

COLLECTIVE BARGAINING AGREEMENT  
CONTRACT BETWEEN

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THE DEPARTMENT OF THE INTERIOR  
ASSISTANT SECRETARY – INDIAN AFFAIRS  
BUREAU OF INDIAN AFFAIRS  
BUREAU OF INDIAN EDUCATION  
OFFICE OF THE SECRETARY/  
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

AND

FEDERATION OF INDIAN SERVICE EMPLOYEES  
AMERICAN FEDERATION OF TEACHERS  
LOCAL 4524  
AFL-CIO

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## **Article 1**

### **Recognition and Unit Description**

#### **Section 1. Recognition**

The Assistant Secretary – Indian Affairs, Bureau of Indian Affairs Director, Bureau of Indian Education Director, and Office of the Special Trustee for American Indians, Special Trustee for American Indians and all the respective designees for each office/bureau (henceforth “Management”) recognizes that the Federation of Indian Service Employees (FISE) Local 4524, AFT, AFL-CIO is the exclusive representative of all employees in the consolidated bargaining unit as certified in Federal Labor Relations Authority (FLRA) Case WA-RP-08-0087, dated May 21, 2009.

#### **Section 2. Unit**

This Agreement is applicable to the Department of the Interior employees as reproduced in Appendix A of this Agreement. This Agreement will apply to any additional employees for whom FISE is certified as exclusive representative upon amendment of the certification referred to in FLRA Case WA-RP-08-0087 above.

#### **Section 3. Coverage of the Collective Bargaining Agreement**

This agreement covers all bargaining unit employees except where otherwise noted.

## **Article 2**

### **Effect of Law and Regulation**

#### **Section 1. Hierarchy**

In the administration of all matters covered by this agreement, the Parties are governed by Federal Law, Government-wide rules or regulations in effect upon the effective date of this Agreement, and Government-wide rules or regulations issued after the effective date of this Agreement that do not conflict with this Agreement. This section does not change the obligation of Management to notify the Union of any changes in government wide regulations which occur during the life of this Agreement or alter the Union's right, pursuant to Chapter 71 of 5 USC, to negotiate over the impact of such changes.

#### **Section 2. Agreement Provisions**

To the extent that provisions of Management's regulations, policies, procedures, internal manuals, internal rules and regulations (including 62 BIAM 11) are in conflict with this Agreement, the provisions of this Agreement will govern.

## Article 3

### Union Rights, Representation, and Official Time

#### Section 1. Authority

The Union is the exclusive representative of the bargaining unit and is entitled to act for these employees in negotiations and joint meetings with Management regarding personnel policies, practices, and matters affecting working conditions.

#### Section 2. Contact

- A. The Union will provide Management biannually (January and July) with a list of, and contact information for, Union officers, stewards, staff, and other representatives that are authorized to act on its behalf and shall promptly notify Management of any changes. Management agrees to recognize and cooperate with designated representatives of the Union, including staff and other Union representatives who are not agency employees.
- B. Management shall also provide the Union biannually (January and July) with a list of, and contact information for, representatives who are authorized to act on its behalf and shall promptly notify the Union of any changes. This list shall include the Human Resources Labor Relations Specialists authorized to act for Management in a labor relations capacity and the scope of their jurisdictions or responsibility.
- C. The lists supplied by the Union and Management shall include one person who will serve as the parties' chief point of contact and who will be authorized to act for each party at the national level concerning all matters involved in the administration of the Agreement.

#### Section 3. Visitations

The Union shall provide notice to Management of visits by representatives of the Union who are not agency employees. Notice will be given twenty-four (24) hours in advance to the local site manager with a courtesy copy to the Servicing Labor Relations Office. If advance notice is given, Management will attempt to arrange for a convenient time for the Union official to meet with the necessary party(s). If official notice is given less than twenty-four (24) hours in advance of the visit, the Union recognizes that a particular employee(s) may not be available when requested.

#### Section 4. Labor Management Relations Meeting

There will be an annual meeting between FISE Executive Council representatives and Management representatives to provide both parties an opportunity to develop an understanding of problems relating to the Labor Management Relations (LMR) Program and to discuss outstanding concerns. This meeting may be initiated by either party. The parties will exchange an agenda no later than twenty-one (21) work days in advance of the meeting. The meeting will be held at a location and at a time consistent with another planned Union meeting to be mutually agreed upon. Union members will be in official

time for the days required to attend the LMR meeting, pursuant with Section 7.A. of this article. Management will pay the cost of travel and per diem for four LMR Union participants. Nothing in this article will affect existing labor/management collaborations on the local level.

### **Section 5. Representation Rights and Responsibilities**

The Union will be provided advance notice of, and an opportunity to be represented at all formal discussions between Management and employees concerning grievances, personnel policies, procedures and other matters affecting the working conditions of employees in the unit. At any such formal discussion, the Union representative may ask relevant questions and may make a statement of the Union's position regarding the subject of the meeting. Use of the Government charge card (by Government employees only) is authorized for representational travel.

### **Section 6. Official Time**

The parties recognize that good communications are vital to positive and constructive relationships between the Union and Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business.

- A. Block Grant. The Union is hereby granted a bank of twelve thousand (12,000) hours of official time per annum and is subject to the uses and limitations expressed in this Section. The bank of hours includes all representation functions, and training hours on official time, but does not include national negotiations or annual LMR meetings.
- B. Designation of Representatives. The Union will provide Management with a list of Union officials to be released on official time and the amount of hours to be used from the bank on a yearly basis commencing July 1 of each year. Notice will be given no later than sixty-three (63) work days prior to July.
- C. Positions or Functions not subject to the Block Grant.
  - (1) Secretary/Treasurer – A reasonable amount of official time up to ten (10) hours per pay period for the Secretary/Treasurer will be granted for representational purposes subject to the provisions of this agreement.
  - (2) Chief Stewards and Stewards.
    - a. The Union will designate stewards at various organizations having employees in the unit. Normally, the number shall not exceed one (1) steward for every thirty (30) unit employees. At installations having fewer than thirty (30) unit employees, the Union will have one steward to represent employees. At any site, local Management and the local Union representative will determine if there is a need for additional stewards with the concurrence of the Bureau/Office Labor Relations Officer and the Union President or their designees. Union

representatives may receive, investigate and present grievances or appeals or other representational duties under this agreement during duty hours.

- b. Official time for representational duties for a Chief Steward will not exceed twenty (20) hours per pay period and for other stewards will not exceed ten (10) hours per pay period. Exceptions may be made on a case-by-case basis when additional time is necessary, however, a denial will not be made without written justification.
- c. Recognizing the right and responsibility of the Union to appoint stewards and officers, reasonable use of another steward or representative will be accepted in the absence, unavailability, or conflict of interest of the usual steward or representative.

#### D. Use and Recording of Official Time

- (1) The Union will assist in tracking the use of official time from the bank of hours.
- (2) The Union may combine one Union position with other Union positions. Under this scenario, the official time associated with the multiple positions will be combined.
- (3) Official time will only be granted while the employee would otherwise be in a duty status.
- (4) The Union Executive Council shall be authorized official time for representing unit employees in third party proceedings and formal discussions as well as for training authorized under Section 7. This time is charged against the block grant of Section 6.A.
- (5) Chief Stewards and stewards shall be authorized official time in accordance with Section 6.C. (2) (b) to represent the Union at third party proceedings and formal discussions as well as for training authorized under Section 7. This time is not subject to the block grant provisions of subsection A.
- (6) Negotiations under Article 34 and annual LMR meetings between Council and Management are excluded from the block grant provisions of subsection A.

#### E. Release to Perform Representational Duties. The following provisions do not apply to Union representatives who have been released from duties on an ongoing basis under Section 6B:

- (1) When a representative requests and is granted official time to perform a representational function, he/she will inform the supervisor of the amount of time needed and the category of official time. The Official Time Request Form (see Appendix B) will be used to record official time. All stewards will use the Official Time Request Form when requesting official time. All approvals or disapprovals of official time will result in the Union



representative being given a copy of the form at the time of approval or disapproval. Reason for disapproval will be documented.

- (2) Collaboration between supervisors and Union officials is required to assure that job duties are accomplished and official time is granted, as needed. Union representatives are encouraged to request official time as far in advance as practical.
- (3) If a representative cannot be released when requested due to work related reasons, the representative will be released as soon as practical thereafter. For education employees, the release time may be scheduled in non-contact time such as teacher preparation periods, or in residential programs during the time students are in class or scheduled elsewhere. If a delay in releasing a representative for representational functions involves a situation with a collective bargaining agreement contractual time limit, the time limit will be extended equal to the delay.
- (4) Permission must be obtained by the representative from the supervisor of the employee he/she is to visit in any representational matters.
- (5) The representative will inform the appropriate supervisor upon return to official duties.
- (6) Union officials will be granted official time for contract administration in accordance with the provisions of this agreement to perform such duties as reviewing Management's proposals concerning negotiations and changes in policies, practices and matters concerning working conditions; performing representational functions; receiving, reviewing, preparing and presenting grievances; handling complaints; third party proceedings; preparing for negotiations; negotiating; and contacting other Union officers regarding aforementioned functions.

#### F. Bargaining Unit Employees.

- (1) Employees in the bargaining unit shall be authorized a reasonable amount of time to meet with their Union representatives to discuss pending or potential grievances.
- (2) A unit employee wishing to leave his/her work area will request, and must receive, permission from his/her supervisor in advance.

### **Section 7. Labor Management Relations Training**

Properly requested and approved official time will be granted to Union officers and representatives selected by the Union to attend Union-sponsored training, subject to workload considerations and provided the training is of mutual benefit to Management and the Union.

- A. A request for official time related to training will be submitted two (2) weeks, but preferably twenty-one (21) work days in advance, to the Management official designated for this purpose. The request will be accompanied by an agenda, if available, or a written description of the

training. The description will give the subject matter, the duration, purpose and nature of the training.

- B. Government owned or General Services Administration (GSA) leased vehicles may be used for travel in accordance with the Federal Travel Regulation (FTR) for training by bargaining unit employees provided:
  - (1) A vehicle is available; and
  - (2) Such use is approved by local management and does not adversely impact on the transportation needs of the installation.
- C. Management agrees to provide space and academic aids (e.g., black boards, projectors, and lap tops), for approved training when requested and if available at the local installation.

### **Section 8. Internal Union Business**

Internal Union business, such as attending Union meetings, will be conducted during the non-duty hours of the employees involved. Upon request, and subject to normal security limitations, the Union representatives shall be granted authority to conduct membership drives during non-duty status and on-site in non-work areas.

## **Article 4**

### **Employee Rights**

#### **Section 1. Collective Bargaining Rights**

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity freely and without fear of penalty or reprisal and each employee shall be protected in the exercise of such right. Except as otherwise provided under this Agreement, such right includes the right:

- A. To act for the labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

#### **Section 2. Voluntary Dues**

Nothing in the 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 members for payment of dues through payroll deduction or by voluntary cash dues payment by a member.

#### **Section 3. Accountability**

- A. Employees are accountable for performance of official duties and compliance with Standards of Conduct for Federal employees as codified as well as applicable DOI policies. Employees shall have a right to engage in outside activities of their choosing without being required to report to Management except as required by law or regulations or outside employment activities that may be a conflict of interest to their federal positions. A conflict of interest is a situation in which an individual has competing interests or loyalties. Management retains the authority to take appropriate actions should it be determined that an employee's off-duty conduct affects his or her ability to meet the position's requirements or the employee's activities undermine the public trust or otherwise affect the efficiency of the service. This does not diminish Management's right to assign official duties in accordance with applicable laws and regulations.

- B. Management will not compel employees to invest their money, donate to charity, or participate without compensation in activities, meetings, or undertakings not related to their performance of official duties. This does not preclude publicity of officially sanctioned programs and savings bond campaigns. Normally, immediate supervisors will not collect pledges or contributions from employees under their supervision.

