time frame.

## ARTICLE 28

### MASS TRANSPORTATION PROGRAM

#### Section 1: Mass Transit Program

The Mass Transit Program provides transit subsidies for all eligible PBGC employees.

- A. Subject to budgetary limitations, PBGC will provide all employees who commute by Metro rail, metro bus, commuter trains or buses and vanpools that honor Metro vouchers or Metro SmarTrip cards with the maximum allowable tax-free benefit under law, or their approximate actual commuting costs, whichever is lower. Changes in subsidy amounts made by the Employer may give rise to Impact and Implementation bargaining obligations.
- B. Employees must only use the benefit for personal transportation to and from work. Employees are not eligible for the benefit if, during the month for which the benefit is received, they ride in a carpool or commute using a highway vehicle for which any employer is providing a benefit for parking.
- C. Employees who wish to participate in the Mass Transit Benefit Program will complete and sign the PBGC Form 535 (Transportation Benefit Application) certifying their monthly commuting costs and forward it to PBGC's Payroll/Travel Office for processing. The Employer may require employees to recertify regarding their participation in the program on a periodic basis (normally, on an annual basis). Employees will notify the Payroll-Travel Office of any changes in their eligibility or monthly cost as soon as practicable.
- D. Transit benefits for Metro provided transportation will be electronically added to employees' Metro SmarTrip card. Employees are responsible for purchasing their own Metro SmarTrip card and will advise the Employer of their serial number on the card. Employees will report their lost or stolen Metro SmarTrip card to the Metro's SmarTrip Hotline as soon as practicable. Employees must notify PBGC's Payroll/Travel Office when their SmarTrip card has been replaced.
- E. Employees using commuter transportation that only accepts Metro vouchers will present their identification cards at the payroll window on dates and times determined by the Payroll-Travel Office. Distribution will be available for the first ten (10) consecutive workdays each month. By regularly signing for their Metro voucher employees are certifying that they are residing at the same address listed on the most recent Mass Transit Benefit Application and are continuing to use public transportation to commute to and from PBGC. If a participating employee is out of the office for the duration of the distribution period on approved travel, annual, sick leave, or other approved leave or training, he or she may designate another employee to pick up the Metro voucher via an email to the Payroll Travel Services mailbox` stating the duration and reason for the



employee's absence and that the designee (by name) is authorized to pick up the employee's Metro voucher.

**Section 2: Ride-Share Program**

Recognizing the significant environmental concerns of the community at large, PBGC will actively promote ride-sharing through Commuter Connections, an area-wide ride-sharing matching program, by:

- A. Providing information regarding Commuter Connections' services on the Payroll/Travel Office intranet page and during new employee orientation; and
- B. Providing a web-based link from PBGC to the Commuter Connections website to allow for online application.

## **ARTICLE 29**

### **MERIT PROMOTIONS**

#### **Section 1: Policy**

The merit promotion policy of PBGC is to ensure that all positions are filled with the best qualified candidates consistent with the Agency's needs, merit principles and affirmative action goals. This Article applies the procedures to be used in making promotions to bargaining unit positions when competition is required.

#### **Section 2: Coverage**

This Article applies only to the following actions:

- A. Filling a position by promotion except, as specified in Section 3 below (Exclusions);
- B. Temporary promotions in excess of one hundred and twenty (120) consecutive calendar days;
- C. Reinstatement to a permanent or temporary position at a higher grade or one with more promotion potential than a position previously held on a permanent basis in the competitive service;
- D. Transfer to a position at a higher grade or one with more promotion potential than a position previously held on a permanent basis in the competitive service;
- E. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations); and
- F. Details which can be reasonably anticipated to last more than one hundred and twenty (120) consecutive calendar days to higher graded positions or positions with known promotion potential.

#### **Section 3: Exclusions**

These procedures do not apply to:

- A. Promotion resulting from a career ladder;
- B. Promotion resulting from an employee's position being reclassified at a higher grade or a classification appeal;
- C. Promotions otherwise mandated by law, rule, or regulation;

- D. Promotion resulting from the upgrading of a position without significant change in the duties and responsibilities (due to issuance of a new classification standard) or correction of an initial classification error; and
- E. An approved placement plan for employees involuntarily demoted.

**Section 4: Recruitment Methods**

- A. In its search for qualified candidates the Employer may utilize any of the following options:
  - 1. Announce the vacancy to PBGC employees only; (an individual must be on PBGC's rolls up to and including the date of selection);
  - 2. Announce the vacancy to PBGC employees and status eligibles as defined in OPM regulations;
  - 3. Announce for status and non-status candidates; or
  - 4. Post the announcement on USAJOBS

The above options may be exercised sequentially or simultaneously at the Employer's discretion.

- B. The posting period, area of consideration and other non-regulated aspects of this Article may be waived by mutual consent of the Parties where there is good reason for doing so.
- C. The Employer and the Union agree that PBGC employees should have the opportunity to advance in accordance with their Experience Statements. Experience Statements (formerly KSAs) must be job related, capable of objective measurement and must not be unduly restrictive. The Employer agrees to support such advancement through its selection authority.

**Section 5: Vacancy Announcement**

- A. The Employer will post a vacancy announcement to cover all positions which must be filled in accordance with the procedures of this Article. Initially, the vacancy announcement will be posted for a minimum of fourteen (14) calendar days and a maximum of thirty (30) calendar days. However, the HR Director, or designee, may approve vacancies posted for a minimum of five (5) calendar days.
- B. Employees will be notified, via e-mail, when a vacancy announcement is posted. The announcement will include a link to the vacancy announcement.
- C. At a minimum, the vacancy announcement will contain:
  - 1. Announcement number;

2. Opening and closing dates (any open announcement will be indicated);
  3. Position title, series and grade;
  4. Organizational location;
  5. Promotion potential, if any;
  6. Area of consideration;
  7. Principal duties;
  8. Qualifications necessary for filling the position (including any OPM requirements);
  9. Relevant Experience Statements pertinent to successful performance of the position;
  10. Significant work conditions;
  11. Statement of the evaluation method to be used;
  12. Procedures for applying;
  13. Statement of equal employment opportunity;
  14. Number of positions expected to be filled;
  15. The specific information the candidate must submit; and
  16. Where to submit the application.
- D. The Union will be given an advance copy of new vacancy announcements, and may, within seven (7) days of receipt, comment on Experience Statements. The Union shall not circulate or, otherwise, provide Experience Statements to other employees.
- E. The Employer will consider Union comments if received within the seven (7) day timeframe. The Union may request to meet with the Employer to discuss the Union's comments. Where the position to be filled was not changed and the Experience Statement has been previously submitted for comment, repetitive submission will not be required. Nothing in this Section shall interfere with the Employer's ability to fill a vacancy.

**Section 6: Filing Applications**

- A. Employees may apply, electronically through USAJOBS or by submitting a resume, an OF-612 (Optional Application for Federal Employment), or an SF-171 (Application for Federal Employment). Applications which do not contain required information may be rejected.

- B. Each employee is responsible for ensuring that his/her application is submitted by the closing date. In order to be considered, an employee must submit all the required information (including supplemental documentation) before midnight EST on the closing date. Applications received in the HRD prior to or after the announcement period will not be considered. If an employee desires to apply for a vacant position, but is on approved absence from work for the entire time that the vacancy announcement is open, he/she may, upon return to duty, submit a written indication of interest on his/her first day back at work and must submit the full application package prior to the beginning of the evaluation process.
- C. The Human Resources Department shall date stamp hand-delivered applications upon receipt. The Employer agrees not to inequitably solicit, entreat or strongly urge employees to submit applications.

**Section 7: Evaluation Factors**

Selective placement factors will be used in accordance with OPM's Qualification Standards Handbook for General Schedule Positions.

**Section 8: Evaluation Procedures**

- A. The Employer agrees that a Subject Matter Expert (SME) will evaluate the candidates when there are ten (10) or fewer qualified candidates for a position. When there are fewer than five (5) qualified candidates, a Human Resources Specialist may be assigned to complete the candidate evaluation in lieu of an SME.
- B. The Employer agrees to use a three (3) member rating panel when there are more than ten (10) qualified candidates for a position. At least one (1) of the panel members shall be a subject matter expert for the position. The remaining panel members should be familiar with the mission and function of the organizational segment where the position is located. Panel members must be at the same or higher grade of the position being filled.
- C. There shall be no non-voting observers present during the rating process except for a designee from both the EEO Office and/or HRD to ensure the integrity of the process. The rating panel members must rate all qualified candidates.

**Section 9: Rating and Ranking**

- A. The HRD will determine whether each applicant meets the minimum qualifications outlined in the vacancy announcement.
- B. Final ratings will be based on evaluation of the resume to determine the quality and extent to which the applicant's background (experience, education, training, etc.) relate to the Experience Statements identified in the vacancy announcement. Based on that evaluation, an applicant's resume will be placed in one of the following categories:
  - 1. Best Qualified; or

2. Well-Qualified.

- C. Interviews will not be conducted by the rating panel or SME, except in the case of the Upward Mobility Program, and/or after the Union has been notified.
- D. The Human Resources Specialist, SME or rating panel will evaluate information provided by the candidates in their Experience Statement as relevant for the position.
- E. When a Human Resources Specialist or SME is used, the rating is the candidate's Experience Statement score. Where a rating panel is used, scores from each panel member for the Experience Statement will be totaled and divided by the number of panel members. This number shall be the candidate's final Experience Statement score.
- F. Candidates for a specific vacancy who are eligible for non-competitive selection or appointment (reassignment, transfer, reinstatement, demotion, new appointment, etc.) will be screened to ensure that they meet the specific qualifications for the position and placed on a separate certificate. This certificate will be sent to the Selecting Official.

**Section 10: Certification and Selection of Candidates**

- A. For positions with ten (10) or fewer qualified candidates, the certificate will be referred to the Selecting Official without ranking. If there are more than (10) qualified candidates, an SME panel will be convened. In that case, the certificate will contain a reasonable number of candidates based upon the natural break points in candidate's scores. A natural break point is defined as at least four (4) points separating two candidates.
- B. The Selecting Official may conduct interviews and may interview one, any or all candidates referred on a selection certificate. However, the Selecting Official must be able to make meaningful distinctions between the candidates if he/she chooses not to interview all of the referred candidates. If all of the candidates have, roughly, the same qualifications, the Selecting Official should interview all the candidates. (For example, if the Selecting Official can justify why he/she would interview applicant B over applicant C, the Selecting Official can interview applicant B only). An employee's annual or sick leave balances may not be considered as the basis for selection or non-selection.
- C. The Selecting Official will make a selection decision within thirty (30) days of receiving the Certificate of Eligibles unless an extension has been granted by the Director, HRD, or designee.

**Section 11: Effective Date of Promotion**

A promotion will become effective not later than one (1) complete pay period following either the candidate's selection, or the date the position is vacated if the selection was made prior to the date the position was vacated.

## **Section 12: Applicant Requests for Information**

Upon written request to the HRD, an employee/candidate will be provided the following information about a position applied for:

- A. Whether legally eligible and, if not, the specific reasons why not;
- B. Whether or not they meet the minimum qualifications for the position;
- C. Whether they were considered by the Human Resources Specialist, SME or rating panel and, if not, specifically why not;
- D. Whether or not they were ranked in the group referred to the Selecting Official;
- E. Counseling as to how he/she might be more successful in subsequent competitions.

## **Section 13: Corrective Action for Improper Procedure and Priority Consideration**

If an employee was not awarded proper consideration in a competitive action, but promotion is not warranted or ordered, corrective action will be taken in accordance with the following principles:

- A. If the employee was erroneously omitted from a Certificate of Eligibles, he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one at the same grade level, with similar duties in the same area of consideration, and with comparable promotion opportunities as the position for which the employee did not receive proper consideration. Priority consideration involves, in addition to the above, the submission of the employee's name alone on a Certificate of Eligibles to the Selecting Official before the Selecting Official reviews the qualifications of other qualified candidates.
- B. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, the names of all such employees shall be submitted on a single promotion Certificate of Eligibles to the Selecting Official.

## **Section 14: Conduct Investigations/Subsequent Demotions**

- A. An employee who is the subject of a conduct investigation will not be prevented from competition, unless it is necessary to prevent discredit to the Government, or unfavorable and unjustifiable criticism of the Government. The employee will be notified in such cases.
- B. If an employee is promoted and subsequently demoted for inability to perform at a higher level, the Employer agrees to make reasonable efforts to return the employee to the position he/she was promoted from or a like position as soon as is practicable.

**Section 15: Promotion Files**

PBGC will maintain promotion and selection files in accordance with OPM regulations.

**Section 16: Grievances Related to Merit Promotion**

- A. An employee may not grieve non-selection from a group of properly rated and ranked candidates.
- B. An aggrieved employee and/or their Union representative will, upon request, be furnished the relevant materials used by the SME or rating panel and selecting official in assessing and rating the eligible candidates.
- C. Upon request of the grievant or his/her Union representative, the Employer will provide access to the merit promotion file for the relevant promotion action.
- D. The aforementioned information may be sanitized to protect the individual's right to privacy. However, this sanitization should not be accomplished in such a manner as to substantially impair the usefulness of the document or information.

**Section 17: Career Ladder Promotion**

Employees in career ladder positions will be promoted the first pay period after having met the minimum waiting period established for promotion to the next higher grade level in the career ladder provided that:

- A. the employee's last performance rating was at the "Meets Expectation" level or above;
- B. there is sufficient work at the next higher grade level; and
- C. the employee has demonstrated the ability to perform the higher level duties.



## ARTICLE 30

### MERIT SYSTEM PRINCIPLES AND ACCOUNTABILITY

#### Section 1: Merit Systems Principles

As provided by 5 U.S.C. §2301(b), the Employer's personnel management will be implemented consistent with the following merit system principles:

- A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skill, after fair and open competition which assures that all receive equal opportunity.
- B. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- C. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates of pay by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
- D. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
- E. The Employer's work force should be used efficiently and effectively.
- F. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
- G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- H. Employees should be:
  - 1. Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes; and,
  - 2. Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
- I. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences –
  - 1. A violation of any law, rule, regulation; or

2. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

**Section 2: Accountability for Violation of Merit System Principles**

In carrying out their duties, all employees of the Employer will follow and apply the Merit System Principles contained in Section 1 above. All employees of the Employer who violate these principles are subject to appropriate action, up to and including removal.

**Section 3: Compliance with Merit Principles Under Executive Order**

The Employer will comply with the following provisions of Executive Order No. 10577:

- A. Prohibition Against Racial, Political, or Religious Discrimination – No employee of the Employer who has authority to take or recommend any personnel action with respect to any person who is an employee or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation or religious belief of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment.
- B. Prohibition Against Securing Withdrawal from Competition – No employee of the Employer shall influence an employee to withdraw from competition for any competitive position for the purpose of either improving or injuring the prospects of any applicant for appointment.

## ARTICLE 31

### NOTICES TO EMPLOYEES

#### **Section 1: General**

When the Employer presents the employee with written notice specified in Section 2 below, the employee will receive an original and a copy of that written notice. The notice shall inform the employee that they may consult with their Union representative.

#### **Section 2: Application of Article**

Section 1 above, applies to the following material:

- A. Letters of proposed disciplinary actions;
- B. Letters of final decision in any disciplinary actions;
- C. Letters of advance notice or decision to withhold a within grade increase;
- D. Letters of advance notice or decision to impose a reduction in force;
- E. Letters of advance notice or decision to downgrade an employee's classification;
- F. Performance improvement plans;
- G. Letters denying a waiver of overpayment;
- H. Letters denying an employee's request to work part-time;
- I. Letters placing an employee on sick leave restriction; and
- J. Final Agency action denying relief in formal EEO complaints.

#### **Section 3: Reports to Union**

The Employer shall, on a quarterly basis, provide the Union with statistics on the issuance of items in Section 2.A, 2.B, and 2.F.

## ARTICLE 32

### OFFICES

#### Section 1: Selection of Offices

- A. Within each department and within each division level unit in COCD, CPRD, FASD, FOD, HRD, and IOD, employees will select offices by (1) category of office type and size to which they are entitled, and (2) within each category, by total length of service at PBGC. Prospectively, employees who work twenty-three (23) hours or less per week in permanent part-time positions and are not job sharing will be ranked behind other employees when office selection opportunities arise. Ties will be broken using total federal service.
- B. For OGC, the following three (3) principles apply:
1. Generally, attorneys are to be located on the same floor as their AGC; or
  2. If there is no vacant office at the attorney's grade level on his/her AGC's floor, but there is one vacant on the other floor, the attorney may select that office; and
  3. There are certain common sense exceptions to these rules, which are to be agreed upon by the Parties.

#### Section 2: Vacant Offices

- A. Whenever there is a vacant office that is projected not to be filled within ninety (90) days, the employee with the highest selection standing or ranking for the category of office size that is one (1) step lower who so wishes may select the vacant, larger sized office. That employee will occupy the larger sized office for, at least, six (6) months. At the end of the six (6) month period, the office will be deemed vacant and will be filled again by applying the agreed procedures.
- B. The Union may inquire as to the Employer's plan to fill a vacant office at any time. The Employer will respond within five (5) workdays as to whether or not it projects filling the office within ninety (90) days of the date of vacancy.
- C. If the Employer projects filling a vacant office within ninety (90) days, but does not fill the office within that time, then the employee with the highest selection standing or ranking for the category of office size that is one (1) step lower who so wishes may, immediately, select the vacant, larger-sized office. That employee will occupy the larger-sized office for, at least, six (6) months. At the end of the six (6) month period, the office will be deemed vacant and will be filled again by applying the agreed procedures.

### **Section 3: Procedures for Selection**

- A. These procedures apply to all employees, whether or not in the bargaining unit.
- B. Subject to any other Agreements by the Parties regarding office sizes, the following categories apply for purposes of office selection:
  - 1. At least two hundred (200) square feet, private office for GS-15 employees;
  - 2. At least one hundred and fifty (150) square feet, private office, for GS-14 employees and GS-12/13 supervisors;
  - 3. At least one hundred and twenty (120) square feet, private office, for GS-13 employees;
  - 4. At least one hundred (100) square feet, private offices, for GS-5/7/9/11/12 professional employees and GS-8/9/11 supervisors;
  - 5. At least sixty-four (64) square feet workstation, for GS-5/6/7/8/9 technical employees and GS-7/8 secretaries;
  - 6. At least forty-eight (48) square feet workstation, for GS-3/4/5/6 clerical and secretarial employees; and
  - 7. At least thirty-six (36) square feet workstation, for GS-2/3 stay-in school employees.

### **Section 4: Systems Furniture**

If an employee chooses to move into a different work space, the systems furniture will not normally be reconfigured unless it is to reasonably accommodate an employee who has a disability. In those offices which have columns that reduce the overall usable size of the office category, furniture and cabinets can be moved to best use the available space.

### **Section 5: Work Stations**

The Parties will work towards replacing “J” (forty-eight square feet) work stations with “T” (sixty-four square feet) work stations, where construction is not required and space permits. The Parties will jointly determine the reconfigurations. Where work stations cannot be enlarged, the option of placing lateral two (2) drawer file cabinets outside the work station will be allowed if desired by the employee and if ADA requirements are still met.

### **Section 6: Utilization of Offices During Employee Absence**

The Employer has the right to utilize employee offices while the employee is on extended absence (defined as two (2) consecutive pay periods or greater) if no other adequate space exists in the applicable area. However, the Employer shall notify the employee or the employee’s representative of such intended use.

## ARTICLE 33

### PARKING

#### **Section 1: Permits**

The Employer will contract for parking permits in the 1200 K Street building to be assigned to employees under the provisions of this Article.

#### **Section 2: Assignment of Permits**

In the event the number of applicants exceeds available spaces, parking permits will be assigned in the following order of priorities:

- A. PBGC employees with a medical need (medical certification required) precluding the employee from using public transportation.
- B. Carpools of two (2) or more full-time PBGC employees. Permits for carpools will be assigned according to size of carpool memberships and, when membership is equal, to the numerical score established by the PBGC applicants as follows:
  1. One (1) point will be allowed for each one-way trip made by the driver and each qualifying rider during the work-week.
  2. An additional one (1) point per mile from residence to building of employment will be allowed for each driver and for each rider, up to a maximum of fifteen (15) points per occupant.
  3. An additional two (2) points will be allowed for each driver and for each rider whose residence is more than one-half (1/2) mile from a bus stop or who lives in a locality where bus service is not available at less than thirty-minute intervals.
  4. Fifteen (15) points may be added to the regular point score based on a signed doctor's statement submitted with the application, that a PBGC-employed applicant or rider has a medical need precluding the individual from using public transportation because it would present a serious health hazard or would result in intolerable discomfort to the individual.
- C. If ties occur, the carpool whose riders have the longest total length of continuous PBGC service will be selected. Remaining ties will be broken on the basis of total Federal service. Each rider will provide the commencement date of their PBGC and Federal service computation dates on the parking permit application form.
- D. Parking assignments will be reevaluated every six (6) months. Applications for assignment received after the deadline will be accepted and interim assignments will be made when spaces become available. Such interim assignments will last for the remainder of the six (6) month parking term.

**Section 3: Payment**

Payment will be in advance, payable not later than five (5) workdays prior to the end of the month preceding the month for which payment is due. If payment is late, the assignee may lose his/her permit and not be eligible for consideration until the next six (6) month assignment.

**Section 4: Subsidy**

The Employer will subsidize carpool parking permits assigned under this Article at the maximum allowable tax-free subsidy under law up to the actual permit cost.

**Section 5: Pre-Tax Pool**

The Parties will explore the feasibility of creating a Pre-Tax Parking Deduction Plan (Parking Commuter Benefit Account) to allow eligible employees to pay for qualified parking expenses (as defined by the IRS) with pre-tax dollars.

**Section 6: Bicycle Commuter Subsidy**

The Parties will explore the feasibility of providing a Bicycle Commuter Subsidy consistent with the provisions of §132(f) of the Internal Revenue Code.

## ARTICLE 34

### PART-TIME, PROBATIONARY AND TEMPORARY EMPLOYEES

#### Section 1: Purpose

This Article sets forth the unique rights of part-time, temporary and probationary employees where those rights differ from those of full-time career employees.

#### Section 2: Part-Time Employees

- A. The Employer, considering both the needs of the employee and the mission of the organization and its operational needs, may allow employees to work on a part-time basis and/or participate in a job share program.
- B. When a part-time position is established, PBGC has the discretion to fill this position utilizing any of the methods allowed in filling comparable full-time positions.

#### Section 3: Probationary Employees

PBGC will comply with OPM regulations in terminating any probationary employee.

#### Section 4: Temporary Employees

- A. Benefits –Temporary employees serving on time limited appointments of more than one (1) year, and who have a reasonable expectation of working more than six (6) months, may enroll in Government life insurance (FEGLI) and health insurance (FEHB) programs.
- B. Termination Procedures– Temporary employees serve at the will of the Director of the Corporation and may be terminated at will. Termination for reasons, other than lack of work or lack of funds, will be subject to the following procedures:
  - 1. The employee will be provided a termination letter, in writing, by his/her immediate supervisor. The letter must include the reason for the termination (conduct or performance issue) and the date the termination is effective.
  - 2. The employee may request a meeting with the supervisor within four (4) calendar days. The employee may have a Union representative present.
  - 3. The supervisor may give the employee an immediate decision to sustain or rescind the termination. If the termination is rescinded, the supervisor will notify the employee in writing. If the termination is not rescinded, it shall be effective no earlier than seven (7) calendar days from the time the employee receives the written decision.



4. Upon request, the employee may meet with the next higher management official within the seven (7) calendar day period. The employee may have a Union representative present. The next higher official shall advise the employee in writing whether the decision to terminate is sustained or rescinded.
  5. The termination process of notice may be waived if:
    - a. there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed; or
    - b. the circumstances are such that there is good reason to believe that the employee's retention in a duty status may result in damage to Government property or may be detrimental to the interests of the Government or injurious to the employee, his/her fellow employees, or the general public.
- C. An employee may resign without a derogatory notation being put on his/her Standard Form 50 (SF-50), Notice of Personnel Action, anytime prior to the issuance of a termination letter.
- D. Termination of Temporary Appointment, Not for Cause – Unless it is not practicable, temporary employees serving in a limited time appointment will be given two (2) weeks advance notice when their appointments are to be terminated for reasons other than just cause, e.g., lack of work.

## **ARTICLE 35**

### **PERFORMANCE MANAGEMENT**

#### **Section 1: Purpose**

The Parties agree that the objective of the performance management program is to articulate the expectations of individual and organizational performance, to provide ongoing clear and informative communication between the supervisor and employee, to provide a meaningful process by which employees can be rewarded for noteworthy contributions to the organization and its mission, and to provide a mechanism to improve individual and organizational performance, as necessary. To that extent, this Article establishes arrangements in addition to those procedures contained in the Employer's directive on Performance Management.