#### **Section 4. Weingarten Rights**

- A. The right of employees to have union representation at investigatory interviews is based on a U.S. Supreme Court case (NLRB vs. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689) and per 5 USC 7114(a) (2) (B). These rights have become known as the Weingarten rights. An investigatory interview occurs when a supervisor or other representative of Management questions an employee to obtain information which could be used as the basis for discipline or ask an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation.
- B. The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making the request.
- C. Union Representative involvement at a Weingarten interview include:
  - (1) The representative will be allowed to speak privately with the employee before the interview;
  - (2) During questioning, the representative can interrupt to clarify a question so that the employee can understand what is being asked;
  - (3) If the Weingarten rules are complied with, the representative does not have the right to tell the employee not to answer questions or to give false answers. Employees can be disciplined if they refuse to answer questions.
- D. Management will not impose any restraint, interference, coercion, or discrimination against an employee who exercises his/her right to designate a Union representative.
- E. At the time the employee is contacted to schedule a Weingarten interview, the following information will be provided to the employee:
  - (1) The subject matter of the interview in a much specificity as possible, except when doing so would undermine the investigation; and
  - (2) Whether the employee is the subject of the conduct interview or the employee is being interviewed as a third party witness, if known with certainty and if doing so would not undermine the investigation.
- F. If an employee is represented in an interview and the subject of the interview changes to subjects over which the employee and the representative have not conferred, the employee or the representative may request to confer on such issues.

G. Management will annually communicate to all employees their rights regarding Union representation at the beginning of each year. This annual requirement will be accomplished by a posting on the bureau/office website. The contents of the notification can be found at Appendix C.

## Article 5

### Management Rights

#### Section 1. Retained Rights

Management officials of the Agency retain the right in accordance with applicable laws and regulations of higher authority:

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

#### Section 2. Applicability of Management Rights

The above Management rights shall apply to all supplemental, implementing, subordinate or informal agreements between Management and the Union.

#### Section 3. Negotiation Limits

Nothing in this Article shall preclude the Parties from negotiating:

- A. At the election of Management on numbers, types, and grades of employees or positions assigned to any organization's subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

- B. Procedures which Management officials of the Agency will observe in exercising any authority under this Article; or
- C. Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such Management officials.

## **Article 6**

### **Voluntary Allotment of Union Dues**

#### **Section 1. Deduction Provisions**

Management will continue to deduct Union dues from the pay of employees in the unit, subject to the following provisions: The Union agrees to procure SF1187s, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues, and SF-1188's, Cancellation Forms; and furnish them to eligible employees desiring to authorize/cancel an allotment for withholding of dues from their pay, providing that:

- A. The employee's earnings are sufficient to cover the amount of the allotment; and
- B. Union representative has completed and signed Section A of SF-1187 and forwarded it to the appropriate Labor Relations Specialist.

#### **Section 2. Dues Changes**

The President or other authorized official of the Union will notify the Bureau/Office Labor Relations Officer when the Union's dues structure changes. The change will be submitted by an appropriate management representative to the payroll servicing provider within ten (10) work days of receipt in accordance with the payroll servicing provider change process.

#### **Section 3. Allotments**

Allotments will be effective at the beginning of the first full pay period after receipt of the SF-1187 at the appropriate Human Resources Office, providing such notice is received at least five (5) work days in advance of the beginning of the pay period. Once processed and effective, the dues allotment for a bargaining unit member may not be revoked or cancelled for a period of one (1) year in accordance with 5 USC 7115(a).

#### **Section 4. Remittance**

Management will ensure deductions are properly made and remittance made each pay period to the Union.

#### **Section 5. Cancellation**

The employee may terminate the deduction of dues by submitting a SF-1188 (or other written substitute) to the Human Resources Office. The Human Resources Office must receive a dues cancellation form at least five work days in advance of the beginning of the pay period for the applicable cancellation date. For employees who have less than one year of dues deductions, the cancellation will be effective on the pay period that begins 52 weeks from when the first dues allotment was taken from the employee's pay



(as long as the cancellation request is received in the Human Resources office at least five (5) work days in advance of the pay period). Once the SF-1188 or other written substitute is processed, the Human Resources Office shall forward a copy to the Union.

## Article 7

### Information and Publications

#### Section 1. List of Employees

Management will provide the Union President's office with a bargaining unit roster in an electronic format on a quarterly basis. This roster will identify each unit employee by name, duty location, organization and organizational code, duty station, occupational title and series, pay grade and step, FLSA status, and dues paying status. Mailing addresses for each duty station and a key to the organizational codes will also be provided separately. Lists of new employees will be provided monthly to the President's office. Such lists shall contain the name and duty location of each newly hired bargaining unit employee.

#### Section 2. Publications

Management agrees to put the Union national office on all appropriate mailing lists of personnel policies and procedures, publications, and Management will notify the local Chief Steward of School Board and Board of Regents meetings. Management agrees to provide any Executive Union Officer, on request, sections of internal agency publications dealing with personnel policies, procedures, and other matters affecting working conditions.

#### Section 3. Telephone/Telefax Service

Union stewards, chief stewards, and other Union officials will be allowed to use electronic mail (E-Mail), official telephones, and facsimile machines, printers, copy machines or any other standard office equipment for the purpose of conducting representational activities subject to approval of Official Time in accordance with Article 3, Official Time, and as long as representational activities do not interfere with the conduct of office business. Unit employees will be permitted to use E-Mail and telephones to communicate with other employees in accordance with Department and Bureau Internet (and Intranet) and Government Equipment Use policies.

#### Section 4. Internal Mail Service

The internal mail service of Management, excluding metered, franked, or other paid mail service, shall be available to the Union. Sealed envelopes addressed to or by Union officials shall be processed in a timely manner and not be tampered with.

#### Section 5. Facilities and Equipment

- A. Each Union official utilizing block grant official time on an ongoing basis shall be furnished, if available, secured private office space, telephones, desks, chairs, lockable file cabinets, computer, word processing programs, and otherwise available customary equipment.

- B. Union Officers and stewards will have access to computers, word processing programs, and printer at his/her duty station and telecommunication equipment, if available. If a private secured office space is not available, a lockable file cabinet will be provided, and the use of the office equipment listed above will be made available for use as permitted and available.
- C. Each Chief Steward may negotiate an agreement concerning office space with concurrence of the FISE President or designee.

### **Section 6. Website Postings**

The Union shall have the right to have information posted on the bureaus/offices websites to include such items as the collective bargaining agreement, related forms, contact information, Union officer names and locations, Union Steward names and locations, other Union staff names, and notification of visits and events. Information related to internal Union business shall not be posted on the websites.

## **Article 8**

### **Orientation of New Employees**

Management will disseminate to new employees a Union informational packet, which will be provided to Management by the Union. The Union is responsible for ensuring the information in the packet is current and up-to-date. The local Union representative will be allowed up to 30 minutes to speak privately about the Union's representational role with new employees during the new employees' first two weeks of employment.

Link to the FISE website: <http://fise-aft.org>

## Article 9

### Equal Employment Opportunity (EEO) and Sexual Harassment

#### Section 1. Policy

Within the scope of Indian Preference, Management shall not in any way discriminate for or against an individual regarding employment or conditions of employment because of race, color, religion, sex, national origin, age, sexual preference, or handicapping conditions. This policy shall be in the strictest adherence to both the letter and the spirit of Title VII of the Civil Rights Act of 1964, the Rehabilitation Act, the Equal Pay Act, and all other applicable anti-discrimination laws and regulations.

#### Section 2. Nomination of Counselors

- A. The Union may nominate employees to serve as EEO counselors. However, conflicts of interest should be considered when making these nominations, i.e., Union Representatives.
- B. Management retains the right to select EEO counselors from among employees nominated by the Union or others, including employees outside the bargaining unit.

#### Section 3. Sexual Harassment

- A. Management acknowledges that sexual harassment undermines the integrity of the Federal Government and will not be condoned. Merit System principles require that all employees be allowed to work in an environment free from sexual harassment. Further, sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as the taking, or refusal to take, a personnel action, including promotion of employees who submit to sexual advancement or refusal to promote employees who resist or protest sexual overtures.
- B. Definition. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that constitutes sexual harassment when:
  - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  - (2) Rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

#### **Section 4. Avenues of Redress**

Employees who believe they have been discriminated against have the option of filing an EEO complaint through the Agency's EEO administrative complaint process or filing a grievance under the negotiated grievance procedure contained in this document, but not both. However, an employee who has contacted an EEO counselor and initiated an informal EEO complaint shall not be deemed to have irrevocably chosen to pursue his or her complaint through the formal EEO administrative process; only the filing of a formal EEO complaint following the informal counseling phase thereafter bars the filing of a grievance under the negotiated grievance procedure. If an employee first contacts an EEO counselor, the time deadline to file a grievance under this agreement does not begin to run until the counseling phase has been completed. Management agrees to strive to resolve allegations of discrimination and sexual harassment in the pre-complaint counseling phase of the EEO administrative remedy process.

#### **Section 5. Information and Counseling**

Management will distribute and make available to the Union and employees information on the complaint and counseling processes. Such information will include the names and telephone numbers of counselors, and the location of the appropriate Office of Civil Rights.

## **Article 10**

### **Safety and Health**

#### **Section 1. Purpose**

Management will make every effort to provide a safe, clean and sanitary working environment for its employees and will comply with Section 19 of the Occupational Safety and Health Act (OSHA), Executive Order (E.O.) 12196, the Basic Program Elements for Federal Employee Occupational Safety and Health Programs 29 CFR 1960, and other appropriate regulations. Each supervisor and employee will take prompt and appropriate action to report any unsafe action or condition. When safety rules are ignored, supervisors will take appropriate disciplinary or corrective action. Should accidents or sickness occur, the prime consideration will be the welfare of the affected employee(s). Employees retain all rights and responsibilities provided in Section 19 of OSHA, E.O. 12196 and 29 CFR 1960, and other appropriate regulations.

#### **Section 2. Imminent Unsafe Danger Situations**

- A. When an employee feels subject to conditions so severe that even short-term exposure to such conditions would be detrimental to health and safety, the employee shall report the circumstances to the immediate supervisor. The supervisor shall inspect the work area or substance in question and analyze the situation to ensure that it is safe (or may be safely handled) before requiring the employee to carry out the work assignment. If there is doubt regarding the safety of the existing condition by the supervisor, an appraisal shall be obtained from the appropriate Management official before proceeding.
- B. If the supervisor determines an unsafe or unhealthy circumstance exists and the supervisor cannot correct the hazard, the supervisor will take preventive action as specified in Section 7B. The employee or group of employees who continue to believe that work is being required under conditions which are unsafe or unhealthy beyond the normal hazards inherent in the operations in question have the right to file a grievance.
- C. When exposed to a work environment in which the employee(s) reasonably believe the duties present an imminent risk of death or serious bodily harm coupled with insufficient time within which to abate the hazard, the employee(s) may temporarily avoid the hazard and promptly notify the supervisor. This does not include inherently hazardous activities for which advance preparations have been made, such as forest fire suppression.

#### **Section 3. Reporting Accidents**

All accidents will be reported immediately in accordance with applicable regulations. Time spent in obtaining medical attention by employees taken sick or injured while performing their duties during working hours will be in accordance with the provisions of Management's Leave policies. Administrative leave will be granted to employees requiring medical attention due to job related accidents. The granting of administrative leave is limited to the day in which the accident occurred.

Notice to families of employees involved in job related accidents will be in accordance with Department of Interior policy.

#### **Section 4. Emergency Aid Procedure and Follow-Up**

Employees who are exposed to toxic substances on the job will receive physical examinations, as determined necessary by an appropriate health professional, at Management's expense. Such examinations will be of the type and frequency as provided by regulation or as recommended by an appropriate Federal Agency and approved. Health and emergency aid services will be made available to employees in accordance with established Departmental and Bureau/Office health programs and policies. A request may be made for a specific medical surveillance examination for employees who may be exposed to chemicals, radiation, toxic agents, excessive noise, and/or other health hazards. Furthermore, an employee suffering from a medical condition or problem related to the medical surveillance area may be temporarily assigned to another position upon the recommendation of the Chief, Division of Medical and Health Services to the Safety Officer.

#### **Section 5. Counseling**

Employees injured or taken ill arising out of employment shall be furnished counseling (at their option) concerning rights and benefits under the provisions of the Office of Workers Compensation Program (OWCP). Each employee will be given a copy of U.S. Department of Labor notice, "When Injured at Work." When an employee cannot perform his/her regularly assigned duties due to illness or injury, as determined by a medical authority, he/she may be temporarily assigned to another job.

#### **Section 6. Review of Reports**

Management agrees to provide the Union with a copy of the Annual Report of Injury/Death. The Union representative may review safety reports of hazards filed with Management's Safety Personnel for their location.

#### **Section 7. Reporting Unsafe Conditions**

- A. Employees or the Union will inform supervisory personnel when an unsafe or unhealthy working condition is detected. The employee may submit a summary of the problem to Management directly or via the Union or Safety Committee or local Safety Officer. Local Management will report, in writing, to the Union any unsafe or unhealthy working conditions that are reported.
- B. Management will, to the extent feasible, eliminate identified safety and health hazards. When such conditions cannot be readily abated, Management shall inform the Union of a timetable for abatement. Arrangements shall include notifications, warnings, and relocation of employees, if needed, providing information to employees exposed to hazardous conditions and, take other steps as necessary under the circumstances, such as holding informational meetings with affected employees.



## **Section 8. Safety Inspections**

Where safety inspections are conducted, the Union will be notified and a Union representative will be given an opportunity to accompany the inspector.

## **Section 9. Protective Equipment**

Management will provide all required personal protective equipment, clothing, and safety devices (which include, but are not limited to, steel-toed boots or shoes, lab aprons, glasses, etc.) for employees engaged in activities requiring the use of such equipment. Employees shall be required to use these provided items in keeping with Section 1 of this Article. Management will provide for the cleaning and repair of issued equipment or safety devices. Items suitable for reuse remain the property of the Government and must be turned in when an employee leaves the Agency/Office. Where medical prescription or personal corrections are necessary (glasses, shoes, etc.), the employee will pay for the examination. Management will pay in full for getting the prescription filled, i.e. glasses, boots, etc. If the employee feels that the protective equipment may be defective, the immediate supervisor will be notified.

## **Section 10. Violence in the Workplace**

All cases of physical threat or violence to employees shall be reported to the employee's supervisor immediately. If, in the judgment of the employee and/or supervisor, the assault and/or threat are sufficiently severe, the proper law enforcement officials shall be notified. Management will take the circumstance into consideration and determine whether further assistance is necessary. Management will implement a Crisis Intervention Team as prescribed in the "Violence in the Workplace" policy.

## **Section 11. Safety Committees and Councils**

The Union may appoint or nominate a representative to any existing local Safety Committee. The Union may appoint representatives at each activity where a Field Safety and Health Council have been established. Official time to attend such meetings will be in accordance with Article 3.

## **Section 12. Visual Display Terminals (VDTs)**

Management will require that regular maintenance is performed on all VDTs to assure that manufacturer's specifications are met. Operators will be rotated to other duties from the VDT to the extent Management finds this practicable. A VDT operator is defined as one who continuously operates a VDT for six or more hours per day. VDT operators are entitled to a diversion in work of at least 5 minutes per hour away from the terminal. Ergonomic furniture and preventive devices such as wrist braces will be provided when identified in an approved Job Hazard Safety Analysis.

### **Section 13. Unusual Conditions**

- A. An employee, with the exception of those required to provide essential services, may be dismissed from duty, if the employee believes that an extreme temperature is affecting his/her health. The employee should report this to Management.
- B. Management may grant appropriate leave; or, in rare circumstances, administrative leave, to an employee when Management can reasonably conclude that the extremes of temperature have or will incapacitate an employee for duty or that the prevailing condition would adversely affect their health. Management will make a decision based upon the best available evidence. If conditions are serious enough as to actually prevent employees from working, they may be dismissed as a group and placed on appropriate leave.

### **Section 14. Blood Borne Pathogens/Bodily Fluids Protection**

- A. Work locations where employees are likely to be exposed to blood borne pathogens/bodily fluids will be furnished with the following protective equipment:
  - (1) Rubber gloves;
  - (2) Face shields;
  - (3) Eye protection;
  - (4) CPR mouth barrier;
  - (5) Biohazard container;
  - (6) Bleach and containers for mixing with water, one part bleach to 10 parts water.
- B. Employees shall be required to use protective equipment in keeping with this section. The above mentioned materials will be included in first aid kits at appropriate locations such as; athletic facilities, schools, dormitories, first aid stations, police vehicles, detention centers, and locations where first aid kits are provided to fire fighters, etc.
- C. No employee will be required to perform CPR or to expose themselves to blood borne pathogens/bodily fluids without the appropriate protective equipment listed above.

## **Section 15. Drug Testing Program**

- A. There will be no additional or supplemental negotiations at the Area/Agency/ Activity level except as provided in Article 34, of the Master Agreement.
- B. If urine sampling is to be conducted off-site, bargaining unit employees will be provided transportation, if necessary, in accordance with applicable travel regulations. A bargaining unit employee selected for random testing will be notified the same day the test is administered, preferably within two (2) hours of the actual test.
- C. If the urine sample is to be provided on-site, where the temperature of each sample will be taken, precautions in accordance with Department of Health and Human Services (HHS) guidelines will be taken to guard against tainted samples.
- D. If a bargaining unit employee designated for testing is unable to provide sixty (60) milliliters of urine at the time of testing, the employee may be retained until the sample is provided. If the employee is kept past his/her normal tour of duty, the employee will be compensated under appropriate laws and regulations.
- E. If an employee selected for urinalysis wishes to arrange for private testing within twenty-four (24) hours of having provided the sample, the employee may request sick, annual, personal, or leave without pay in accordance with applicable laws, regulations, or this Master Agreement.
- F. A bargaining unit employee may request Union representation at any meeting with a Management representative including the Medical Review Officer (MRO) in discussions concerning confirmed positive test results. The employee may, in writing, request review of any records relating to his/her drug test in accordance with appropriate HHS Regulations.
- G. The Union will be given copies of sanitized laboratory performance test results as provided to the Department.
- H. If the finding is positive, Management will provide information about and access to drug treatment and rehabilitation programs as described under DOI, HHS, Employee Assistance Program guidelines, and this Master Agreement.
- I. Personnel who will administer the drug tests will meet the criteria, standards or requirements of the HHS guidelines.
- J. Drug Testing will not be used to retaliate against bargaining unit employees.
- K. Employees shall not be required to disclose the legitimate use of a specific drug at the outset of the program. Employees will have an opportunity to provide medical documentation supporting legitimate usage upon a confirmed positive test result. Evidence to justify a positive result may include, but is not limited to: a valid prescription or a certificate from the individual's physician verifying a valid prescription. The MRO shall have the final determination.

- L. When a testing designated bargaining unit employee does not wish to submit to testing, he/she may seek reassignment or transfer to non-designated vacant positions through the Merit Promotion Program or Contract Education Recruitment system, as appropriate. Appropriate consideration will be given to their applications in accordance with the applicable recruitment policies. However, bargaining unit employees who refuse to submit to testing will be subject to appropriate disciplinary or adverse action procedures.
- M. The Parties agree to participate in an on-going dialogue concerning the Employee Assistance Program (EAP). Management agrees to provide the Union the annual EAP report and other information as may be appropriate, including contractor reports.
- N. Appropriate Union representatives will be specifically invited as a Union representative to any training sessions or briefings at their location related to the drug-testing program for bargaining unit employees.

**Section 16. Smoking at Work Areas**

- A. Prohibited Smoking Areas. Areas not subject to negotiation and where there will be no smoking are:
  - (1) Auditorium;
  - (2) Conference rooms and classrooms;
  - (3) Elevators;
  - (4) Gift shops;
  - (5) Libraries;
  - (6) Medical facilities;
  - (7) Record/Storage Areas;
  - (8) Hazardous Areas - all areas containing flammable and/or highly combustible materials;
  - (9) Corridors, Lobbies, and Restrooms, except as permitted under 41 CFR 101-20.105-3I(2)(iv)
  - (10) Stairways; and
  - (11) Work areas, except as permitted under 41 CFR 101-21. 105-3 (c)(2)(iii).

- B. Local Negotiations. The designation of smoking areas, other than those where smoking is prohibited, is subject to local negotiations and such negotiations are to be accomplished in accordance with Article 34 of this Master Agreement.
- C. Passage of law, rule, regulation, Executive Order, or other lawfully constituted governing body or Secretarial (Assistant) Order, declaring GSA/BIA/Tribal owned or administered space a smoke free environment will invalidate this Section in its entirety, subject to impact and implementation bargaining.

### **Section 17. Food Service Safety**

- A. The provisions of this Section apply only to food service employees working in the Agency's food service facilities.
- B. Medical Examinations. When Management requires medical examinations for current employees, the cost will be paid by Management. When the medical examination results show that an employee has a medical condition that is temporary and is such that he/she is to be precluded from handling food on a temporary basis, the employee may be placed in a position not requiring food handling or on appropriate leave.
- C. First Aid Training. As determined appropriate by Management, First Aid and safety training will be provided to employees.
- D. Inspections. Report(s) of inspections that are provided to Management will be made available to the Union representative upon request.
- E. Communicable Disease. An employee suspected of having a communicable disease may be placed on administrative leave until a medical examination has been conducted and Management receives the results.

### **Section 18. Safety Awareness**

Management recognizes the need for training and orientation regarding occupational health and safety, including training on blood borne pathogens where appropriate for that specific occupation. When mutually agreed, Management will provide OSHA-type training to the individual designated by the Union when such training is available locally.

### **Section 19: Continuation of Operations Plan (COOP)**

Bargaining unit employees who have COOP responsibilities will be notified by their respective supervisors of this status, and be informed of what is expected of them.

## Article 11

### Government Furnished Quarters

#### Section 1. Availability

Management agrees, in accordance with applicable laws and regulations, to make Government furnished quarters available where possible to employees.

#### Section 2. Assignment

Future assignments of Bureau quarters shall be accomplished in an equitable manner, and the following are examples for assignment criteria:

- A. Quarters should be assigned to an employee encumbering a “required occupancy position”. Such assignments shall be made without regard to race, color, or national origin.
- B. Where quarters have been assigned to all “required occupants,” the remaining will be assigned to “permitted occupants” in accordance with the following criteria:
  - (1) Employees at or below GS-11 or equivalent, beginning with those who have the greatest length of Government service at each level.
  - (2) All other employees on the basis of length of Bureau service.
  - (3) Where possible, larger quarters will be assigned to larger families, considering the age and sex of the children.
  - (4) Consistent with (A) above, larger or more expensive quarters should be assigned to higher salaried employees.
  - (5) Vacancies in quarters made available to “permitted occupants” on a priority basis should be filled in accordance with the above criteria. The installation/project head may use discretion, with the agreement of the installation Housing Committee, to fill on a temporary basis, quarters vacated by a “required” or “permitted” occupant.
  - (6) Bureau employees will be favored over other government employees and third parties who are not deemed “required” or “permitted”.
  - (7) Employees who live within a reasonable commuting distance of the duty station will be considered for housing after all employees meeting the above criteria have been placed in the Bureau’s housing.

### **Section 3. Surveys & Determination of Rates**

The Union will receive appropriate survey data from Management annually and will have ten (10) work days to review the data and offer comments prior to any final determination of rates.

### **Section 4. General Conditions**

- A. Management shall furnish twice a year a status of obligation report by location listing obligations to each Agency Quarters Committee. This report will include an accounting of all rental income and Quarters Operations and Maintenance Management Fund account expenditures at individual locations.
- B. Proper lighting and other security systems such as locks and dead bolts shall be installed and maintained when necessary as determined by Management. Employee security requirements and needs while in Government quarters will be properly considered in determining the maintenance, repair and installation schedule.
- C. Management will provide all tenants with two copies of any notices of rental rate adjustments at least twenty-one (21) work days in advance of implementation. Tenants may provide a copy of such notices to the Union.
- D. Quarters will be inspected for safety and habitability prior to assignment to an employee.
- E. As landlords, Management has the obligation to ensure that all occupied quarters are maintained in a safe and habitable condition.
- F. The landlord will use the GSA appliance replacement standard as a guide for appliance replacements.
- G. The landlord will ensure that all major appliances, heating systems, and water heaters will be given maintenance and required repair.
- H. The tenant may utilize the negotiated grievance procedure to seek relief in any case where Management is party to unsafe, unhealthy, or discriminatory conditions in housing.
- I. Each employee may file a request for review of increased rental or utility rates in accordance with the Department of the Interior Handbook and IPMR. The Union may represent on these appeals.
- J. The tenant handbook will be provided to each new tenant.
- K. The employee (tenant) has a right to contest any aspect of the rental rate establishment process. The employees, however, must exhaust the administrative appeal process outlined in the Departmental Quarters Handbook (400 DM addition to Interior Property Management Regulation, Appendix 6. A.) Section 114-52.602, prior to filing a grievance. If the employee

(tenant) receives no final decision through the administrative appeal process within sixty (60) calendar days, a grievance may be filed. On the other hand, if the decision is received and is unacceptable to the employee, the employee may pursue the complaint through the grievance procedures described in Article 25.