#### **Section 2: Communication**

- A. Supervisors will establish and maintain effective oral and written communication with their employees. The goals of this communication are as follows:
  - 1. To clearly inform employees what is expected of them;
  - 2. To provide regular feedback on employee performance;
  - 3. To identify and address any downward trends in performance; and
  - 4. To identify and address significant accomplishments and further opportunities for growth.
- B. Supervisors and employees are encouraged to work together to establish an individual communication program that works best for them.

#### **Section 3: Definitions**

- A. Activities – Specific tasks or functions that support mission and/or individual objectives.
- B. Performance Measures – As defined in PM 20-3 (Performance Management Program), a management approved expression of performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. When this expression of performance is used in conjunction with the rating scale and benchmarks definitions, it constitutes a performance measure. Performance measures may include, but are not limited to, quality, timeliness, and cost effectiveness.
- C. Objective – As defined in PM 20-3 (Performance Management Program), a component of a position consisting of one or more duties and responsibilities that are of such importance that unacceptable performance on the objective would result in an overall performance level of Unsatisfactory.

- D. Performance Improvement Plan (PIP) – An opportunity period, or a PIP as it is often called, provides a reasonable chance for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.

**Section 4: Performance Plans**

- A. The Employer has determined that employees shall be rated based on not less than three (3) nor more than five (5) performance objectives. Two of these objectives, Teamwork and Customer Service, are corporate-wide generic objectives; the remaining objectives are job specific.
- B. Performance Plans will be stated in a clear and distinct manner and will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria. The Performance Plans will be realistic and reasonably attainable and will make allowances for factors beyond the control of the employee.
- C. If five (5) or more similarly situated employees (e.g., in an occupation, position, department or work group) identify themselves to the Union as being adversely impacted with regard to their Performance Plan, whenever the Employer elects to:
  - 1. make a change to performance goals, objectives, activities, measures, or standards;
  - 2. introduce or add new performance goals, objectives, activities, measures, or standards;
  - 3. make a change to the position descriptions; or
  - 4. make a change in duties or in mission or work priorities,the Employer will discuss the matter with the Union and the Employer will consider recommendations submitted by the Union.
- D. Whenever the Employer elects to change an individual employee's Performance Plan, upon issuance, the employee may send the changes to the Union for review and comment. The Employer will consider comments received from the employee.
- E. Supervisors will meet with employees regarding their performance objectives, activities and measures within thirty (30) days of their initial assignment to a position or within thirty (30) days of a change in their Performance Plans. Performance plans should be established and in place no later than thirty (30) days after the beginning of the performance cycle or after an employee changes positions. The general process shall be as follows:
  - 1. The supervisor will meet with the employee within thirty (30) days of assignment to a new position or the beginning of the rating period;

2. The supervisor and employee will discuss the performance appraisal cycle to obtain input from the employee on the development of the employee's Performance Plan;
  3. The supervisor and employee meet to discuss the final Performance Plan;
  4. The supervisor considers any final employee input, signs, and presents the final plan to the employee.
- F. If after the supervisor signs and presents the final plan to the employee, the employee desires further clarification of their Performance Plan, the employee may, within fourteen (14) days, request a meeting with the supervisor to seek further clarification and may have a Union representative present for this single clarification meeting. The purpose of the meeting is to assist the employee in understanding his/her Performance Plan. During the meeting, the Union representative may ask questions and/or seek clarification to facilitate the discussion between the supervisor and employee. The supervisor may terminate the meeting at any point and the meeting termination may not be grieved. The supervisor may invite another management official or an HR Specialist to attend as well. Notwithstanding the single clarification meeting with their supervisor and Union representative, employees may request follow-up meetings with their supervisors to discuss performance matters between the two of them at any time.
- G. Performance Plans will become effective the date they are signed by the supervisor and presented to the employee. Those objectives and measures will remain in effect unless changes are effected as described in PM 20-3 (Performance Management Program).
- H. All performance for the entire appraisal year shall be considered when preparing the final appraisal for the employee.

**Section 5: Progress Review**

Supervisors will conduct progress reviews with employees in February and June, at the end of every one hundred twenty (120) days, or more frequently during the performance appraisal cycle. The employee and supervisor will sign and date the Performance Plan system cover sheet to document that these progress reviews were conducted.

**Section 6: Annual Performance Appraisal**

- A. The appraisal period is October 1st through September 30th. To the extent possible, by October 31st, supervisors will complete annual performance appraisals for each employee who has been under a Performance Plan for one hundred and twenty (120) days or more as of September 30<sup>th</sup>. Supervisors will meet with their employees to review and discuss their performance rating. If, after the performance appraisal is issued to the employee, the employee desires further clarification of their performance appraisal, the employee may request a meeting with the supervisor to seek further clarification.

- B. When an employee has been performing under a Performance Plan for less than one hundred and twenty (120) days as of September 30th, the appraisal period may be extended until the employee has been under a Performance Plan for one hundred and twenty (120) days, at which time the supervisor may complete a rating of record. Employees who have not been working under Performance Plans for one hundred and twenty (120) days as of September 30th, however, will not be eligible for performance awards.
- C. Performance ratings consist of five (5) levels as defined by PM 20-3, Performance Management Program:
1. Outstanding (Level 5) – Exemplary performance in all areas of the job that is of such high quality that organizational goals and operational objectives have been achieved that would not have been otherwise.
  2. Exceeds Expectations (Level 4) – Surpasses the measures and established performance expectations in the objectives of the job and exhibits a sustained support of organizational and operational goals.
  3. Meets Expectations (Level 3) – Good, sound performance that meets organizational goals. The employee consistently and effectively applies technical skills and organizational knowledge to get the job done.
  4. Below Expectations (Level 2) – Performance does not meet expectations in some important areas of the job; below expected levels. Improvement is needed.
  5. Unsatisfactory (Level 1) – Performance falls below expectations in many areas of the job and requires constant supervision. Substantial improvement is critical.
- D. The immediate supervisor will prepare a written narrative for each performance objective rated less than Meets Expectations (Level 3). For ratings at or above Meets Expectations (Level 3), the supervisor may provide an overall narrative justification of the summary rating. Developmental needs will also be discussed and documented.
- E. The supervisor must initiate a progress review, in addition to the two (2) required progress reviews, if an employee's performance on one or more objectives falls below Level 3.
1. Performance at Level 1 in any one objective requires a written PIP and an overall rating of 1;
  2. If performance is at Level 2, the supervisor must discuss instances of deficient performance and outline in writing what is required of the employee to bring his/her performance to a Level 3. It is recommended that the supervisor, with input from the employee, develop a written plan to assist the employee in improving performance to a Level 3.

- F. Opportunity Period: If the supervisor believes the employee's performance is unsatisfactory, the supervisor may provide an opportunity for improvement by placing the employee on a Performance Improvement Plan (PIP). Supervisors can do this at any time—not just at the end of the annual rating cycle. However, whenever a supervisor rates an employee as Unsatisfactory as part of the annual performance appraisal, the supervisor must place the employee on a PIP as soon as practicable after issuing the Unsatisfactory rating. A PIP should include the following:
1. Identification of each of the performance objectives and measures that the employee failed to meet with descriptions and examples, of what makes the employee's performance deficient for each objective during the rating period. Examples of performance that occurred prior to the current rating period may not be used;
  2. What the employee must do to improve his/her performance;
  3. A work plan with input from the employee which prioritizes the employee's work assignments and provides appropriate specification on how the employee will complete them. The completed work plan must be approved by the supervisor;
  4. Notice that the employee and supervisor will meet, at least every two (2) weeks to review the employee's work plan and job performance;
  5. A reasonable amount of time, normally not less than ninety (90) days after development of the initial work plan, to improve the employee's performance; and,
  6. Notification to the employee that he/she is expected to show immediate and progressive improvement and that failure to show improvement or to eliminate the performance deficiencies in the objectives and measures that have been cited may result in the Employer taking appropriate action up to and including removal.
- G. The employee may, within fourteen (14) days of receiving a PIP, request a meeting with the supervisor to seek further clarification and may have a Union representative present for this single clarification meeting. The purpose of the meeting is to assist the employee in understanding of his/her PIP. During the meeting, the Union representative may ask questions and/or seek clarification on performance-related issues in order to facilitate the discussion between the supervisor and employee. The supervisor may terminate the meeting at any point and the meeting termination may not be grieved. The supervisor may invite another management official or an HR Specialist to attend as well. Notwithstanding the single clarification meeting with their supervisor and Union representative, employees may request follow-up meetings with their supervisors to discuss performance matters between the two of them at any time.
- H. Maintaining Improved Performance: Employees who successfully complete a PIP must maintain their improved performance. If the employee's performance declines to the unsatisfactory level within one (1) year from the date of the initial PIP, the Employer may take appropriate performance-based action, including reassignment, demotion and/or

removal. If the employee's performance declines to an unacceptable level more than one (1) year after the date of a previous PIP, the Employer must place the employee on a new PIP before taking any action.

- I. **Removal for Unacceptable Performance:** The Employer may remove employees from the Federal service whenever their performance does not improve upon the expiration of the PIP. The Employer agrees to consider reduction in grade/pay as well as retraining or lateral reassignment when it is appropriate to do so under all of the circumstances, before proposing an employee's removal.

### **Section 7: Details of Less Than One Hundred and Twenty (120) Days**

Manager(s) who are supervising an employee while they are on detail should meet upon the detail's completion and discuss the employee's performance in each of the objectives that are appropriate for his/her grade and title. This feedback should only be a discussion: there should not be any documents that are signed and/or dated. This discussion, as well as any additional feedback, should be relayed to the employee's supervisor of record. How this managerial feedback is exchanged is up to the management officials involved. For example: there can be a discussion between the supervisor of the detail and the supervisor of record taking notes on the feedback received regarding the employee's performance; or, the detailing manager can fill out a copy of the objective's sheet from the employee's Performance Plan with the detail's observations, and forward it to the supervisor of record. Either method is appropriate.

### **Section 8: Within Grade Increase (WGI)**

- A. Supervisors will approve within-grade increases (WGI) for employees who are performing at the "Meets Expectation" level in accordance with 5 C.F.R. Part 531, Subpart D. The WGI will be effective on the first pay period after having met the minimum regulatory requirements.
- B. WGI denials will be processed in accordance with 5 C.F.R. Part 531.

### **Section 9: Grievances**

Employees may grieve the final rating of record and a reconsideration decision that sustains a negative determination of a WGI. For the purpose of calculating timeliness of a grievance over the performance rating, a rating of record becomes final on the date the employee signs the rating. If the employee refuses to sign the rating, the rating becomes final on the date the rating was presented to the employee. If an employee refuses to sign the rating of record, the supervisor should annotate that on the rating when it is presented.

## ARTICLE 36

### PERSONNEL RECORDS AND ACCESS TO INFORMATION

#### Section 1: Access to Personal Records

- A. Upon written request and proper identification, each employee and/or the employee's representative designated in writing by the employee for this specific purpose, shall be granted access to any record(s) pertaining to the employee with the exception of records restricted by OPM and/or other records restricted by law or higher regulation. Such access will take place in the presence of the individual(s) having official custody of the records.
- B. Copies of such documents will be furnished to the employee and/or designated representative upon written requests. Charges, if any, for such photocopies shall be in accordance with 5 C.F.R. §297.206.
- C. Any records concerning an employee which are not made available to the employee or his/her designated representative for inspection and review will not be made available to any unauthorized person(s) for inspection, review, or duplication. Such information will be made available to authorized persons only for official use as provided for in the Privacy Act of 1974, or as otherwise authorized by law.

#### Section 2: Privacy Act Requirements

It is agreed that OPFs and other personnel records will be maintained in accordance with applicable law and regulation, including the Privacy Act of 1974. The Employer will purge records in accordance with this Agreement and applicable law.

#### Section 3: Supervisory Files

Managers or other representatives of the Employer may not maintain personal files on employees outside of the OPF, unless the files are properly declared under the Privacy Act. In addition, any information or documentation within the personal files which could have an adverse effect on an employee's performance appraisal must meet the criteria of Article 35 (Performance Management). Supervisors may retain copies of all actions affecting employees initiated in their offices (SF-52, Request for Personnel Action; Quality Step Increase (QSI) nominations; etc.) or returned to their office for informational purposes (SF-50 etc.).

#### Section 4: FMLA Records and Reports

- A. The Employer shall maintain records on employees who take FMLA leave in compliance with 5 C.F.R. §630.1211. These records include the employee's rate of basic pay, the occupational series for the employee's position, dates FMLA leave is taken by eligible employees, and the number of hours of leave to include paid leave and leave without pay



during the twelve (12) month period. This information shall be provided to OPM as required and, when an employee transfers to a different agency, to the gaining agency.

- B. Records of any dispute between the Employer and an employee regarding the designation of leave as FMLA leave must be kept until the dispute is resolved. This includes any written statements from the Employer or employee relating to the reasons for the designation and/or dispute.

**Section 5: Confidential Medical Records**

Records and documents relating to medical certifications, recertifications, or medical histories of employees or their family members, must be maintained in files or records, separate from their personnel files. With certain exceptions, they are to be treated as confidential medical records.

## ARTICLE 37

### POSITION CLASSIFICATION

#### **Section 1: General**

The Employer shall apply the principle of equal pay for substantially equal work to all position classification actions except as otherwise provided for by OPM regulations and law. The Employer shall apply the OPM Position Classification Standards in classifying all positions.

#### **Section 2: Position Description and Review**

- A. Each employee will be provided with an accurate description of his/her duties and responsibilities in the form of a position description. To the extent practicable, all identical positions within the same organizational unit will be covered by the same position description.
- B. When there are significant changes in the duties and responsibilities of the position, the position description will be amended or rewritten to bring it to a current status within a reasonable period of time.
- C. Any employee who finds inaccuracies in his/her position description, or who is dissatisfied with the classification of his/her position, shall have the right to discuss the problem with his/her supervisor and/or with the position classification staff. An employee may appeal the classification of his/her position to the Employer, or to OPM in accordance with law. However, an employee may not appeal to the Agency and OPM at the same time.

#### **Section 3: Changes in Duties and Responsibilities**

The Employer shall inform the Union as soon as possible when significant changes will be made in the duties and responsibilities of positions held by employees in the unit due to reorganization or when changes in position classification standards result in classification changes. The Employer further agrees to notify the Union as soon as possible of proposed classification standards for jobs in the Agency's bargaining unit when OPM initially refers proposals to the Employer for comment.

#### **Section 4: Timeframe for Classification of Duties**

A classified position description shall be established prior to an employee being permanently assigned. Additionally, the Employer will not detail an employee to unclassified duties in order to avoid compensating them through a temporary promotion.

**Section 5: Duties During a Classification Appeal**

The Employer shall not reassign work during a classification appeal in order to avoid reclassification.

## ARTICLE 38

### PRO BONO AND VOLUNTEER SERVICES

#### **Section 1: Pro Bono Legal and Other Volunteer Opportunities**

Employees are encouraged to seek pro bono legal or other volunteer opportunities that can be accomplished outside their scheduled working hours. Supervisors are urged to be flexible and accommodate where feasible, the efforts of their employees to perform pro bono legal or other volunteer work by granting leave if workload permits. Employees seeking to participate in pro bono legal or other volunteer activities during work hours may be granted leave without pay or annual leave or; in exceptional circumstances (where the work is in an area related to the employee's work and engaging in the activity would enhance the employee's value to the Agency), administrative leave.

#### **Section 2: Granting Requests**

The decision to grant an employee's request to engage in pro bono legal or other volunteer activities during hours of work may not be affected by a supervisor's personal views regarding the substance of the pro bono legal or other volunteer activity.

#### **Section 3: No Endorsement Implied**

Approval of absence to engage in pro bono legal or other volunteer activities does not reflect Agency endorsement of the organization or its views for which the employee volunteers to serve and the employee shall not represent that such an endorsement exists.

## **ARTICLE 39**

### **PROFESSIONAL FEES**

#### **Required Membership and Participation in Professional Organizations**

The Employer will pay for membership dues in professional associations whenever an employee is required to join such an organization by an appropriate level of management in connection with the performance of his or her official duties. Where possible such memberships shall be in the name of the Agency for the employee. The Employer will pay the expenses of employees for attendance at professional meetings, as allowed by law, consistent with budget limitations and accounting and training rules and regulations, provided these expenses have been approved in advance by an appropriate level of management.

## **ARTICLE 40**

### **PROFESSIONALISM**

#### **Section 1: Professional Ethics**

Whenever an employee believes that a revision to his/her work product is contrary to law, published Agency or government-wide regulations, or published professional standards, the employee may contemporaneously submit a statement (electronically and/or in hard copy) to the Employer reflecting his/her objections to the revision and identifying in the statement the published law, Agency or government-wide regulation(s) or published professional standard(s) that has not been adhered to.

#### **Section 2: Separate Documentation**

If an employee disagrees with a revision to his/her work product that is contrary to his/her professional judgment or expert opinion, the employee may state such disagreement in a separate document submitted electronically and/or in hard copy.

## ARTICLE 41

### REASSIGNMENTS

#### Section 1: Definition

A reassignment, for purposes of this Article, means the permanent noncompetitive movement of an employee from one position to another with the same grade and promotion potential.

#### Section 2: Purpose of Reassignment

- A. The Employer may reassign employees for purposes that will promote the efficiency of the Employer's operation, for such reasons as to assure the better utilization of employee skills or abilities, to make the best use of current staff, to provide employees with opportunities to broaden their qualifications and experience for the ultimate benefit of the organization and to respond to staffing imbalances. Additionally, reassignments may be made in response to employee request. Requests for reassignment shall be granted if the reassignment will, in the Employer's sole discretion, promote the efficiency of the organization. In addition, the Employer will make a concerted and timely effort, within merit promotion principles, to consider employee requests for reassignment based on the following:
1. Facilitating the utilization of employee skills and interests;
  2. Eliminating or relieving a hardship of a job-related or personal situation; and/or;
  3. Improving opportunities or morale.
- B. When a reassignment is determined, the Employer will notify the employee, in writing, of the details of the new assignment, at least, seven (7) days in advance of the reassignment. Employees who feel a hardship will be caused by the reassignment will be granted a prompt meeting, prior to the reassignment, with the responsible PBGC official for the purpose of explaining the particular circumstances faced. The employee may be accompanied to the meeting by his/her Union representative. The official will consider the facts presented by the employee and will attempt to resolve the employee's concerns.
- C. An employee assigned to a different position will be given a reasonable training and on-the-job acclimation period, generally 120 days. If the employee fails to attain satisfactory performance, the Employer will consider whether the employee should be further reassigned at the same grade level.

#### Section 3: Involuntary Reassignments to Correct Staffing Imbalances

When the Employer determines that an involuntary reassignment of an employee is necessary to correct staffing imbalances, the Employer will canvass qualified employees for volunteers. If there are insufficient volunteers, the Employer will use the following procedures:

- A. The Employer will identify those positions, as opposed to employees, in which there are an excess number of employees, i.e., a staffing imbalance.
- B. The Employer will then identify within this group three (3) employees with the least length of PBGC service who are qualified to fill the vacant position; and,
- C. From the group mentioned in Section 3.B, the Employer will select someone to fill the vacancy.

**Section 4: Priority for Reestablished Job**

Where an employee has been reassigned due to abolition of his/her position, he/she will be given priority consideration if the Employer reestablishes that position within one (1) year, and the employee notifies the Employer of his/her interest in writing within seven (7) days after being personally notified in writing that the position is about to be reestablished.

**Section 5: Voluntary Exchange of Assignment**

Employees occupying the same classification and grade who work for the same immediate supervisor may request that their supervisor approve an exchange in a particular assignment or task. Consistent with management's right to assign work, the supervisor may authorize this exchange at his/her sole discretion. The supervisor will respond to the request within fourteen (14) days. If the supervisor denies the request, he/she will advise the employees of the basis for the decision orally or in writing. The supervisor's decision is not grievable.



## ARTICLE 42

### REDUCTION-IN-FORCE

#### **Section 1: General**

This Article describes the procedures and arrangements for adversely affected employees that the Employer will follow in the event it determines to undertake a reduction in force (RIF). It is intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the Corporation.

#### **Section 2: Applicable Laws and Regulations**

This Article is to be interpreted in conformance with any applicable government-wide regulations and Agency policies in effect at the time of the reduction in force.

#### **Section 3: Definitions**

Definitions of terms used through this Article may be found in applicable government-wide regulations or applicable Agency policies.

#### **Section 4: Union Notification**

- A. Pre-RIF – Where the reasons for and likely impact of a RIF indicate it is appropriate to do so, i.e., where employees will be separated or furloughed in a RIF, and those affected can be retrained or reassigned without preventing the Agency from accomplishing its mission, the Employer shall, prior to conducting a RIF, conduct a cost study to determine whether instituting a furlough or retraining program for affected employees would be more cost effective than conducting a RIF. Before initiation, the Union shall be consulted as to methodology. Within three (3) workdays of the completion of this study, a copy will be provided to the Union and the Union shall be given an opportunity to provide comments, at least, thirty (30) days before the RIF is announced. Any RIF proposal by the Employer shall use the largest competitive areas available.
- B. Implementation
  - 1. When it is determined that any of the actions stated in this Article are necessary, the Employer shall inform the Union in writing and provide the information described in this Section.
  - 2. Formal written notification shall be given to the Union at least thirty (30) days in advance of any notice to employees in accordance with OPM regulations.
  - 3. The Employer shall provide the Union with the following information concerning the proposed RIF:

- a. the reason for the reduction in force;
  - b. the approximate number and types of position affected;
  - c. the anticipated effective date that action will be taken; and
  - d. a copy of the proposed notice, when available.
4. The Union will be provided a copy of any certified retention registers, any updates, and any qualification determinations upon which the Employer based its action(s) in the RIF.
  5. Once the specific RIF notices are issued, the Employer will, upon request, provide the Union with listings of all abolished and affected positions; the names, grade and title of affected employees; the date of the actions; and listings of the job offers made to affected employees.
  6. In accordance with OPM regulations the Employer will allow its retention registers and related records to be inspected by an employee and/or their representative.
  7. The Employer agrees to meet with the Union if requested.

**Section 5: Alternate Methods**

To eliminate or minimize adverse impact upon employees in a RIF, the Employer agrees to consider alternative methods, such as, but not limited to, attrition, reassignments or details which do not result in displacement, early-out retirement, and, to the extent feasible, curtailment of non-essential expenditures.

**Section 6: Notice to Employees**

- A. Employees who are adversely affected by actions in this Article (i.e. demotion or separation because of RIF) shall be given notice, at least sixty (60) days in advance of the effective date. All such notices shall contain the information required by OPM regulations, in addition to that required by this Agreement.
- B. The Employer shall provide information explaining the reason for the RIF and why they are affected. Specifically, the Employer shall:
  1. Inform all employees as fully and as soon as possible of plans or requirements for RIF; and
  2. Inform all employees of the extent of the affected competitive area, the regulations governing RIF and the kind of assistance provided for affected employees.

- C. Employees may be granted up to eight (8) hours of duty time to review and analyze records related to the action or other information or confer with their Union representative.

**Section 7: Employee Response to Notice**

Upon receipt of a notice notifying the employee that he/she is offered a reassignment and/or release from competitive level, or any other RIF action described in this Agreement, in lieu of separation, the employee shall have five (5) work days to accept or reject the offer in the notice.

**Section 8: Employee's Use of Duty Time and Facilities**

- A. Employees who are identified for separation or change to a lower grade shall be entitled to a reasonable and necessary amount of time between the date of the notice and the effective date of separation or change to lower grade while otherwise in a duty status without charge to leave for:
  - 1. preparing, revising, and reproducing job resumes and/or job application forms;
  - 2. participating in employment interviews; and
  - 3. using the telephone to locate suitable Federal employment.
- B. All such time is subject to workload considerations and supervisory approval.
- C. Career and career conditional employees affected by a reduction-in-force or transfer of function will be given written advance notice of, at least, sixty (60) days before the effective date of the release unless there are good management reasons for providing a lesser notice period. The saving in salaries shall not in and of itself be considered a good management reason for giving less than sixty (60) days notice. The notice period may not be less than thirty (30) days. Notice of up to one hundred and eighty (180) days may be given if the Employer determines that the additional time will protect employee's rights or avoid administrative hardship, if OPM approves. The Employer will request OPM approvals if it determines the foregoing conditions exist.

**Section 9: Allegations of Improper RIF Notice**

Any employee who receives a RIF notice, and who believes that the RIF action is improper based on any of the grounds specified in paragraph 20.A of PBGC Directive PM 05-7 (Reduction-in-Force Procedures), may file a grievance in accordance with this Agreement and provisions contained in the Agency's RIF policy.

**Section 10: Reassignments and Promotions While a RIF is Occurring**

After a RIF has been formally approved, reassignments and competitive promotions for employees identified for separation or change to lower grade will be frozen.