### **Section 5. Payroll Deduction**

Payroll deduction of quarter's rental is mandatory. The total twelve (12) months rental charge shall be divided by the number of actual pay periods in pay status for the computation of the payroll deduction. Should the renter vacate Government furnished quarters prior to the 12-month period, a rebate of monies withheld will be paid to the employee minus any outstanding monies owed the Government.

### **Section 6. Quarters Committees**

- A. Recommendations for quarters assignments at the agency headquarters shall be a function of the Agency Quarters Committee (AQC). Assignments shall be made in accordance with applicable regulations and this Master Agreement.
- B. Recommendations for quarter's assignments at the local school sites shall be a function of the School Quarters Committee. Assignments shall be made in accordance with applicable regulations and this Master Agreement.
- C. The quarters committee shall have the right to review the priority listings for required occupancy and recommend changes to the same.
- D. Any eviction which does not result from termination of employment will be previewed by the appropriate quarters committee. The quarters committee may make recommendations concerning such evictions to the appropriate line officer. Management will provide notice of intent to evict at least twenty-one (21) work days prior to implementation. The Chairperson of the quarters committee will call a meeting to review documentation pertinent to a notice of intent to evict within ten (10) work days. The quarters committee will provide its formal recommendations to the appropriate line officer at least seven days prior to implementation of the proposed action. The appropriate line officer will consider the recommendation of the quarters committee prior to implementing an eviction.
- E. Recommendations to request new quarters, additional quarters, or trailer pads may be made to the appropriate line officer by the recommending quarters committee.
- F. Quarters Committees, in consultation with a Bureau Housing Program Representative, will establish objective criteria that will determine the condition of quarters, i.e., excellent, good, fair, or poor. When reviews of housing conditions are made at a school site, there will be two representatives from the School Housing Committee (one Management and one Union) as members of the review team.



- G. Within twenty-one (21) work days of the effective date of this agreement, Management will provide the Union with the name, title, address, phone number and email address of the management official at each duty location who is responsible for the administration locally of any living quarters at that duty station in which bargaining unit employees reside.
- H. Within twenty-one (21) work days of the effective date of this agreement, the parties shall designate members of their local quarters committee. The local union steward shall notify his or her local management counterpart of who will serve on the quarters committee representing the union, and such representatives must be union members. Management shall notify the steward of its appointees. The local committee shall consist of not more than three appointees from management and not more than three appointees from the union, who shall be on official time when the committee meets or otherwise conducts its affairs. The first meeting of each local quarters committee shall be held within ten (10) work days, and the parties shall jointly notify the Union and Management at the national level that a local quarters committee has been constituted, who its members are, and that the parties have conducted their first meeting. The quarters committee will serve in an advisory capacity to the appropriate line officers.
- I. Any written complaints received by Management either locally or at the national level from unit employees concerning their housing will be sent to the Union at the national office as well as to all members of the appropriate local quarters committee, within five (5) work days of receipt. Any oral complaints will be reduced to writing when received and will similarly be provided. The local quarters committee shall ensure that repairs or corrections made, if warranted, and shall report all action taken on such complaints to the Union's national office.

## Article 12

### Travel and Travel Related Expenses

#### Section 1. Travel Time

- A. Unless organizational needs require otherwise, Management shall schedule travel during official work hours. If a meeting or event is within the control of Management, and it is administratively feasible, Management will reschedule the meeting to avoid required travel on non-work days. When a supervisor knows in advance that an employee's administrative workweek will differ from the employee's normally scheduled workweek due to travel the supervisor will reschedule the employee's administrative workweek to correspond with the specific days and hours the employee is expected to work.
- B. If circumstances require an employee's attendance at a temporary duty station at a time too early to permit travel on that day during the employee's regularly scheduled working hours, the employee may request to travel during regularly scheduled hours on the preceding work day and, if approved, shall be entitled to lodging and per diem. Employees who are unable to return from temporary duty stations during normal duty hours may request to return the following day during regularly scheduled duty hours, and, if approved, shall be entitled to lodging and per diem.
- C. Employees who are FLSA exempt or who are otherwise ineligible to be compensated for travel time outside of scheduled work hours shall be entitled to compensatory time off for travel in accordance with OPM regulations. Employees are required to use such compensatory time within twenty-six (26) pay periods unless he or she is precluded from doing so due to an exigency of the service beyond the employee's control, in which case the time limit to use such compensatory time shall be extended for an additional twenty-six (26) pay periods.
- D. Travel status for which employees are eligible for compensation or compensatory time includes the usual waiting time that precedes or interrupts travel. This includes the time that an employee is required to arrive at an airport in advance of a scheduled flight to check in and clear security.

#### Section 2. Travel Vouchers

- A. Employees will submit a Final Travel Voucher (SF 1012) claim for travel expenses within five (5) work days after the end of travel. If the employee is on continuous travel, he or she should submit a Partial Voucher (SF 1012) claim on a monthly basis. Travel vouchers will normally be paid within two (2) weeks of receipt by the servicing finance office. A traveler is entitled to receive a late payment fee if the Travel Voucher claim is not reimbursed within thirty (30) calendar days of submission.
- B. If the review of a Travel Voucher claim discloses irregularities, Management will notify the traveler as soon as practical and attempt to resolve the irregularity with the traveler. If the servicing finance office determines that the voucher is improper, it will be returned to the

employee within seven (7) work days and includes a written explanation of the reasons for the return and a contact in the servicing finance office for assistance.

- C. If an audited Travel Voucher contains some items not properly supported or allowable, the traveler will be promptly reimbursed initially for those items supportable or allowable. The employee will be notified in writing regarding the disallowed items and will be provided an opportunity to provide additional information and/or documentation to support the claim. If still unable to support all or part of a claim, the employee will be notified in writing why the claim remains disallowed and the proper process for filing a reclaim voucher or appeal.

### **Section 3. Gainsharing**

At the time of the signing of this agreement, Management and the Union agreed that a gainsharing program was not feasible based on the current technology being used for travel related activities, as well as based on the additional manpower required to operate this type of program. In anticipation of the implementation of new travel-related technology, Management and the Union agree to revisit this specific topic in October 2012.

## Article 13

### Workweek and Hours of Work

#### Section 1. Hours

- A. For purposes of determining eligibility for overtime pay, the basic workweek shall normally consist of forty (40) hours over five (5) consecutive eight-hour days. The workweek will be the period for which an employee is paid a straight-time pay rate. Management recognizes the right of the Union to bargain over the impact and implementation of changes in the hours of work, shifts, flextime or tours of duty.
- B. In conformance with the Federal Employee Part-time Career Employment Act (FEPCEA), Management shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis. Nor shall any unit employee who is employed on a full-time basis be required to accept part-time employment as a condition of continued employment. However, this paragraph does not impact part-time career positions which exist at the time this Agreement is memorialized or preclude Management from the creation of part-time career positions which are established in accordance with FEPCEA.

#### Section 2. Alternative Work Schedules (AWS)

##### A. General

- (1) Management and the Union agree to support the application of alternative work schedules within various organization segments of the Department. Both parties further agree that it is the mutual responsibility of Management and employees to effectively and efficiently accomplish the mission of the Department. The alternative work schedules defined in this section are recognized by the parties as exceptions to the basic work week definition identified in Section 1 above.
- (2) Alternative work schedules will fall into two categories: flexible work schedules (FWS) and compressed work schedules (CWS).

##### B. Definitions and Administration

- (1) If approved by Management, employees may elect to work one of the following alternate work schedules:
  - a. **Flexible Work Schedules:** An FWS allows variable hours (within designated flexible time bands) and variable days, with set core hours. Employees, with the exception of members of the Senior Executive Service, may earn credit hours under an FWS.

- i. **Flexitime** – commonly referred to as the “gliding schedule,” this type of AWS provides for flexible arrival, departure and lunch periods and has specified core hours in each of ten work days in the pay period. Full-time employees are required to work during their scheduled work hours, or use leave, credit time, and/or compensatory time off during specified core hours and eight regular hours on each of ten work days in the bi-weekly pay period. Employees may be allowed to earn credit hours under the guidelines in this policy after the bi-weekly work requirement is met.
  
- ii. **Maxiflex** – this type of AWS allows for the establishment of flexible arrival and departure times, and flexible lunch periods and requires that specific core hours be established on at least three days of the work week. There is no daily or weekly requirement. Employees must work or account for their whereabouts, by leave, credit time, or compensatory time off, to meet their bi-weekly work requirement (80 hours for full-time employees). Employees may vary the number of hours they work each day and each week for a maximum of two days off per pay period. Employees working under this type of AWS should gain approval from their immediate supervisor for their “planned” schedule by the beginning of each pay period. Credit hours may be earned with supervisory approval, but will not accrue until after the biweekly work requirement is met. In addition to full Maxiflex, employees have the option of working schedules similar to those under a compressed schedule as follows:
  - (a) **Maxiflex 5/4-9** – requires the employee to establish a daily schedule of nine hours on each of eight work days, eight hours on one work day and one AWS day off per pay period. The AWS day off is established but may be “swapped” for another day within a pay period, with prior supervisory approval. Arrival and departure time bands and core hours are established for days on which work is scheduled. Flexible lunch periods are allowed, with prior supervisory approval. Credit hours may be earned, but will not accrue until after the bi-weekly work requirement has been met.
  
  - (b) **Maxiflex 4/10** – requires the employee to establish a daily schedule of ten hours on each of four work days each week with one AWS day off per week. The AWS day off is scheduled on a recurring basis, but may be “swapped” for another day within a pay period, with prior supervisory approval. Arrival and departure time bands and core hours are established for days on which work is scheduled. Flexible lunch periods are allowed with prior supervisory approval. Credit hours may be earned, but will not accrue until the bi-weekly work requirement has been met.

- b. **Compressed Work Schedules:** A CWS has fixed hours with a fixed starting and ending time, and allows employees to work their scheduled hours in fewer than ten (10) work days. Credit hours cannot be earned under a CWS. There are no core hours, flexible time bands, or flexible lunch periods.
  - i. **Compressed 5/4-9** -- under this schedule, employees work nine hours on eight work days in the pay period, eight hours on one day in the pay period and have one AWS day off. The AWS day off is fixed at the time the schedule is established and may not be “swapped” for another day.
  - ii. **Compressed 4/10** – under this schedule, employees work four ten-hour days each week of the biweekly pay period and have one AWS day off each week. The AWS day off is fixed at the time the schedule is established and may not be “swapped” for another day.

### C. Core Hours

- (1) Core hours are that part of the schedule of hours during the work day, workweek, or pay period that is within the tour of duty and during which employees must be present at work or on leave, or other excused absence. The core hours are 9:30 a.m. to 3:30 p.m., with a break of either ½ or one hour mid-day for lunch.
- (2) Employees must be present at work during core hours, except for their scheduled ½ to one hour lunch break, or must account for absent time with credit hours, compensatory time off, or appropriate charge to leave, or other excused absence.
- (3) Supervisors may require employees to be present at work at times other than those covered by core hours to attend meetings, training, or perform other assignments as may be necessary. If so required, employees must report. If the requirement results in additional entitlement to pay such as night differential or overtime, the supervisor must compensate the employee in accordance with appropriate regulations.

### D. Length of Work day

- (1) The maximum length of the work day is generally 12 hours; however, exceptions may be made as needed. The length of the work day will be between the hours of 6:00 a.m. and 7:30 p.m.
- (2) Supervisors should work with employees to establish the earliest arrival time and the latest departure time for taking into consideration the operational hours of the facility in which they work. Supervisors should consider the safety and security of employees when establishing these times. In locations protected by a guard force, supervisors must

coordinate arrival and departure times that do not result in additional expenses for extended guard hours.

#### E. Meal Time

- (1) Meal time or an unpaid break of no less than 30 minutes and no more than one hour is required for each 6 hours or longer of work, and for employees scheduled to work core hours, must be scheduled to be taken between 11:00 am and 2:00 pm. **The meal time or unpaid break may not be taken at the beginning or end of the normal scheduled work day.** Employees must work the number of hours appropriate to their work schedule.
  - a. For example, an employee on an 8-hour schedule who arrives for work at 7:00 a.m. and who has a 30-minute meal or unpaid break between the hours of 11:00 a.m. and 2:00 p.m., is due to leave for the day at 3:30 p.m. If that same employee has a one-hour meal break, his/her work day will end at 4:00 p.m.

#### F. Credit Hours Earned and Used

- (1) Credit hours are hours an employee works voluntarily, with prior supervisory approval, in excess of the normal hours worked in a pay period. Credit hours can be carried over for use in another pay period.
- (2) Supervisory approval is required to earn and use credit hours. “Blanket” approval for an employee to earn credit hours may be given at the supervisor’s discretion; however, such deviations should be an exception. Credit hours may not be earned on Saturdays, Sundays, or holidays.
- (3) Credit hours may be earned on regular work days or on the employee’s AWS day off as long as no more than 12 total hours are worked on any day. Therefore, employees working an 8-hour schedule may work up to four extra hours per day; those on a 9-hour schedule may work up to three extra hours per day, and those on a 10-hour schedule may work up to two extra hours per day. Once the employee has completed 80 hours in a pay period (or less for a part-time employee), additional hours worked will be considered and input into the automated timekeeping system as credit hours. Extra hours worked in the pay period will not be recorded as credit hours until such time as the employee has met the 80-hour bi-weekly requirement.
- (4) Part time employees on Maxiflex must work the number of hours specified in their tour of duty for the pay period before they may accrue credit hours. Part time employees in Flexitime must work 80 regular hours prior to being able to earn credit hours. Hours an employee works in addition to their normal tour of duty for the pay period up to 80 hours will be paid at the regular hourly rate.

- (5) Credit hours must be earned within the time period established for the length of the work day, e.g., between the hours of 6:00 a.m. and 7:30 p.m. for Main Interior employees. Credit hours may be earned in 15-minute increments. Full time employees may only carry over a maximum of 24 credit hours from one pay period to the next. Part time employees may only carry over a maximum number of credit hours equal to  $\frac{1}{4}$  of their regular bi-weekly work requirement. Employees are responsible for monitoring their credit hour balance and ensuring that the maximum carry over is not exceeded. Credit hours in excess of 24 hours are forfeited and do not entitle the employee to overtime compensation. "Off the record" balances are not allowed.
- (6) Credit hours may not be earned or used by employees working under a compressed schedule. Employees who wish to establish a compressed work schedule must use all of their existing credit hours prior to doing so.

#### G. Holidays on AWS

- (1) Employees working under a compressed work schedule will be paid the number of hours for which they were scheduled to work on the holiday. For example, an employee who works a compressed 4/10 schedule will receive 10 hours of holiday pay. If the holiday falls on the AWS day off and that day is a Monday, the employee will be scheduled to take Tuesday off in lieu of the holiday and will be paid the number of hours they are scheduled to work on that day. If the holiday falls on an AWS day off and that day is a Friday, the employee will be scheduled to take Thursday off in lieu of the holiday and will be paid the number of hours they are scheduled to work on that day.
- (2) Full-time employees working under a flexible work schedule shall receive only 8 hours holiday pay for holidays. Under a flexible work schedule, if the AWS day off is the same day as the holiday, the employee and supervisor will determine which day within the same pay period will be taken as the AWS day off, but generally the employee will be scheduled to take Tuesday as their AWS day off if the holiday falls on a Monday, and Thursday as their AWS day off if the holiday falls on a Friday.

#### H. Abuse

- (1) If an employee abuses his/her flexible schedule, Management may remove the employee from participation in a flexible schedule.
- (2) Removal from a flexible schedule for abuse is not a disciplinary action, and does not preclude other action by Management within its authorities to effect disciplinary action including removal from employment.
- (3) Normally employees will be given notice before being removed from a flexible schedule.



### **Section 3. Shift Assignments**

Shift assignments will be made in the interest of efficiently carrying out program objectives. To the maximum extent possible, personal hardships or preferences expressed by employees will be considered in assigning tours of duty. To the extent that employees have substantially equal qualifications, as determined by Management, the most senior employee may have first choice of shift assignment, or in the case of instructional personnel, first selection of courses to be taught and teaching schedules.

### **Section 4. Rest Breaks**

All covered employees will receive a 15 minute rest break mid-morning and mid-afternoon. In addition, employees will be authorized a 15 minute rest break for each four hour period of overtime worked. The two fifteen minute rest breaks cannot be used to shorten the work day. If the rest break is not utilized, it is lost. It is Management's responsibility to schedule rest breaks and find coverage. Employees may not leave the duty station during rest breaks.

### **Section 5. Meal Time**

Employees not on AWS shall receive a minimum of 30 minutes and up to one hour for a meal time or unpaid break, except in emergency situations. The employee shall be free to leave the worksite during this period since the meal time/unpaid break is not paid time. For employees scheduled to work during core hours, the meal time/unpaid break must be taken between 11:00 am and 2:00 pm. **The meal time or unpaid break may not be taken at the beginning or at the end of the normal scheduled work day.** Normally, duties will not be assigned during the meal time/unpaid break. If duties must be assigned, the employee will be compensated with overtime or compensatory time as appropriate. For contract Education employees, see Article 31, Section 5.

### **Section 6. Holidays**

Employees are entitled to all federally recognized holidays if otherwise in a duty status. Employees properly classified as "essential" may not always be entitled to be off on all federally recognized holidays, but will be compensated in accordance with appropriate pay regulations.

### **Section 7. Altering Schedules**

Except where the needs of the service dictate otherwise, assignments to tours of duty will be scheduled at least one week in advance of the administrative workweek and such schedules will remain in effect for at least one week.

## **Article 14**

### **Telework**

#### **Section 1. Purpose**

- A. Management and the Union jointly recognize the mutual benefits of a flexible workplace program to the Department and its employees. Balancing work and family responsibilities, assistance to the elderly or disabled employees, and meeting environmental, financial, and commuting concerns are among its advantages. In recognizing this benefit, both parties also acknowledge the needs of the Department to accomplish its mission.
- B. Any telework/telecommute program established under this Article will be a voluntary program which permits employees to work at home or at other approved sites away from the office for all or part of the workweek.

#### **Section 2. Telework Agreement**

Before beginning work at an alternative worksite, the employee and immediate supervisor must sign a telework agreement. It is the supervisor's responsibility to adequately document the telework arrangement in advance to explain/define the employee's duty status, credit hours, overtime, leave, alternative work schedules, etc. The agreement should specify the terms and conditions of program participation, the performance expectations, and the work schedule information for the individual employee. The telework agreement documents a commitment by the employee and the supervisor to abide by the applicable guidelines and program policies and must be in place before the employee begins working at an alternative worksite. Telework agreement can be found at [www.doi.gov](http://www.doi.gov).

#### **Section 3 – Participation Criteria for the Telework Program**

- A. Consistent with the parties' goals of fostering a family-friendly workplace, all employees may participate in the telework program if the following criteria are met:
  - (1) Whether a sufficient amount of the employee's work, in fact, can be performed at an alternate worksite. It is understood that the accomplishment of the Agency's mission is paramount. While supervisors and managers are encouraged to be progressive in regard to reengineering or restructuring how their offices operate or the manner in which they assign work, there is no contractual obligation or requirement on management to do so to accommodate an employee's request to participate in telework/telecommute.
  - (2) The employee will be available and accessible to supervisors, co-workers, and customers at all times while performing work at an alternate worksite.
  - (3) The employee's most recent performance evaluation is at least Fully Successful and the employee has demonstrated an ability to work alone and without face-to-face supervision.

- (4) There are not conduct problems that would cause management to be concerned about the employee's trustworthiness or dependability.
- (5) Costs of such an arrangement: The parties recognize that costs or cost savings in technology, equipment, and telecommunications are considerations in decisions regarding participation in telework/telecommute arrangements. While it is expected that telework/telecommute will require some costs, the costs involved may be too much to finance an employee on telework/telecommute.
- (6) Technology/equipment needs: The parties recognize that existing and evolving technology(ies) may allow or prevent an employee from participating in the telework/telecommute program. The employee may need access to specific equipment and/or will use the telephone extensively on telework/telecommute days. Such technology/equipment may include:
  - a. Long distance telephone usage
  - b. Telephone usage (other than long distance)
  - c. Computer/Laptop assigned to the employee's home
  - d. Computer software
  - e. Modem
  - f. Equipment maintenance and repair
  - g. Remote technical assistance
  - h. Replacement of damaged or lost equipment
  - i. Fax capability
  - j. Internet service provider

#### **Section 4. Coverage of Office Functions**

- A. Management will continue to have responsibility for seeing that the mission of the Department is carried out. Each office will determine adequate coverage during official hours for the purpose of assuring that the functions of the office are fulfilled. Some examples of the principal forms of coverage are:
- (1) Having phones answered;
  - (2) Providing clerical, technical, and professional support;
  - (3) Providing office representation at essential meetings;
  - (4) Handling inquiries from the public; and
  - (5) Providing program needs based on business necessity.
- B. When coverage requirements are established, all employees are obliged to meet coverage requirements. The determination of who will work which particular hours to ensure such coverage is within the authority of the supervisor. Determining office coverage involves both the office work site and the telework/telecommute site. Where practicable, personal preference will be honored in scheduling coverage. Where personal preference conflicts with the equitable sharing of the burden of coverage, personal preference shall give way. The opportunity of each employee to maximize his/her telework/telecommute participation shall be consistent with the coverage of legitimate work unit functions as determined by the supervisor.

#### **Section 5. Time Frames**

- A. Upon receipt of a request for telework/telecommute, the supervisor and the employee will meet to discuss and review the request. The supervisor's decision is to be provided to the employee within ten (10) work days of the request. The time frame may be extended by mutual agreement of the employee and supervisor.
- B. If disapproved, the employee will be advised in writing with the reason(s). If the disapproval subsequently becomes the subject of arbitration, the parties will clarify all the issues in accordance with this Master Agreement.
- C. If approved, the specifications of the arrangement will be worked out, reduced to writing, and signed by both the supervisor and the employee. The employee will begin working at the alternate work site within twenty-one (21) work days after completion of the individual telework/telecommute agreement unless circumstances dictate otherwise.

## **Section 6 . Operating Principles**

- A. For employees who are approved to telework/telecommute, the employee will have the option to work the designated telework/telecommute plan/schedule of his/her organization or to opt out of Alternative Work Schedule.
- B. The governing rules, regulations, and policies concerning time and attendance, overtime, and leave are unchanged by participation in telework/telecommute. Employees will not perform overtime or night work without express approval in advance.
- C. Injuries that arise in the performance of duty at the alternate worksite are subject to the Federal Employees' Compensation Act.
- D. The government is not responsible for operating costs, home maintenance, or any other incidental costs to the employee (e.g., utilities). Employees on telework/telecommute are entitled to reimbursement for authorized expenses while conducting government business.
- E. For employees who are approved to telework/telecommute, the following applies with respect to equipment:
  - (1) If the employee uses government equipment, the employee will use and protect the equipment.
  - (2) Government-owned equipment will be serviced and maintained by the Government. This equipment will be required to be brought/returned to the duty station to have any maintenance performed.
  - (3) The employee must comply with Department security and information technology policies and procedures. They must ensure the adequate measures are in place to protect the equipment from being damaged, stolen, or accessed by unauthorized individuals.
  - (4) If the employee uses his/her own equipment, the employee is responsible for its service and maintenance.
  - (5) Employees will ordinarily be given a minimum of 24 hours advance notice regarding management service or maintenance of government-owned property. Such service or maintenance will occur during the employee's normal work hours unless circumstances dictate otherwise.
- F. Employees on telework/telecommute are obligated to ensure a safe and healthy work environment and to apply necessary safeguards to protect government records from damage or unauthorized disclosure.