**Section 11: Placement of Employees in RIF**

During a RIF, the Employer will take reasonable steps to place employees reached for release from their competitive levels in other vacant positions which the Employer decides to fill. The Employer agrees to waive non-mandatory qualifications to the maximum extent feasible to facilitate placement of the affected employees at the same or lower grade. The Employer will take into account the need to accomplish the mission of the Agency in the most efficient manner and to ensure the ability of the employee to perform in the position without undue interruption. Nothing in this Section shall restrict the Employer from filling vacancies from appropriate sources. The Employer will also assist employees in locating vacancies that may exist with the Employer's contractors to the extent permitted by law.

**Section 12: Ties and Retention**

When employees in the same retention subgroup have identical service computation dates and are tied for release from a competitive level, the Agency may select any tied employee for release. In that case, the Employer shall break ties on the following bases:

- A. Length of service in the PBGC; and if a tie remains,
- B. Time in grade; and if a tie remains,
- C. A consideration of work experience and quality of performance.

**Section 13: Grade and Pay Retention**

Employees reduced in grade will be entitled to grade and/or pay retention as authorized by law and regulations.

**Section 14: Assistance to Employees**

- A. The HRD shall notify affected employees who have been identified for separation or change to lower grade of posted vacancy announcements prior to releasing the announcement to the entire Agency.
- B. The Employer will establish a positive placement program to minimize the adverse impact on employees who are affected by the RIF. The placement program will include counseling for employees on job opportunities and alternatives available to affected employees.

**Section 15: Back Pay Act**

- A. When a final determination is made consistent with the provisions of the Back Pay Act or the implementing regulations that an action taken under a RIF was unjustified or unwarranted the Employer will take such remedial action as ordered by an appropriate authority as soon as practicable.

- B. Where appropriate, the restoration of an employee to his/her former grade or to an intermediate grade, shall be retroactive to the date of the improper action.

**Section 16: Early Retirement Authority**

When the OPM requirements for early retirement authority requests are met, the Employer agrees to request OPM to allow employees to exercise the option of electing early retirement as provided for by law and regulation.

**Section 17: Unemployment Compensation and Other Displacement Programs**

- A. The Employer will provide employees (separated or furloughed) with information concerning unemployment compensation in an orientation session during the notice period.
- B. The Employer shall also give information to employees concerning the OPM Displaced Employee Program and the PBGC Reemployment Priority Program.
- C. Upon request, the Employer will give individual consultation to any separated employee on any of the above.

**Section 18: Severance Pay**

The Employer will provide eligible employees separated with severance pay as provided for by law and regulation.

**Section 19: Offers of Other Assignments**

- A. An employee is entitled to an offer of a position commensurate with his/her assignment rights, if any, as stated in 5 C.F.R. Part 351. An employee is entitled to no further offer of assignment when:
  - 1. He/she accepts or rejects an offer; or,
  - 2. He/she fails to reply to an offer within the stated time limit. The reply period must be reasonable for the circumstances and will normally be not less than ten (10) working days after receipt of the specific notice by the employee.
- B. In rejecting an offer, an employee may indicate second and third choices of alternate positions for which he/she is, otherwise, qualified. The Employer will consider these and will offer them whenever feasible, reasonable, and in compliance with applicable regulations. The provisions of this Section shall not require the Employer to withdraw an offer already made in order to satisfy another employee's preference.
- C. When an employee has been involuntarily reassigned to a position of equal grade outside his/her competitive level without personal cause through a RIF action and his/her prior position becomes vacant and the Employer decides to refill it, he/she will, upon request,

be considered for the position subsequent to any employee eligible for consideration under Section 24 of this Article and before other candidates are referred to the selecting Official. The above shall apply only if, as of the date a decision is made to refill the position, the individual is employed by the Employer and has not been reassigned to a position within his/her previous competitive level.

- D. The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for a position for which OPM has determined certification of eligibles by sex is justified.
- E. Except when otherwise required by OPM regulations, an employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury.
- F. Except when otherwise required by OPM regulations, the Employer may not satisfy the assignment rights of an employee who is other than full-time by involuntarily assigning him/her to a full-time position or vice-versa.

**Section 20: Part-time Status**

When the Employer proposes to carry out a RIF through the issuance of a general notice and more than five (5) employees in a branch will be separated or furloughed, the Employer shall poll those employees in the affected organization to determine which employees would desire to convert to permanent part-time status. The results of this poll shall be provided to the Union.

**Section 21: Bump and Retreat**

The Employer will utilize bump and retreat rights in accordance with law and government-wide regulations.

**Section 22: Temporary Employees During a RIF**

Except when otherwise required by OPM regulations, the Employer will not release a competing employee from a competitive level while retaining in that level an employee with a specifically limited temporary or term promotion.

**Section 23: Order of Release**

Except when otherwise required by OPM regulations, the Employer will, if it abolishes all positions in a competitive area within three (3) months, release employees in subgroup order and within a subgroup, in the order of their service computation dates. Ties shall be broken as provided for in Section 12 (Ties and Retention).

**Section 24: Refilling Positions**

An employee adversely impacted in a RIF may be offered first consideration when his/her former position becomes available to be re-filled. This entitlement is available only to employees who have not already been re-promoted to the grade level from which he/she retreated or was bumped.

## **ARTICLE 43**

### **RETIREMENT**

#### **Section 1: Retirement Planning Seminars**

The Employer agrees that employees who are eligible within ten (10) years shall be given an opportunity to voluntarily participate in an Employer approved retirement planning seminar not to exceed forty (40) hours of duty time. The Employer will pay for any seminars it approves. Eligible employees will be given an annual notice as to this opportunity and where they may review information on available seminars. Inquiries concerning this opportunity will be treated as confidential.

#### **Section 2: Retirement Right Upon Separation**

Upon request, each employee who separates voluntarily or involuntarily except by retirement will be informed as to his/her rights under the retirement system in which he/she participates. This shall include information regarding eligibility for disability retirement, discontinued service annuity and deferred annuity. The separation clearance form will specifically include an item on retirement information.

#### **Section 3: Withdrawing Resignation or Retirement Application**

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided:

- A. The withdrawal is communicated in writing to the Employer;
- B. The Employer has not made a commitment to fill the position of the retiring or resigning employee to any specific person; or
- C. The Employer has valid reasons in accordance with applicable case law to deny the employee's request to withdraw.

The reasons shall be communicated to the employee in writing in accordance with applicable regulations.



## ARTICLE 44

### SECURITY AND SAFETY MEASURES

#### **Section 1: Employer's Responsibility for Security and Safety**

- A. The Employer is responsible for providing security to protect the health, safety, security and welfare of all its employees. The Employer will provide and maintain safety and security in the workplace. The Union will cooperate to that end and will encourage all employees to work in a safe manner, reporting breaches in security to the Employer and to the Union.
- B. The Employer shall welcome, any time, suggestions that offer practical and economically feasible ways of improving security at 1200 and 1275 K Street.
- C. The Employer will advise employees whenever it learns of a significant crime or security incident at 1200 or 1275 K Street.

#### **Section 2: Security Personnel**

The Employer shall request that the landlord retain security personnel at 1200 K Street. Additionally, the Employer will ask the landlord to have security patrol the halls and corridors on a periodic basis and report security breaches and broken lights to the property manager. A copy of any filed report shall be provided to the Employer.

#### **Section 3: Security Provisions for Employees Who Work After Dark**

- A. The Employer will inform all employees of available volunteer escort services. In the event that an employee is unable to obtain an escort through the volunteer service, the Employer shall pay reasonable taxi fares between 1200 K Street and the nearest metro station. This option is only available outside of an employee's normal working hours.
- B. The Employer will pay reasonable taxi fares for travel between office and home when authorized by division manager or a higher authority when the following conditions are met:
  - 1. The employee is required to work after his/her normal departure time;
  - 2. The employee is leaving the office at or after dark;
  - 3. The employee is dependent on public transportation (including carpools); and,
  - 4. The employee has notified the official requiring the work of the need for taxi fare and the approximate amount.

**Section 4: Office Locks**

The Employer shall provide locks for the office doors of the Union President and two (2) additional Union officers, designated by the President.

## **ARTICLE 45**

### **SPECIAL SALARY RATES**

#### **Recruitment and Retention**

Consistent with OPM requirements, the Employer will evaluate its recruitment and retention needs for all Agency positions. If, in its sole discretion, the Employer determines that recruitment and/or retention problems exist for one (1) or more of these positions, such that the Head of the Agency can certify, in accordance with 5 C.F.R. §530.303(d), to OPM that “special salary rates are considered necessary to ensure staffing adequate to the accomplishment of the Agency’s mission,” the Employer will submit a request to OPM for special salary rates for the applicable positions. Before submitting the request, the Employer will provide the Union with supporting documents, and an opportunity to comment on the request.

## **ARTICLE 46**

### **STUDENT LOANS**

**[RESERVED.** The Parties agree to revise this Article before printing it in the Collective Bargaining Agreement. Until the new Article is completed, provisions of the MOU dated August 26, 2005 will be used to cover this subject to the extent consistent with law, regulation, and Agency directives.]

**NOTE: This Article supersedes Article 47 (Telework) of the Collective Bargaining Agreement dated May 3, 2011.**

## **ARTICLE 47**

### **TELEWORK**

#### **Section 1: Purpose**

The Employer and the Union jointly acknowledge the benefits of a flexible workplace program to the Agency and its employees. Telework is a voluntary work arrangement that has been noted to improve performance, improve employee morale, increase an employee's productivity, meet environmental concerns by decreasing traffic congestion, and reducing the stress and cost of commuting by giving employees a chance to balance work and family/personal demands by eliminating the commute for part of the work week. To that extent, the Parties supports the agency's Telework Program and agree to comply with the PBGC Telework Program directive, along with the following additional provisions in this article.

#### **Section 2: Definitions**

In addition to the definitions provided in the Telework Program directive, the following definition applies:

Medical Telework – An arrangement in which an employee is allowed to work from an AWL because the employee or employee's family member suffers from a temporary illness or injury.

#### **Section 3: General Provisions**

1. Telework is a voluntary program which permits employees, to work at home or other approved sites away from the principle office (PO).
2. An employee on duty at an AWL remains subject to applicable laws, rules, regulations, and agency policies and directives governing federal employees.

#### **Section 4: Eligibility for Acceptance into the Telework Program**

Employees may participate in the Telework Program provided they meet the criteria listed in the PBGC Telework Program directive and listed below:

- A. They volunteered for the Program.
- B. They have portable work; however, an employee's supervisor has discretion to determine, based on objective standards, whether a particular job's duties are portable.
- C. They have never been the subject of disciplinary action for conduct described in sub-section 6502(a)(2) of Public Law 111-292, which states:
  1. An employee may not telework under a policy established under this section if the employee has been officially disciplined for being absent without permission for more than 5 days in any calendar year; or

**NOTE: This Article supersedes Article 47 (Telework) of the Collective Bargaining Agreement dated May 3, 2011.**

2. The employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
- D. They are a full-time employee or work a part-time schedule of at least thirty-two (32) hours per week; and
- E. The Employee is able to transport government equipment on loan to the AWL or has all the necessary equipment at the AWL.

**Section 5: Conditions of Telework**

- A. Once approved for participation, the employee will inform his/her supervisor of his/her preferred Telework days. The supervisor, however, retains discretion to determine the employee's Telework days. Normally, the employee will give the supervisor their proposed Telework information two (2) weeks in advance, but this does not prohibit changes in schedules.
- B. The employee will be available to perform work, communicate with supervisors, co-workers, and customers at the AWL unless on an approved break or pre-approved leave.
- C. If requested by the supervisor, the employee will provide, either orally or in writing (as appropriate), a description of the work performed or the employee's work product (for example, a list or description of what work was done or a copy of the actual report or calculation produced). The request must not be so onerous as to place an unreasonable burden on the employee.
- D. Employees may request modification of his/her approved Telework days (such as requesting a different Telework day), in advance of the scheduled days.
- E. Employees participating in the Telework program must be able to travel to their PO for unforeseen work requirements during that day's tour of duty. However, the Employer will take full advantage of existing technology (teleconference, fax, etc.) where feasible to minimize such occurrences. In any event, if after the employee begins work, the Employer directs the employee to travel from the employee's AWL to another work location on his/her Telework day, the Employer will, to the extent allowable by law, pay for reasonable transportation costs to the directed work location.
- F. Medical Telework arrangements are normally limited to a maximum period of six (6) months. Such arrangement may only be considered where the illness or injury requires the employee to stay at home or close to home, does not negatively affect the employee's ability to perform his/her regular work assignments, does not require the employee to provide care to family members during scheduled work hours, and the employee provides medical documentation to support the arrangement. Employees working in an approved Medical Telework arrangement must provide, upon request of the Employer, medical documentation to support the arrangement, in no less than three month intervals.

**NOTE: This Article supersedes Article 47 (Telework) of the Collective Bargaining Agreement dated May 3, 2011.**

- G. When coverage requirements (answering phones, providing clerical or technical support, or handling inquiries from the public) are an issue, they must be addressed. The Employer will use uniform, non-discriminatory procedures in establishing coverage requirements. The determination of who will work which work days to ensure such coverage is within the authority of the supervisor; however, the supervisor will work with employees to ensure that different employees (within a function) will use alternate workdays for Telework, if possible. The personal preference of an employee will be honored where practicable.
- H. The employee must have the equipment necessary to work at the AWL. The Employer will provide the employee equipment that would, otherwise, be reasonably available, although it is not under any obligations to purchase equipment for this purpose or deny it to others who may need it. If after equipment is issued to an employee, the employee may be required to return the equipment to the Employer for higher priority use, as determined by the Employer. Should the Employer be unable to provide the necessary equipment from its available supply, the employee will have to provide it through his/her own means.
1. If the employee uses the Employer's equipment, the employee will use and protect the equipment in accordance with established procedures.
  2. Employer-owned equipment will be serviced and maintained by the Employer. Employees will be given a minimum of thirty-six (36) hours advance notice regarding service or maintenance of Employer-owned property. Such service or maintenance will occur during the employee's normal work hours unless circumstances dictate otherwise.
  3. If the employee uses his/her own equipment, the employee is responsible for its service and maintenance.
  4. The Employer is not responsible for operating costs, home maintenance, or any other incidental costs to the employee (e.g. utilities, cost of phone lines). Employees on Telework are entitled to reimbursement for authorized expenses while conducting Government business.
- I. Employees on Telework are obligated to ensure a safe and healthy work environment and to apply necessary safeguards to protect Government records from damage or unauthorized disclosure, including during the transport between PO and AWL. Injuries that arise in the performance of duty at the AWL are subject to the Federal Employees' Compensation Act.
- J. In the event office arrangements need to be adjusted, the Parties will fulfill their bargaining obligations under the law.
- K. Fair Labor Standards Act: The existing rules in Title 5 U.S.C. and in the Fair Labor Standards Act governing overtime also apply to Telework arrangements. All overtime work for employees working at an AWL must be approved in advance by the supervisor.

**Section 6: Termination**

**NOTE: This Article supersedes Article 47 (Telework) of the Collective Bargaining Agreement dated May 3, 2011.**

- A. Supervisors may terminate an arrangement as prescribed for in the PBGC Telework Program directive and for non-compliance with laws, rules, regulations, or agency policies and directives governing federal employees.
- B. When terminating a Telework arrangement, the Employer will provide appropriate advance notice of the termination; the notice will be in writing and will indicate the reason(s) for termination. The Employer will apply procedures in a uniform, nondiscriminatory manner to ensure equitable treatment. When a Telework arrangement is terminated, the Employer shall notify the Union.
- C. Removal from Telework does not prevent an employee from reapplying for the program.

### **Section 7: Grievability**

The Employer's decision on participating or termination of one's participation in the Telework program are grievable under the terms of the Collective Bargaining Agreement. Denial of episodic Telework is not grievable. Temporary modification, to include the Employer's direction to travel to the employee's PO while working at the AWL, is grievable through Step 2 of the grievance procedure. However, allegations of a pattern of supervisory abuse of temporary modification are grievable.



## **ARTICLE 48**

### **TEMPORARY LIGHT DUTY**

#### **Inability to Perform Assigned Tasks**

Employees who are temporarily unable to do their regularly assigned tasks will be given light duty assignments where practicable so as to avoid losing compensation. Normally, the period of light duty will not exceed three (3) months. Employees will provide a medical certificate stating the nature of the infirmity, its anticipated length, and the types of tasks the employee should not perform.

## **ARTICLE 49**

### **TRAINING AND DEVELOPMENT**

#### **Section 1: Training Policy**

The training and development of employees is a matter of significant importance to fulfilling the mission of the Employer. The Employer and the Union encourage employees to take advantage of training and educational opportunities that enhance work efficiency and provide needed skills for advancement.

#### **Section 2: Necessary Job Training**

- A. The Employer agrees to make available training necessary for the performance of assigned duties. Where an employee is reassigned from one position to another or placed in a new job, the Employer will determine and provide, with input from the employee, the appropriate training, if necessary, for the employee to perform the duties of the new position.
- B. Recognizing that there may be reorganization, technological changes, reductions-in-force or other actions that could have an impact on career development or job security, the Employer will offer training which would allow employees to move into existing or projected vacancies, consistent with budget and staffing restrictions and merit promotion requirements.

#### **Section 3: Providing Information on Training to Employees**

- A. The Employer will notify employees, through the Learning Management System (LMS) of training opportunities and programs. The information will be made available to all employees at their desktops.
- B. The Employer shall maintain in LMS an up-to-date listing of all courses the employee has taken. This information will be available to the individual employee.

#### **Section 4: Training Priorities**

- A. The Employer will provide training opportunities to employees, in accordance with law, OPM regulations and Agency policy, as indicated below:
  - 1. Priority 1 – Mandatory or mission-essential training needed to meet performance standards or to correct serious performance deficiencies.
  - 2. Priority 2 – Training which maximizes performance in the present position or training related to a defined training program or established training agreement.

3. Priority 3 – Training that enhances the overall performance of employees or would enable employees in positions at the GS-8 level or below to enhance their opportunity for growth.

When the Employer approves training, it will permit the employee to attend on duty time if the training occurs during the employee's normal work day.

**Section 5: Tuition, Outside Training Costs and Reimbursement**

- A. An employee's request for outside training must be approved by their Department and submitted to the Learning and Development Division (LDD) at least twenty (20) days before the registration deadline or course start date, whichever is earlier. If an employee pays the tuition/registration with personal funds, he/she will not be reimbursed.
- B. Employees who do not satisfactorily complete external training courses (academic training, including colleges and/or universities), will reimburse the Employer for all tuition and related expenses incurred by the Employer. This reimbursement may be paid in mutually agreed-to installments. In exceptional circumstances including, for example, severe illness or partial completion of most course requirements, the Employer may waive the reimbursement. Employees may apply, through their Departments, to the Director, LDD in such circumstances.

**Section 6: Selection for Training**

- A. The Employer will use its' existing competitive procedures to select employees for participation in the Upward Mobility Program and Career Achievement Program The Employer will follow merit promotion procedure under Article 29 (Merit Promotions), and procedures which are consistent with OPM regulations and Agency policy, when selecting employees for training that permits non-competitive promotion after successful completion of the training.
- B. Consistent with EEO and Merit System Principles and the Employer's right to assign work, the following criteria will be used for the fair selection of employees for all other training:
  1. The employee's demonstrated need for training;
  2. The extent to which the training relates to the employee's job as identified by the employee and/or supervisor (such as using the new knowledge to solve problems);
  3. The employee's ability to pass on information to others (e.g. the ability to train others upon his/her return to the job);
  4. The employee's stated intent to remain employed at the Agency long enough to use the training in a way that will enhance the Agency's ability to accomplish its mission and reach its performance goals; and

5. The employee's self-interest in learning and/or improving his/her performance.

**Section 7: Career Planning Services**

- A. The Employer will provide access to a career planning service that helps employees:
  1. Identify strengths, preferences, challenges (through discussion, feedback from instruments, etc.);
  2. Identify positions/work tasks that support/match strengths and preferences;
  3. Determine appropriate strategies or areas of focus; and
  4. Set development goals and identify activities necessary to reach goals.
- B. The Employer will identify positions (such as Program Assistants, Secretaries and Legal Technicians) primarily at grades GS-9 and below that will serve as bridge positions to technical, administrative and professional positions.

**Section 8: Employee Career Development Plans**

An employee may propose a Career Development Plan (CDP) which consists of a clear and specific plan to help the employee develop his/her short range career goals (two years or less) through such means as developmental assignments, classroom training, on-the-job training, etc. The CDP is reviewed by the employee and the supervisor and finalized upon their mutual agreement. A CDP may be amended or revised at any time in accordance with these procedures.

**Section 9: Mandatory Training**

Before requiring attendance at Agency required training, (ERISA, Primavera, etc.) the Employer shall provide the Union with notice, at least five (5) days in advance of the type of training, the purpose of the training and why it is being required.

**Section 10: Recommendations Regarding Training Opportunities**

Upon request, HRD will meet with the Union President or designee to discuss training issues.

## ARTICLE 50

### TRAVEL

#### Section 1: General

- A. The Employer will utilize GSA travel regulations to determine official travel authorizations and payments. Employees will follow GSA travel regulations when traveling on official business to ensure they are able to obtain the maximum authorized reimbursement.
- B. Employees will abide by the provisions of the travel regulations as promulgated in the Federal Travel Regulations (41 C.F.R. Chapters 300 thru 304, and PBGC Directives GA 10-5 (Travel) and PM 15-1 (Premium Pay).

#### Section 2: Requirement for Government Credit Card

- A. Employees who travel on official business will obtain a Government credit card in accordance with PBGC Directive GA 10-5 (Travel).
- B. The Employer will forward to the employee any notice it receives from the credit card company regarding non-payment by that employee.

#### Section 3: Travel Advances, Vouchers and Reimbursements

- A. Employees who travel on official business and do not have a Government credit card will be able to obtain travel advances in accordance with GSA regulations. Normally, employees will request travel advances at least ten (10) days prior to traveling and these advances will be issued via Electronic Funds Transfer (EFT). In the unusual circumstance where the supervisor directs an employee to travel with less than ten (10) days notice, advances may be issued via EFT into the employee's checking account within one (1) week of the date of travel. If a supervisor directs an employee to travel and the employee is unable to obtain a cash advance, the Employer, in its discretion, may cancel the trip.
- B. Employees will submit travel claims in accordance with 41 C.F.R., Part 301-52.3 and 52.7(a).
- C. Employees will receive reimbursements for travel expenses in accordance with 41 C.F.R., Part 301-71.204 and 301-71.209. The Employer shall send employees e-mail confirmation when travel reimbursement amounts are sent to the Department of Treasury for transmission to employee bank accounts, stating:

“We’ve requested Treasury to deposit \$\_\_\_\_\_ in your account for travel reimbursement.”

- D. An employee who is assigned to training or duty away from his/her regularly assigned duty post, and has approval to delay his/her return home beyond the end of that training or duty will be reimbursed for travel as if he/she had returned at the close of the assignment in accordance with the Federal Travel Regulations.

**Section 4: Travel Claim Disputes**

When travel claims are denied or adjusted downward, the Employer will provide information upon request as to the reason for denial or adjustment as well as the controlling policy or regulation.

**Section 5: Overtime/Compensatory Time**

Overtime pay or compensatory time off earned while in a travel status is credited in accordance with PBGC Directive GA 10-5 (Travel)

**Section 6: Use of Private Vehicle for Official Travel**

In no case may an employee be required to use his/her privately-owned vehicle in connection with official business. Employees using a personal vehicle are subject to the procedures and restrictions of 41 C.F.R. Part 301-10, Subpart D.

**Section 7: Employee Illness While on Official Travel**

Where an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the employee will receive allowable payment consistent with 41 C.F.R. Part 301-30.4.

**Section 8: Accessibility of Information**

Employees may view GSA regulations on the PBGC intranet site which will include information as to which management officials to contact regarding questions about the interpretations and applications of those regulations.

**Section 9: Travel Gainsharing**

The Employer will maintain its existing travel gainsharing program. The Employer and the Union will publicize the program and encourage employees to use it.

## **ARTICLE 51**

### **UNION ACCESS TO EMPLOYER FACILITIES AND SERVICES**

#### **Section 1: Union Office**

- A. The Employer will provide the Union a secure office, within its premises, of approximately two hundred (200) square feet. The Union office will be designed to provide privacy to the Union.
- B. The Employer will provide the Union an adequate number of tables and chairs, file cabinets, and bookcases. The Employer and the Union will collaborate to determine the specific furniture needs and configuration of the Union's office. In addition, the Employer will provide a network-connected computer with internet access, a printer and a standard telephone with conference calling capabilities. The Union may only use the telephone for local calls.
- C. The Union may install a bulletin board at its own expense inside or immediately adjacent to the Union office. Installation shall conform to the Employer's standards.

#### **Section 2: Meeting Space**

- A. The Union will be permitted to use available space for representational purposes, in accordance with Agency policy.
- B. For ratification purposes, the Employer will assist the Union, upon request, in securing space to meet with employees, provided the Employer receives reasonable advance notice. The meetings may be divided into several sessions to accommodate all interested employees.