## **Section 7. Recall**

Employees participating in telework/telecommute programs must be accessible and available for recall to their regular offices for work needs that cannot be performed at the alternate worksite. Examples are training, special meetings, new work requirements, and emergencies. These examples are for illustrative purposes and are not meant to be all-encompassing. Management will take full advantage of existing technology (teleconference, fax, etc.) where possible in order to minimize recall. Management will provide reasonable advance notice of all recalls if possible. Where practicable, not less than 24 hours advance notice will be given but there may be times when advance notice cannot be given.

## **Section 8. Travel**

- A. Travel provisions that apply to employees working at a traditional worksite also apply to employees who telework. A teleworker who is directed to travel to another worksite (including the traditional worksite) during his or her regularly scheduled basic tour of duty would have the travel hours credited as hours of work. If the employee is directed to report to the official duty station, the travel will be at no cost to the Government.
  
- B. Where an employee teleworks full-time from a location outside of the local commuting area of the traditional worksite, and his or her alternative worksite has been determined as his or her official duty station, the employee's organization would be responsible for all work-related travel outside the employee's normal commuting area, including travel to the traditional worksite.

## **Section 9. Termination**

- A. Supervisors may terminate an agreement whenever:
  - (1) There is a change in work requirements or the arrangement no longer supports the mission.
  - (2) An employee's performance is less than Fully Successful at the progress review or at the end of the annual appraisal period, or if, within at least sixty (60) work days, the employee has demonstrated an inability to work alone and without face-to-face supervision.
  - (3) The employee has demonstrated conduct problems regarding trustworthiness or dependability to the extent that he/she should be removed from the program.
  - (4) Costs of the agreement are no longer affordable.
  - (5) Technology changes require return to the regular office.
  - (6) Employees do not conform with the terms of their agreement.
  
- B. When terminating a telework/telecommute arrangement, the following must occur:

(1) Management will attempt to provide appropriate advance notice of the termination of any agreement to the extent practicable. If possible, the notice will be at least five (5) work days in advance.

(2) The Notice of Termination must be in writing and indicate the reason(s) for termination.

### **Section 10 . Grievability**

Management's decisions on participation, recall, or termination of formal telework/telecommute arrangements are grievable. Decisions on informal telework/telecommute arrangements are not grievable. However, if the employee alleges that a decision on informal telework/telecommute arrangements is a prohibited personnel practice, such a matter is grievable.

### **Section 11. Issue Resolution**

Agency managers and union officials are encouraged to establish creative approaches to provide information and resolve problems regarding telework/telecommute. Where there are disputes over participation, recall or termination of a formal telework/telecommute arrangement, agency and union officials agree to use alternate dispute resolution methods to resolve such issues.

## **Article 15**

### **Overtime/Compensatory Time**

#### **Section 1. Employee Assignments**

Employees who are required by Management to work overtime will be compensated in accordance with applicable laws and regulations.

#### **Section 2. Distribution**

Records showing the overtime distribution for bargaining unit employees will be maintained and made available to the Union upon request. Normally, the opportunity to perform overtime work will be made available to all qualified employees as overtime work becomes necessary. Consistent with mission requirements, first consideration in assignment of overtime will be given to employees currently performing the work. Second consideration will be given to other qualified employees in the assignment of overtime/holiday work. Supervisors are responsible for making overtime assignments.

#### **Section 3. Excusal**

An employee, upon request, should be released from an overtime assignment if it is determined by management that a qualified replacement is available and willing to work.

#### **Section 4. Callback Pay**

Callback pay occurs when an employee is called back after having been dismissed for the day after completion of the normal tour of duty. The employee will receive pay for at least two (2) hours in duration for the purpose of premium pay, either in money or compensatory time off at the employee's choice. Overtime will be paid in fifteen (15) minute increments after the first two (2) hours.

#### **Section 5. Compensatory Time**

- A. Compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work, or under flexible work schedules, time off with pay in lieu of overtime pay for regularly scheduled, or irregular or occasional overtime work. At the request of the following types of employees, the agency may grant compensatory time off from the employee's tour of duty instead of overtime payment for an equal amount of overtime work:
- (1) Employees who are covered by the Fair Labor Standards Act (FLSA), i.e., employees considered "Nonexempt" from the FLSA;
  - (2) General Schedule (GS) employees who are "Exempt" (not covered) by the FLSA and earn less than the maximum pay of a GS-10; and
  - (3) Federal wage system employees.



- B. Management may not require the above listed employees to take compensatory time in lieu of overtime pay. However, Management can direct GS employees earning rates of basic pay greater than a GS-10 Step 10 who are Exempt from FLSA to take compensatory time off in lieu of overtime.
- C. Compensatory time off that is not used within twenty-six (26) pay periods after the pay period during which it was earned will be handled depending upon the status of the employee at the time the compensatory time was earned:
- (1) FLSA Nonexempt Employees: If the employee is unable to take earned compensatory time off within twenty-six (26) pay periods after the pay period during which it was earned or who separates or transfers from the Bureau or Office before the earned compensatory time off is used, the employee must be paid for the unused compensatory time off at the overtime rate in effect when the time was earned. Also, if an employee is placed on leave without pay to perform service in the uniformed services or because of an on-the-job injury with entitlement to injury compensation under 5 USC Chapter 81, and is therefore unable to take earned compensatory time off within twenty-six (26) pay periods after which it was earned, then the employee must be paid at the overtime rate in effect at the time it was earned.
  - (2) FLSA Exempt Employees: If the employee is unable to take earned compensatory time off within twenty-six (26) pay periods after the pay period during which it was earned **due to an exigency of the service beyond the employee's control**, Management must pay the employee for the unused compensatory time off at the overtime rate in effect when the time was earned. Also, if the employee transfers, separates, goes on extended leave without pay to perform service in the uniformed services or because of an on-the-job injury with entitlement to injury compensation under 5 USC Chapter 81, and is therefore unable to take earned compensatory time off within twenty-six (26) pay periods after which it was earned, then the employee must be paid at the overtime rate in effect at the time it was earned. However, if the employee fails to take the compensatory time off before the expiration date and it is **NOT** due to an exigency of the service beyond the employee's control, then the employee will **lose all rights** to both compensatory time off and to overtime pay.

## **Section 6. Altering Schedules**

Except when Management would be seriously handicapped in carrying out its function or the costs will be substantially increased, assignments to tours of duty will be scheduled in advance of the administrative workweek over periods of not less than one week and that such schedules will remain in effect for a least one week.

## Article 16

### Career Seasonal Positions

<b>Non-Pay/Non-Duty Status - Applies to Title 5 BIE Employees Only</b>
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#### **Section 1. General**

It is recognized that Career Seasonal positions have been created by law. Management will attempt to keep Career Seasonal non-pay/non-duty status to the minimum necessary in conformance with law, budget constraints, and the needs of the service.

#### **Section 2. Vacancies**

Management will advertise seasonal employment opportunities appropriately during any period of non-pay/non-duty status.

#### **Section 3. Employment**

Management shall consider, to the extent allowed by law and in accordance with Indian Preference, employees who are in non-pay/non-duty status for seasonal work.

#### **Section 4. Benefits**

For employees electing to pro-rate, medical insurance shall be collected by means of pro-rated deductions prior to the seasonal layoff.

#### **Section 5. Policy Changes During Seasonal Layoff**

Management recognizes its obligation to inform the Union of policy changes made during the seasonal layoff period.

#### **Section 6. Notification of Seasonal Layoff**

Except for positions where the duties entail unpredictable starting and ending dates (e.g. firefighters), Management will provide notice of placement in nonduty/nonpay status as soon as possible, generally at least sixty (60) calendar days in advance.

#### **Section 7. Leave for Employees During Seasonal Layoff**

Employees with use or lose leave shall be notified in writing early in the calendar year of the need to schedule their annual and compensatory leave.

## Article 17

### Leave

#### Section 1. Coverage

Leave provisions of this article apply to all unit employees unless otherwise noted. Contract Education employees will be covered by the provisions of this article and Article 30.

#### Section 2. Annual Leave

**NOTE: This section does not apply to contract education employees in the Bureau of Indian Education, whose annual leave (vacation) is governed by Article 30**

- A. Purpose: Annual leave is provided and used for two general purposes: 1) to allow every employee an annual vacation period of extended leave for rest and recreation; and, 2) to provide periods of time off for personal or emergency purposes. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken.
- B. Approval Process: Employees will state, as far in advance as practical, the desired time for their annual leave. Once the annual leave is scheduled and approved, Management should not rescind approval of the leave unless warranted by workload requirements and/or there is an urgent need for the employee's services. A request for emergency leave (annual leave not approved in advance) may require documentation to substantiate the emergency. If leave is denied the employee can submit a written request to receive the reason for the denial in writing.
- C. Eligibility: Permanent and temporary employees, who are serving under appointments that exceed ninety (90) calendar days, begin to accrue leave immediately. This leave may be used as it is earned. Intermittent employees [employees with no scheduled tour-of-duty] do not earn annual leave.
- D. Restoration of Leave: If extension of a furlough period or other reason will cause an employee to lose annual leave that had been previously scheduled and approved, Management will take action to allow the employee to take leave after the furlough period(s) or restore the leave under PL 93-181, if appropriate.

#### Section 3. Sick Leave

It is agreed that the use and approval of accrued sick leave will be in accordance with 5 USC Chapter 63 (Sections 6307-6312) and 5 CFR Part 630.

- A. Purpose: Sick Leave may be used to:
  - (1) Receive medical, dental, or optical examination or treatments;

- (2) Address the employees incapacitation due to physical or mental illness, injury, pregnancy, or childbirth;
  - (3) Make necessary funeral arrangements for a family member or to attend the funeral of a family member;
  - (4) Provide care to a family member as a result of physical or mental illness, injury, pregnancy, childbirth, or medical, dental or optical examination or treatment;
  - (5) Address the exposure to a communicable disease;
  - (6) Address the adoption of a child, including any necessary requirements to complete the adoption.
- B. Approval Process: Normally anticipated sick leave should be requested as far in advance as possible. In the event that the employee is compelled to request unanticipated sick leave, he/she should make every effort to notify his/her supervisor as soon as possible, and in no event, later than one (1) hour after the start of the work day and every day thereafter. If circumstances prohibit immediate communications as stated above, the employee will report his/her absence as soon as possible and may be required to provide an explanation for the delay. Unless the employee is on sick leave restriction, an immediate family member can report the absence. An appropriate call-in procedure will be jointly established at the local sites to ensure that employees have a clear understanding as to their point of contact.
- C. Medical Restriction: Employees normally shall not be required to furnish a medical certificate to substantiate a request for approval of sick leave unless such sick leave exceeds three (3) consecutive work days. However, should the supervisor have reason to believe that the employee may be abusing sick leave, the employee may be placed on Leave Restrictions and will be advised in writing that a medical certificate will be required for each absence chargeable to sick leave. After six (6) months the sick leave restriction will expire. Management may reinstate the requirement for cause.
- D. Eligibility: Permanent and temporary employees earn sick leave. The earning rate will differ based on the type of work schedule. Intermittent employees do not earn sick leave. Full time employees earn four (4) hours per pay period, while part-time employees earn one (1) hour for every twenty (20) hours in pay status.
- E. Restoration: Sick Leave is restored to an employee's account following a break in service without regard to the length of separation, if the employee returns to Federal employment. If sick leave was previously forfeited, it may not now be restored.
- F. Advancing Sick Leave: In cases of serious disability or illness, sick leave may be advanced (except for those employees serving under a limited appointment or with a specific termination date) for up to thirty (30) days, or equivalent for uncommon tours-of-duty, subject to the

following conditions: 1) all available sick leave is used; 2) the employee will return to duty long enough to repay the sick leave; and 3) does not involve Family Friendly Leave authority. The granting of advance sick leave is subject to supervisory approval.

- (1) Repayment. Employees must repay any advanced sick leave unless: 1) the separation is caused by death; 2) disability retirement occurs; or 3) a disability prevents the employee from returning to duty or continuing in the service based on medical evidence that the employing office has determined acceptable.
- (2) Unused Sick Leave: Employees are not paid for unused sick leave upon separation.
- (3) Illness while on Annual Leave: An employee who becomes ill while on Annual Leave may have the time of illness charged to sick leave provided the employee notifies the supervisor on the first day of the illness.