#### **Section 3: Use of Technology Services and Equipment**

- A. Electronic Mail – The Parties agree that the Union's use of the Employer's e-mail system shall be for the conduct of labor-management relations business, but not for general bargaining unit debate regarding internal Union business or Union policy. The Union's use of the Employer's e-mail system is subject to Agency policy and this Agreement.
  - 1. Union officials may utilize the Employer's e-mail system to send a reasonable number of e-mail messages to the bargaining unit. The Union President or Union designee will provide HRD with an advance copy of all e-mails, normally one (1) workday in advance. The Employer reserves the right to disapprove communications that libel or slander any individuals, government agencies, or activities of the Federal Government, reflect on the integrity or motives of any individuals, government agencies or the activities of the Federal Government, or are scurrilous or threatening in nature.

2. Individual communications between Union officials, and between Union officials and an individual employee or employees involved in representational matters are not bound by the requirement to clear e-mails through the HRD; however, such communications must not libel or slander any individuals, government agencies, or activities of the Federal Government, reflect on the integrity or motives of any individuals, government agencies or the activities of the Federal Government, or be scurrilous or threatening in nature.
  3. Communications on the Employer's e-mail system shall not libel or slander any individuals, government agencies, or activities of the Federal Government, reflect on the integrity or motives of any individuals, government agencies or the activities of the Federal Government, or be scurrilous or threatening in nature.
  4. The Union may establish Communities of Interest using the Employer's portal system, but only to the extent that use of the system does not impair, degrade, or negatively impact the Agency's Information Technology Systems (IT). In all circumstances, the Union shall comply with Agency standards for use of the portal system and may not libel or slander any individuals, government agencies, or activities of the Federal Government, reflect on the integrity or motives of any individuals, government agencies or the activities of the Federal Government, or be scurrilous or threatening in nature.
- B. Online Services – The Union may have reasonable access, during official time or non-duty time, to Westlaw and Lexis on-line services in support of their representational duties, provided such access does not unreasonably interfere with the Employer's mission, operations, or unreasonably increase the cost of the services for the Employer. Union representatives who have access to Westlaw and Lexis because of their official government duties may utilize that account until the employee's official government duties no longer warrant such access. In addition up to ten (10) Union designated representatives may seek assistance from the corporate library to obtain access to standard PBGC contract Westlaw and Lexis on-line services in support of their representational duties, When Union representatives use Westlaw or Lexis for representational purposes, they will denote the name or initials of the Union as the client identifier.
- C. Photocopying – Union representatives may, subject to mission requirements and available resources, use PBGC photocopying facilities to conduct their representational responsibilities.
- D. Audio/Visual (A/V) Equipment – The Union may, insofar as the Employer's policies, standards, and practices provide, use standard A/V equipment in support of its approved meetings. When using the Agency's A/V equipment, the Union will adhere to Agency standards and practices. The content of material presented through the use of Agency A/V equipment must not be scurrilous, libelous or slanderous. A/V equipment may not be used to create, edit, or reproduce any material. The Employer will only provide standard technical support for the use of A/V equipment.



- E. Intranet – The Employer will provide on its intranet page, a hyperlink to a Union-sponsored external website. The Union’s website must adhere to PBGC’s information technology policies and procedures, insofar as connectivity and content is concerned.

**Section 4: Distribution and Posting of Union Related Material**

- A. The Employer will provide the Union with one-third ( $\frac{1}{3}$ ) of its bulletin board space located in break rooms for posting union information.
- B. The Union may distribute printed literature to the bargaining unit as long as distribution does not disrupt or interfere with the work of the Agency. Union representatives may distribute the literature on their non-duty time (e.g. during lunch, and before and after the Employer’s normal business hours), provided the representative already has access to the location as a result of his/her official duty assignment. The literature may be placed in the employees’ mailbox or in the employee’s work area, but only if the work area has open access.
- C. The Union may distribute printed literature to its members as long as distribution does not disrupt or interfere with the work of the Agency. Union representatives may distribute the literature on their non-duty time (e.g. during lunch, and before and after the Employer’s normal business hours), provided the representative already has access to the location as a result of his/her official duty assignment. The literature may be handed to the Union member; placed in the Union member’s work area, but only if the work area has open access; or placed in the Union member’s mailbox.

**Section 5: Access by Union Staff and Representatives**

Union staff and representatives may be permitted access to the Employer’s premises in accordance with the Employer’s established policies and procedures.

**Section 6: New Employee Orientation Kits**

The Union will provide the Employer with copies of Union literature for inclusion in the Employer’s entry-on-duty kits. HRD will provide the Union the names of new bargaining unit employees, their position title and starting date. The Employer agrees to update the global bargaining unit e-mail list with the names of new employees.

**Section 7: Employer Provided Documents**

- A. The Employer will provide the Union a quarterly staffing report that lists the employee’s name, title, position number, pay plan, series, grade, step, bargaining unit code, Fair Labor Standards Act code, federal service computation date and PBGC service computation date.
- B. The Employer will provide the Union notice of the posting of all PBGC published directives and orders.

- C. The Employer will print the Collective Bargaining Agreement (“CBA”) for all employees. A copy of the CBA will be provided on electronic media for the Union and posted on PBGC’s intranet.

## **ARTICLE 52**

### **UNION REPRESENTATIVES AND OFFICIAL TIME AND MEETINGS BETWEEN UNION REPRESENTATIVES AND EMPLOYEE**

#### **Section 1: Union Representatives**

- A. Recognition of Union Officers and Representatives:
1. The Employer shall recognize as Union representatives the duly elected officers of UPE and duly designated representatives.
  2. The Union will notify the Employer of the names of the officers and designated representatives, and designate the organizational unit(s) (group, section, branch, division, department) for which a representative is responsible. Notification shall be in writing and shall occur within ten (10) days of the effective date of this Agreement. Notification must include the name and telephone extension of each Union official and representative, and their immediate supervisor.
  3. Intra-year Designations – The Union will notify the Employer, within two (2) days when it appoints a new officer or representative, changes (including removal or resignation) a Union official or representative’s designation, or designates an employee as a special representative on a particular matter. The notice should include the name and telephone extension of the representative and the immediate supervisor. The newly appointed officer, representative, or special representative will receive official time as allocated by the Union, consistent with this Article.
  4. The Employer agrees to communicate directly with the designated union representative on EEO and grievances, where the employee has provided the Employer a written designation of representative. Nothing in this Agreement shall limit the Employer’s right to communicate with the employee, without a representative, about work assignments or any other personnel matter unrelated to the pending EEO complaint or grievance.
- B. Effect of Union Representation on Performance: In appraising the performance of an employee who is a union representative, the supervisor must not penalize the employee for the time spent fulfilling labor-management representational functions established by the FSLMRS and this Agreement.
- C. EEO and/or Ethics Counselors will not be appointed as Union officers or representatives.

## **Section 2: Official Time**

### **A. Policy:**

1. Union representatives and supervisors will treat one another with common courtesy in fulfilling their obligations under this Article. Union representatives will conduct representational duties so as not to interfere with employees' work assignments.
2. Official time is granted to representatives while in duty status. Official time does not apply to time spent on Union matters outside the employee's normal duty hours. Union officials and representatives are not entitled to overtime pay or compensatory time-off for the time they spend on union matters.

### **B. Official Time Bank:**

1. Amounts – The Union will be granted 2,750 hours per year to be divided between officers and representatives consistent with this Article. The official time will be made available each year on the anniversary date of this Agreement. Representative may generally use no more than sixteen (16) hours of official time per pay period. In no case shall a representative use more than twenty-five percent (25%) of official time under this bank in any calendar year.
2. Union officers and representatives designated by the Union may utilize official bank time for these representational activities:
  - a. meeting with employees to discuss grievances or other personnel matters, investigation of grievances, and preparing for and attending grievance meetings,
  - b. preparing and presenting replies to proposed disciplinary, adverse actions or performance-based actions, and
  - c. Union-sponsored training.
3. Exclusions: The following activities are excluded from the official time bank:
  - a. Negotiations between the Employer and the Union on management-initiated changes or changes in working conditions, and preparation time for bargaining;
  - b. Representing an employee at any statutory appeal hearing;
  - c. Representing the Union at any proceeding before a third party;
  - d. Briefings on changes in working conditions, formal discussions, other meetings with management, and arbitration hearings;
  - e. Participating in the ADR process; and

- f. Participation in joint labor-management activities such as the Labor-Management Forum.
- C. Union Training: The Employer agrees to grant official time to Union officials and representatives to attend union-sponsored training sessions, provided the training is of mutual benefit to the Union and the Employer. Official time will not exceed a total of two hundred and seventy-five (275) hours per calendar year for all Union representatives combined. No single representative may use more than forty (40) hours of official time per calendar year for union-sponsored training. Requests for official time for union-sponsored training must be submitted in writing to HRD at least fourteen (14) days in advance of the training. The Union shall submit a copy of the training agenda at the same time the training is requested.
- D. Official Time, Duty Status and Flexible Schedules: Official time under this Article and elsewhere in this Agreement will only be provided if the employee(s) involved are, otherwise, in a duty status. Employee(s) who require official time to perform union representational activities on their AWS day off may change their day off within a pay period with supervisory approval. The supervisor will normally grant the request unless doing so would interfere with the employees' work assignments.
- E. Internal Union Business: The union agrees that internal union business such as soliciting membership, collecting dues, electing officers, attending union meetings that do not concern representational matters, and posting or distributing union literature will only be conducted by the Union representative(s) during their non-duty hours.

**Section 3: Procedures for Requesting Approval of Official Time**

The following shall apply to the use of official time:

- A. Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time use and to assess potential impact of official time on the employee's work assignments and the office workload.
- B. Representatives will coordinate their use of official time with their supervisors. The representative shall request, in advance, to be released from duty in order to use official time. The request should include a good faith estimate of the amount of time for which release is requested, shall indicate the destination, if any, and shall specify the representational category(ies) (see Section 4.A.). If the immediate supervisor is not available, the representative will request approval from the next higher level management official available within his/her department. Requests will be in writing and may be accomplished using electronic mail.
- C. Supervisory permission will be granted except where doing so would interfere with the employee's work assignments. If, because of legitimate work considerations, the supervisor cannot accommodate the representative's absence at the time or for the duration requested, the representative will be given time to make alternative arrangements to carry out that representational activity. The representative will also

advise the supervisor when he/she returns to the work area from performing these activities, or when representational activities are completed. If a representative is on official time longer than initially anticipated, he/she should advise the supervisor as soon as he/she become aware (e.g. if the representative requested one hour and realizes during the time that they will need to be away longer, he/she should let the supervisor know) orally, telephonically or by email.

- D. In the case of an emergency, or where the need to use official time is unexpected, the representative will provide additional information, explaining the urgency of the situation to the supervisor, or if the supervisor is not available, to the next higher level management official, in order to permit a better-informed decision about the need for release. Representatives are expected to coordinate their use of official time, in advance, before entering any other work area. When the representative intends to enter any work area other than his/her own, he/she shall advise the supervisor of that work area of his/her presence, of the employee(s) to be contacted, and the estimated duration. The supervisor of the work area may grant permission to the area unless it interferes with the employee's work assignments. The representative will advise the supervisor when their representational activities are completed.
- E. At the end of the work day or at the beginning of the next work day representatives shall send an e-mail message to their supervisor confirming or changing the actual amount of official time that was used.
- F. The provisions of this Article shall not bar Union representatives from using official time specifically designated elsewhere in this Agreement or when agreed to by the Parties.

**Section 4: Recording and Reporting Official Time**

- A. All official time used must be recorded in the Employer's time and attendance system. Union representatives will include the nature of the representational activity in one of the following categories on their request for official time.
  - LRD: Admin Leave – Labor Relations – Dispute Resolution
  - LRG: Admin Leave – Labor Relations – General Labor Management Relations
  - LRM: Admin Leave – Labor Relations – Mid-term Negotiations, or
  - LRT: Admin Leave – Labor Relations – Term Negotiations
- B. The Parties agree to assist each other in resolving significant differences between the time reported by representatives to their supervisor and the amount of time reported in the payroll system. In the event of serious or repeated reporting delinquencies by a Union representative, HRD will contact the Union President in an attempt to informally resolve the matter.
- C. Upon request by the Union President, not more often than quarterly, the Employer will provide the union with a report of official time used.

**Section 5: Meetings Between Employees and Union Representatives on Duty Time**

Employees are entitled to a reasonable amount of duty time to consult or work with a Union representative authorized to use official time under this Agreement. Employees must request supervisory approval, in advance. Employees need only tell their supervisors that they desire to meet with a Union representative about a personnel matter and the expected duration. Approval will be granted unless the time requested interferes with the employee's work assignments. If, because of legitimate work considerations, the supervisor cannot accommodate the employee's absence at the time or for the duration requested, the employee will be given time to schedule another meeting with the Union representative.