#### **Section 4. Family Friendly Leave Policies**

This applies to any employee who is covered by the Federal leave system [see 5 USC 6301(2)], and who otherwise meets the eligibility requirements described in 5 CFR 630.1201.

**A. Family and Medical Leave Act of 1993:** Federal employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for the:

- (1) birth of a child and care of a newborn;
- (2) adoption or foster care of a child;
- (3) care of a spouse, son, daughter, or parent with a serious health condition;
- (4) Serious health condition of the employee that makes the employee unable to perform his/her position. Upon return from such leave an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.
  - a. Definition of Family Members:
    - i. Spouse (includes common law marriage in States where it is recognized);
    - ii. Son or Daughter is defined in terms of the child's age and relationship to the employee. Age: son or daughter who is either under eighteen (18) years of age, or 18 years of age or older and incapable of self-care due to mental/physical disabilities; Relationship: a biological, adopted, or foster child, stepchild, a legal ward, or a child of a person standing *in loco parentis*.

- iii. Parent is defined as the employee’s biological parent or an individual who stands or stood *in loco parentis* to the employee when the employee was a son or daughter.

(5) An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and regulations, for any unpaid leave under the FMLA .

B. Sick Leave for Family Care, Bereavement Purposes, or Serious Health Condition

(1) **Sick Leave for Family Care or Bereavement Purposes:** Most Federal employees may use a total of up to 104 hours (13 work days) of sick leave each leave year to:

- a. provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
- b. provide care for a family member as a result of medical, dental, or optical examination or treatment; or
- c. make arrangements necessitated by the death of a family member or attend the funeral of a family member.

NOTE: A covered full-time employee may use up to 104 hours (13 work days) of sick leave each leave year for these purposes. Part-time employees and employees with uncommon tours of duty are also covered, and the amount of sick leave permitted for family care and bereavement purposes is pro-rated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week.

(2) **Sick Leave to Care For a Family Member With a Serious Health Condition:** Most Federal employees may use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition. If an employee previously has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12-week entitlement. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. An employee is entitled to a total of 12 weeks of sick leave each year for all family care purposes.

(3) “Family Member” is defined as:

- a. Spouse, and parents thereof;
- b. Children, including adopted children, and spouses thereof;
- c. Parents;

- d. Brothers and sisters, and spouses thereof; and
  - e. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- C. Sick Leave for Adoption: An employee may use sick leave for purposes related to the adoption of a child. Management may advance up to 30 days of sick leave for adoption-related purposes.
- (1) Examples may include but are not limited to:
- a. Appointments with adoption agencies, social workers, and attorneys;
  - b. Court proceedings;
  - c. Required travel;
  - d. Any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and
  - e. Any other activities necessary to allow the adoption to proceed.
- (2) Adoptive parents who **voluntarily** choose to be absent from work to bond with or care for an adopted child may not use sick leave for this purpose. Parents may use annual leave or leave without pay for these purposes. Management may request administratively acceptable evidence for absences related to adoption.
- D. Leave for Bone Marrow or Organ Donation: An employee may use up to seven (7) days of paid leave each calendar year to serve as a bone-marrow donor. An employee also may use up to thirty (30) days of paid leave each calendar year to serve as an organ donor. Leave for bone marrow and organ donation is a separate category of leave that is in addition to annual and sick leave.
- E. Federal Leave Sharing: Voluntary Leave Transfer Programs allow Federal employees to donate annual leave to other Federal employees, who have exhausted all their earned leave and have medical emergencies, and as a consequence, will suffer a loss of income due to the medical emergency.

## **Section 5. Military Leave**

An employee is entitled to Military Leave for certain types of inactive duty in the National Guard or as a Reserve of the Armed Forces. Military Leave will be granted in accordance with the provisions of 5 U.S.C. 5519 and 5 U.S.C. 6323. Detailed information about Military Leave may be found at the following URL: <http://www.opm.gov>.

## **Section 6. Administrative Leave/Excused Absence**

- A. Administrative leave may be granted to employees for participation in such civic activities as blood donations, Military/Veteran Honor Guards, conferences and conventions, civil defense drills, voting, when it is determined that attendance will serve in the best interest of the Federal service. Administrative Leave may also be granted when an activity shuts down due to circumstances beyond the Agency's control.
- B. Voting. When voting polls are not open for local, state, Federal, or tribal elections at least three (3) hours before or after an employee's regular hours of work, then he or she, upon written request, will be granted a sufficient amount of administrative leave to vote by his/her supervisor which will permit the employee to report for work three (3) hours after the polls are open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off. One work day before any national, state, or District of Columbia election, Management will provide employees notice of their rights under this section.
- C. Excused Absence for Armed Forces Connected Funerals
- (1) An eligible employee may be granted an excused absence of not more than three (3) days to make arrangements for or to attend the funeral or memorial service for an immediate relative who died as a result of wounds, disease, or injury incurred in a combat zone as a member of the Armed Forces (5 U.S.C. 6326).
  - (2) The three (3) days must be within the employee's established tour of duty, including regularly scheduled overtime. The three (3) days need not be consecutive. The employee shall furnish to the leave-approving official, an acceptable justification for use of funeral leave in nonconsecutive days.
  - (3) An eligible employee may be granted excused absence for up to four (4) hours in any one (1) day of his or her scheduled tour of duty to participate in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad for final interment in the United States. This includes veterans who attend the funerals of deceased veterans as members of firing squads or guards of honor. (5 U.S.C. 6321)
  - (4) Family member or immediate relative means the following relatives of the deceased member of the armed forces: spouse, parents, children (including adopted children, foster children or step-children) and their spouses, brothers and sisters and their spouses, and any person related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.
- D. Tardiness: Management may excuse occasional and unavoidable periods of tardiness of one (1) hour or less without charge to leave provided the employee submits a reasonable explanation regarding the reason for his/her tardiness. If the excuse is not acceptable, annual leave or leave without pay (LWOP) may be requested to cover the absence. Additionally, if tardiness is



frequent or inexcusable and does not warrant approval of leave, the tardiness may be charged to absence without leave (AWOL).

### **Section 7. Leave Without Pay**

- A. Leave without pay is a temporary non-pay status and absence from duty.
- B. Approval Authority and Appropriate Uses. Authorizing LWOP is matter of administrative discretion. LWOP requests will be examined in conjunction with the feasibility of granting advance sick or annual leave for each individual case, as well as granting LWOP on an extended basis while waiting on a retirement or OWCP claim, but not to exceed one (1) year. An employee is not entitled to LWOP unless the following situations exist:
  - (1) Disabled veterans in need of medical treatment;
  - (2) Guard and Reserve personnel performing active duty military service;
  - (3) Conditions meeting the Family & Medical Leave Act;
  - (4) Receiving compensation for an injury/illness incurred on the job.

### **Section 8. Compensatory Leave**

Agency granted time off from an employee's regular tour-of-duty instead of overtime payment for an equal amount of irregular or occasional overtime work. Compensatory time may be used in lieu of other types of leave.

### **Section 9. Court Leave**

- A. An authorized absence (without loss of, or reduction in pay, leave entitlement, credit for time or service, or performance or efficiency rating) of an employee from work status for attending judicial proceedings for jury duty or in a nonofficial capacity as a witness on behalf of any party in a proceeding in which the Federal government, District of Columbia, or a state or local government is a party.
- B. Eligibility: Permanent and temporary employees in a duty status or on paid leave. There is no limitation on how long an individual may be on jury duty. Employees must reimburse to the agency fees paid for services as a juror or witness in accordance with 5 USC 5515, 5537, and 6322, if any were accepted. However, monies paid to jurors or witnesses which are in the nature of "expenses" (e.g., transportation) do not have to be reimbursed to the agency. If jury duty is performed during non-work days, holidays, or in a LWOP status, fees and allowances may be retained by the employee.

## **Section 10. Inclement Weather Conditions**

- A. If Management must close a facility because of severe weather conditions or an emergency situation, as determined by Management, administrative leave will be granted to those employees on official duty in accordance with applicable law and regulation. If this decision is made prior to the start of the business day, a reasonable mechanism will be established to inform employees at the local worksite.
- B. When inclement weather conditions exist, a reasonable effort will be made to provide direction to bargaining unit employees at Indian Affairs worksites that is similar to the direction provided to employees of other similarly situated federal, state, or local agencies by their respective management officials.
- C. In the event of an early closing of a facility, employees will be notified as promptly as possible after the decision is made that they may leave work at no charge to the employee's personal leave account or loss of pay. The early dismissal will have no effect on the leave or pay of employees not in duty status when the dismissal became effective.
- D. It is recognized that Management is not required to, but may, grant administrative leave pursuant to this Section if an employee residing outside the commuting area is precluded from reaching work when those residing within the commuting area are able to reach work. This will be fairly applied on a case by case basis.

## **Section 11. Religious Leave**

It is agreed that every effort will be given to accommodating the employee in meeting their religious commitments in attending various tribal or secular ceremonies by allowing the flexibility in granting appropriate leave (which may also include a combination of various types of leave). Advance collaboration between the employee and his/her supervisor will be required in order to address workload requirements. An employee may also request the opportunity to perform compensatory overtime work for the purpose of taking compensatory time off.

## **Article 18**

### **Merit Promotion and Non- Competitive Promotions**

**Applies Only to Title 5 Employees**

#### **Section 1. General**

The purpose and intent of this Article is to ensure that employees are given full and fair consideration for advancement and to ensure selection from among the best-qualified candidates. All positions shall be subject to Indian Preference in accordance with United States District Court for the District of Columbia Civil No. 04-01215 dated December 12, 2008. Actions under a promotion plan, whether in identification, qualification, evaluation, or selection of candidates or any other phase of the promotion process, shall be made without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying physical disability, sexual orientation, or age, and shall not be based on any criteria that are not job-related, including favoritism based on personal relationship, patronage, or nepotism.

#### **Section 2. Application of Competitive Procedures**

A. Competitive procedures apply to the following actions:

- (1) Permanent promotion to a higher-graded position or to a position with a higher full performance level than previously held on a permanent basis in the competitive service.
- (2) Temporary promotions for more than 120 calendar days or details for more than 120 calendar days to a higher-graded position or to a position with greater promotion potential than previously held on a permanent basis in the competitive service.
- (3) Selection for training which is part of an authorized training agreement required before an employee may be considered for promotion.
- (4) Reassignment, transfer or change to a lower-graded position with promotion potential greater than any position held on a permanent basis in the competitive service.
- (5) Reinstatement to a permanent or temporary position at a higher grade with a higher full performance level than any position previously held on a permanent basis in the competitive service.
- (6) Promotions due to the addition of substantive, new and higher-graded duties when the new position is not a clear successor to the old position or there are other employees serving in similar or identical positions within the organizational unit to whom the new duties could have been assigned.

B. Competitive procedures do not apply to the following actions:

- (1) Upgrading of a position resulting from the correction of an initial classification error.
- (2) A promotion resulting from an employee's position being classified at a higher grade (with no further promotion potential) because of additional duties and responsibilities, commonly referred to as accretion of duties. The noncompetitive upgrade requires the employee to continue to perform the same basic function in the new position that is a clear successor to and absorbs the duties of the old position. In addition, there are no other employees within the organizational unit to whom the additional duties and responsibilities could have been assigned.
- (3) Actions taken under Reduction in Force.
- (4) Promotions without current competition when the employee competed earlier for an assignment intended to prepare the employee for the position being filled, and the intent was made a matter of record and made known to all potential candidates. These are commonly referred to as career ladder promotions.
- (5) Re-promotion, permanent or temporary, to a grade previously held on a permanent basis in the competitive service.
- (6) Promotion, reassignment, transfer, change to lower grade or reinstatement of an employee from a position with known promotion potential to another position having no higher promotion potential than any other position previously held on a permanent basis in the competitive service.
- (7) Promotion to a position with a representative pay rate equal to or lower than that of any position previously held on a permanent basis in the competitive service.
- (8) Details to higher-graded positions or temporary promotions not to exceed 120 calendar days.
- (9) Details made in 120 calendar day increments up to one year to unclassified duties.
- (10) Details made in 120 calendar day increments to the same grade or lower-graded positions
- (11) Time-limited promotions made permanent when such a possibility was publicized in the original competition notice.
- (12) Selection of a candidate not given proper consideration in a previous competitive promotion action.