## ARTICLE 53

### UNION RIGHTS

#### **Section 1: Rights as Exclusive Representative**

The Union is free to exercise all of the rights afforded to it as the exclusive representative of PBGC's bargaining unit employees under law.

#### **Section 2: Formal Discussions**

- A. The Union has the right to be present at any formal discussion between one (1) or more representatives of the Employer and one (1) or more employees or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment. The Union may be represented by up to three (3) representatives if the Employer has three (3) or more supervisors or managers present at the meeting. If the Employer has less than three (3) supervisors or managers at the meeting, an equal number of Union representatives may attend. The purpose of these meetings is not to engage in formal bargaining.
- B. Unless prevented by a genuine emergency, the Employer will give the Union's Executive Board, at least, three (3) workdays advance notice of the meeting. Notice will be via e-mail. In the event it is not feasible for the Employer to give three (3) workdays notice, the Employer will e-mail notice to the Union's Executive Board.
- C. At those meetings where the Union has chosen to be represented, the attendance of the Union representative will be openly acknowledged by the Employer at the start of those meetings. Furthermore, the Employer will permit the Union representative to ask relevant questions during the meeting and to present a statement towards the end of the meeting outlining the Union's position concerning the issues.



## ARTICLE 54

### WAIVER OF OVERPAYMENT

#### Section 1: General

- A. When an employee receives an overpayment of pay and allowance, other than travel and transportation expenses and allowance and relocation expenses, or the Union receives an overpayment in dues, the employee or Union may apply for a waiver of the obligation to repay such overpayment. The Employer may deny the request if:
1. The amount of the overpayment is more than one thousand and five hundred dollars (\$1,500);
  2. In the opinion of the Employer there exists an indication of misrepresentation, fraud, fault, or lack of good faith in obtaining a waiver of the claim. Good faith shall be determined in reference to pertinent Comptroller General's decisions and regulations;
  3. The payment is the subject of an exception by the Comptroller General in the account of the accountable office; or
  4. The application for the waiver is made more than three (3) years after the employee or union knew or should have known of the overpayment.
- B. The standard of arbitral review is whether the denial is consistent with the above stated conditions.

#### Section 2: Termination of Employment Before Repayment

If an employee terminates his/her employment with the Employer prior to the liquidation of any overpayment that must be repaid, the Employer retains the right to satisfy any outstanding balance from any funds due and owing the employee prior to the effective date of his/her separation in accordance with applicable law and regulation.

## ARTICLE 55

### WITHHOLDING OF UNION DUES

#### **Section 1: Purpose**

Where an employee voluntarily agrees to authorize the payment of dues through payroll deductions, the provisions of this Article will apply. No employee will be interfered with, restrained or coerced by the Union or the Employer in choosing to exercise or not to exercise the right to have Union dues voluntarily deducted from his/her salary.

#### **Section 2: Eligibility**

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

- A. Be an employee in the bargaining unit covered by this Agreement;
- B. Be a member in good standing of the Union;
- C. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- D. An employee may authorize an allotment of only those dues which are the regular and periodic dues required by the Union for that employee. An employee may not authorize payroll deduction for initiation fees, special assessments, back dues, fines, and similar items.

#### **Section 3: Allotment Authorization Procedures**

- A. The Employer shall withhold dues on a bi-weekly basis conforming to the regular pay period. The Employer may take up to seven (7) calendar days to process the SF-1187. A properly executed SF-1187 form will become effective no more than two pay periods following its receipt in the Human Resources Department. Receipt of the SF-1187 shall be documented in writing.
- B. To effect an allotment, the employee must submit a written request using the SF-1187 form (Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues) authorizing the deduction. The SF-1187 must be signed by the employee and an authorized union official.
- C. The Employer shall not be required to deduct dues from an employee when the employee's net salary, after other legal expenses and required deductions is not sufficient to cover the amount of the deduction. The Employer shall notify the Union of each such circumstance as it occurs.

**Section 4: Revoking an Allotment**

- A. An allotment may not be revoked for one (1) year after the first deduction.
- B. A revocation shall become effective the first full pay period after the anniversary of the first deduction. To revoke an allotment, the employee shall obtain an SF-1188 form (Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) from HRD and submit the SF-1188 to that office no earlier than fifteen (15) calendar days before the anniversary date of the first deduction. If the employee does not submit the SF-1188 during the fifteen (15) calendar-day period, his/her withholding allotment will continue, and may not be revoked until the next anniversary date. An untimely SF-1188 will be returned to the employee with an explanation concerning the appropriate time for resubmission.

**Section 5: Union Responsibilities**

It is the responsibility of the Union to:

- A. Provide the SF-1187 to employees;
- B. Certify, on the SF-1187, the amount of dues to be withheld each biweekly pay period which may be expressed as a percentage of regular salary (base plus locality pay);
- C. Educate its members on the overall program for payroll allotment for payment of union dues, its voluntary nature and the availability of the SF-1187;
- D. Inform its members of the conditions governing revocation of allotments and the availability of the SF-1188; and
- E. Notify HRD when there is a change in the amount of the Union dues (changes can be made only once every twelve (12) months);
- F. Notify HRD when an employee with an allotment ceases to be a member in good standing with the Union;
- G. Promptly refund an erroneous remittance to the Employer.

**Section 6: Employer Responsibilities**

It is the responsibility of the Employer to:

- A. Forward to the Union an electronic payment of net dues;
- B. Promptly send to the Union the balance due if it erroneously underpays a payment of net dues;
- C. Provide to the Union a copy of each revocation request; and

- D. Notify the Union and the employee, in writing, when it determines a position subject to dues withholding is no longer eligible for such a deduction.

**Section 7: Terminating an Allotment**

All allotments shall be terminated should exclusive recognition cease to exist for the covered unit. In addition, the Employer shall terminate an individual employee's allotment when:

- A. the employee ceases to be a member in good standing of the Union;
- B. the employee is reassigned to a position outside the bargaining unit or is otherwise excluded from the bargaining unit; or
- C. the employee is transferred or separated from PBGC.

## ARTICLE 56

### DURATION OF AGREEMENT

#### Section 1: Effective Date

This Agreement shall become effective on the date when the last of the following acts occur:

- A. Both Parties sign the Agreement, members of UPE, ratify the Agreement, and the Agency Head approves the Agreement.
- B. If the Agency Head does not inform the Union in writing that the Agreement is approved or disapproved by the thirty-first (31<sup>st</sup>) day after the date of execution, the Agreement has been approved.

#### Section 2: Duration

This Agreement shall remain in full force and effect for four (4) years from its effective date.

#### Section 3: Renewal and Renegotiation

- A. Either Party may request to renegotiate the Agreement by submitting written notice not more than one hundred and twenty (120) days and not less than sixty (60) days prior to the expiration of the Agreement. In the event that the Parties elect to renegotiate the Agreement, the current terms of the Agreement will remain in effect until superseded by a new Agreement. In the event that neither Party submits notice to renegotiate, the Agreement will automatically renew for one (1) year periods, except for any provisions that are in conflict with law or government-wide regulation.
- B. If renegotiation is timely requested by either party, ground rules negotiations shall commence within thirty (30) days of the request to renegotiate.

#### Section 4: Savings Clause

- A. If any provision of this Agreement is, subsequently, declared by proper authority to be unlawful, unenforceable, or not in accordance with applicable statutes or regulations, all other provisions of this Agreement shall remain in full force and effect for the duration of the Agreement.
- B. At either Party's request, the Parties shall meet within thirty (30) days to negotiate over the areas that are affected by any such declaration.

#### Section 5: Supplemental Agreement

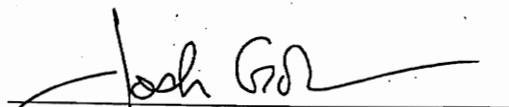
The provision of any Supplemental Agreement or Understanding entered in to at any level shall become a valid part of this Agreement upon the effective date specified in the Agreement when

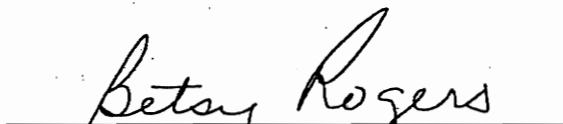
such Agreement or Understanding is signed by the Union President or his/her designee and a duly authorized representative of the Employer. Supplemental Agreements or Understandings shall become a part of this Agreement and shall be subject to the provisions for termination and reopening as provided for this in this Article.

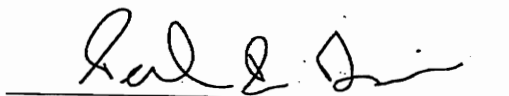
**Section 6: Past Practices and Memoranda of Understanding**


- A. Any past practices or provisions of written memoranda of understanding or agreement which are in existence on the effective date of this Agreement, and which are inconsistent with the terms of this Agreement, are superseded. Such matters shall be governed by the terms of this Agreement.
- B. Any existing written memorandum of understanding or agreement which has a specific term or duration extending beyond the effective date of this Agreement shall continue in effect until its expiration date.
- C. Other existing past practices or provisions of written memoranda of understanding or agreement, on matters which are not covered by this Agreement and are not inconsistent with it, shall be treated as past practices. Such past practices shall not be considered to be incorporated into this Agreement with respect to duration, and shall be subject to renegotiation in accordance with the FSLMRS and this Agreement. Although neither Party shall be required to maintain a past practice which is unlawful or which constitutes a waiver of any right granted to it under the FSLMRS, discontinuation of any such past practice shall be subject to any negotiation requirements established by the FSLMRS.
- D. If, after the effective date of this Agreement, any practice develops which is inconsistent with this Agreement, either Party may require the other to conform to this Agreement by providing adequate prior notice of its intention to enforce this Agreement in the future. Thereafter, both Parties shall conform to the terms of the Agreement.
- E. Memoranda of understanding or agreement negotiated under the terms of this Article shall be considered to be part of this Agreement and shall have a duration concurrent with this Agreement, unless otherwise specified in the memoranda.

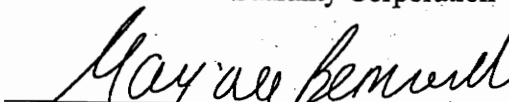
This Agreement is approved and effective May 3, 2011.


  
Josh Gotbaum, Director  
Pension Benefit Guaranty Corporation


  
Betsy Rogers, President  
Union of Pension Employees

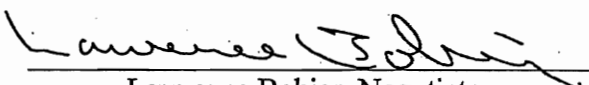
  
Paul Davis, Chief Negotiator  
Pension Benefit Guaranty Corporation


  
Donna Pentek, Chief Negotiator  
Union of Pension Employees

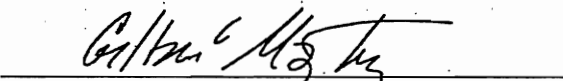
  
Marjorie Bernardi, Negotiator  
Pension Benefit Guaranty Corporation

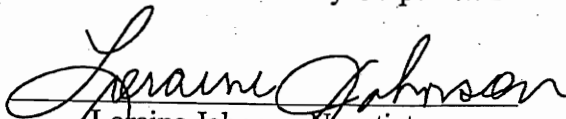
  
Samuel Batsell, Negotiator  
Union of Pension Employees

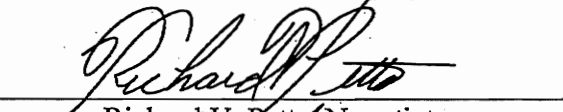
  
Leslie Harris, Negotiator  
Pension Benefit Guaranty Corporation

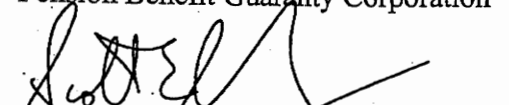
  
Lawrence Bobier, Negotiator  
Union of Pension Employees

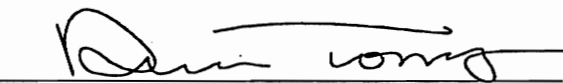
  
David Harvey, Negotiator  
Pension Benefit Guaranty Corporation

  
Gilbert Martinez, Negotiator  
Union of Pension Employees

  
Loraine Johnson, Negotiator  
Pension Benefit Guaranty Corporation

  
Richard V. Petta, Negotiator  
Union of Pension Employees

  
Scott E. Schwartz, Negotiator  
Pension Benefit Guaranty Corporation

  
Anna Torres, Negotiator  
Union of Pension Employees