### **Section 3. Locating Candidates and Publicizing Vacancies**

- A. Candidates shall be located through advertising. No position in the bargaining unit, except those specifically excepted herein from Merit staffing competition, will be filled except as a result of the advertising for the particular vacancy or vacancies. In addition to applying for advertised vacancies, any employee may make advance application by applying as described below.
- B. Employees may submit an application to a Human Resource Office having an Applicant Supply File. Applications for positions listed under the Applicant Supply File will be kept for one year; others will be returned.

### **Section 4. Basic Eligibility**

Each bargaining unit employee who files an application shall, upon request, be given notice in writing by the Human Resources Office as to whether or not they meet the qualifications for the position.

### **Section 5. Candidates**

Qualitative, job-related distinctions must be made among promotion and other competitive eligibles in terms of relative merit and ability and documented through the use of a crediting plan or other rating methodology. Consideration will be given to performance appraisals and incentive awards. The validity and propriety of selective and/or ranking factors must be clearly reflected and supported by a current position description of the job for which they are used.

### **Section 6. Selection**

Selecting Officials must ensure that all bargaining unit candidates are treated fairly and equitably. All candidates will receive notification of their selection/non-selection for the position.

### **Section 7. Career Ladder Promotions**

All employees in career ladder positions will be promoted effective the first pay period after having met the minimum qualification requirements for promotion to the next higher grade in the career ladder, when they have demonstrated the ability to perform at the higher grade and when a "Request for Personnel Act" has been properly authorized.

### **Section 8. Temporary Promotions**

Management will temporarily promote a qualified employee who is assigned to perform the duties of a higher graded position for twenty-one (21) consecutive work days or more. This does not apply to employees properly detailed to higher graded duties. An employee's assignment to the higher graded position will not be interrupted solely to deprive the employee of eligibility for the temporary promotion, nor shall the assignment of such higher graded duties be rotated among employees solely to avoid placing a single employee in the position for ten (10) consecutive work days if the duties need to be performed for a period of ten work days or more. This shall not preclude rotating such temporary

promotions among employees when the higher graded duties need to be performed for two (2) pay periods or more.

## **Article 19**

### **Awards Program**

#### **Section 1. Purpose**

The parties agree that substantial benefits will occur through energetic sponsorship and maintenance of award programs. The parties agree that consideration will be given in award programs for contributions made in safety, civil rights, productivity, efficiency, community service, EEO, as well as, other appropriate aspects of Federal Service. The program shall be administered in accordance with appropriate law, rule and regulation including P.L. 95-561, P.L. 101-335 and Department of the Interior Awards and Recognition Program directives and guidelines. Management will grant awards in a fair, equitable, consistent and objective manner.

- A. Establish National Committee which will include at least one Union appointed representative. This committee will serve in an advisory capacity to the Assistant Secretary – Indian Affairs Deputy Assistant Secretary-Management (AS-IA DASM) and the Office of the Special Trustee for American Indians, Special Trustee for American Indians.
- B. Awards, composition of awards committees, listings of recipients, dollar values and basis of awards for bargaining unit members will be provided to the Union’s headquarters. The report will be due January following the end of each performance cycle, and quarterly thereafter.
- C. When monetary awards are not feasible, non-monetary awards such as time-off awards should be considered.

#### **Section 2. Publicity of Criteria and Results**

At least annually, the National Awards Committee will:

- A. Orient all employees on the award program procedures and nomination process.
- B. Publicize the awards and recognition given to employees or groups in an appropriate manner.

#### **Section 3. General**

As a means to reward an employee whose performance exceeds expectations and as an incentive for all eligible employees who meet established criteria, Management agrees to encourage the use of quality step increases, cash awards and non-monetary awards. Supervisors will be expected to monitor employees’ performance with this objective in mind. Approved awards will be processed in a timely manner.

## Article 20

### Position Descriptions

#### Section 1. Position Descriptions

The Position Description, commonly referred to as the PD, briefly describes the key or major duties and responsibilities of a position or a number of positions. The primary use of the PD is for classification and pay purposes. However, a PD also serves as the basis for preparing an employee's performance plan/objectives, preparing a formal training plan, or reviewing and evaluating employee's current or prior work experience. Since a supervisor determines work assignments for the employee he/she supervises, it follows that the supervisor should have responsibility for ensuring that job descriptions accurately describe the duties and responsibilities required and performed. The assignment of duties to employees is not limited to the content of the position description. However, supervisors will avoid assigning employees incidental duties that are inappropriate to their positions and qualifications. Each employee is entitled to an accurate position description that clearly reflects the employee's duties, title, series, and grade. The position description will be reviewed annually.

#### Section 2. Change to Position Description

A position description is an item of record that should be clearly understood by the employee when he/she is hired into a position. If an employee is assigned to special or new duties on a recurring or regular basis, Management agrees to amend the employee's existing position description.

#### Section 3. Classification Appeal Options

- A. If an employee believes his or her position description does not accurately describe the work being performed, the employee is strongly encouraged to discuss this with the supervisor. Since the supervisor certifies the accuracy of the position description, the supervisor should be able to give an explanation of its contents.
- B. An employee may appeal the pay plan, occupational series, grade, and sometimes, the title of his or her position through the following options:

(1) General Schedule (GS):

- a. Employees may appeal at any time with the bureau/office or directly to the Department (DOI). When an employee receives an appeal decision from either the bureau/office or Department, the right of appeal within Interior is exhausted. If dissatisfied with the bureau/office or Department decision, the employee may file a subsequent appeal to the Office of Personnel Management (OPM). This option affords the maximum number of reviews.
- b. An employee may file an appeal with OPM through either the bureau/office or the Department. The administrative level to which the employee files an appeal has



sixty (60) calendar days in which to provide the employee with a written decision. If the decision is favorable and the bureau/office or Department has the authority to classify the position, the necessary personnel action may be taken and the appeal closed. If the decision is unfavorable, the bureau/office or Department must forward the appeal along with the written decision to OPM for adjudication.

- c. An employee may file an appeal directly with the appropriate Regional Office of OPM. If the employee appeals directly to OPM, he/she may not later appeal to the bureau/office or the Department since OPM decisions are final.

(2) Federal Wage System:

- a. Employees must first appeal to the bureau/office or the Department. If the employee is dissatisfied with the bureau/office or Department's decision, the employee may then appeal to OPM. The employee's appeal must be filed within time frames specified by OPM (refer to [www.opm.gov](http://www.opm.gov) for details).

## Article 21

### Performance Standards and Evaluation

<b>Applies to both Title 5 and Contract Education Employees</b>
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#### Section 1. General

Management's performance management and appraisal system shall comply with the requirements and definitions of 5 USC Chapter 43; regulations of the Department of the Interior; and, the provisions of this collective bargaining agreement. Any future changes in the regulations may require additional negotiations.

#### Section 2. Performance Plan

The performance plan for each employee will be developed in accordance with regulations of the Department of the Interior (DOI). At the beginning of each rating period, the rating official is required to provide an opportunity for employee input. The final decision regarding critical elements and standards always rests with the management official. The performance plan will include no less than one critical element and no more than five critical elements. These critical elements and the associated performance standards should be strategically linked, results focused, measurable, understandable, verifiable, equitable, achievable, and provide for meaningful distinctions between levels of performance.

#### Section 3. Monitoring/Progress Reviews

During the rating period, the rating official will conduct at least one formal progress review at approximately mid-way through the rating cycle. While only one progress review is required, additional meetings may be requested to discuss the employee's performance. It is of paramount importance to establish frequent and meaningful progress review sessions between the employee and the rating official. When inadequate or marginal performance predates any performance review by a rating official and that performance issue may result in a subsequent action being taken by that official (such as a performance improvement plan, proposed removal, or contract non-renewal), the rating official will advise the employee of the noted deficiencies that he/she is aware of at that point in time.

#### Section 4. Rating

- A. To be eligible for a rating of record, an employee must be under established standards for a minimum of ninety (90) calendar days. Management shall evaluate and appraise employees under their supervision in accordance with the following:
  - (1) Rating officials should compile performance data from various sources to include the employee's account of his/her accomplishments, customer feedback, and other documentation. Rating officials may use the Supplemental Employee Performance

Folder (SEPF) for written descriptions of specific employee performance, positive and negative, observed by the supervisor and related to the employee's critical and required performance results. Whenever the supervisor places such a description in the folder, the employee must be informed that the entry is being made and must be given an opportunity to comment thereon. Nothing should be placed in SEPF without employee seeing and initialing it.

- (2) The rating assigned will reflect the level of the employee's performance as compared to the standards established. If the employee does not have an opportunity to perform a critical element during the rating period, no rating will be assigned and the words "Not Rated" should be written on the appraisal for that element. Where Management authorizes and approves the use of official time, pursuant to Article 3 for Union representation activities, such time will not be considered as a negative factor in evaluating the employee's performance. Management will consider work-related factors beyond the control of the employee that may have impacted attainment of written elements and standards. The responsibility for bringing these to the supervisor's attention rests with the employee. When Management determines that training is required as the result of the assignment of new tasks, such training will be provided.
- (3) Upon written request by the employee, documentation used in an employee appraisal shall be provided to the employee at the time of the appraisal by the supervisor. The employee has a right to review their SEPF upon written request.
- (4) A bargaining unit employee may request reconsideration of a negative summary performance rating issued by the immediate supervisor in accordance with current DOI policy as captured in the DOI Performance Appraisal Handbook [www.doi.gov](http://www.doi.gov).
- (5) Management will not require employees to back date planning session records or performance appraisals.

B. The rating period for employees in the Bureau of Indian Education is from July 1 through June 30. The rating period for all other employees is from October 1 through September 30.

### **Section 5. Performance Improvement Plan (PIP)**

- A. If at any time during the rating cycle the supervisor determines an employee's performance is unsatisfactory in one or more critical elements, the employee must be placed on a written PIP to assist in improving the performance to at least the Minimally Successful level. A PIP includes:
- (1) Identification of the critical element(s) where the employee is working at the unsatisfactory level;
  - (2) Clarification and greater specificity regarding performance expectations, if necessary;
  - (3) Minimally Successful level of performance required;

- (4) Needed action(s) to obtain minimally successful level of performance;
  - (5) Provisions for counseling, training, or other appropriate assistance, if any; and
  - (6) Warning concerning the consequences of continued performance below the Minimally Successful (“acceptable”) level.
- B. The goal of a PIP is to give the employee an opportunity of at least thirty (30) calendar days to demonstrate acceptable (Minimally Successful) performance in all critical elements. For Contract Education employees, the opportunity to improve will occur while the employee is in a duty status.
  - C. If, at any time, the supervisor determines the employee has demonstrated acceptable performance the PIP may be terminated. The employee will be notified, in writing that the PIP has been terminated and he or she has been evaluated as at least Minimally Successful in the critical element.
  - D. If the employee is demonstrating some improvement but has not yet achieved acceptable performance, the PIP may be extended for additional thirty (30) or more calendar days. Contract Education Employees may be given no more than one (1) contract term to raise the summary rating to Minimally Successful. A second consecutive rating of Unsuccessful shall result in removal or non-renewal of the Contract Education employee. Removal of non-probationary employees for inadequate performance under 5 CFR 432 shall not occur unless a PIP has been implemented.
  - E. Failure of the employee to correct performance deficiencies during the PIP will result in the employee receiving an Unsuccessful Rating. Demotion, removal, or contract non-renewal of the employee, whichever is appropriate, will be taken. Non-renewal of non-probationary Contract Education employees is subject to Management appeal process pursuant to Article 30 Section 4.
  - F. The employee may appeal to either the Merit Systems Protection Board (MSPB) in accordance with applicable law or file a grievance under the negotiated grievance procedure. Contract Education employees may not appeal to MSPB but may only file a grievance under the negotiated grievance procedure.

## **Section 6. Group Sessions and Training**

When local training on the Bureaus’/Offices’ performance appraisal system is provided to managers and/or supervisors, bargaining unit employees and employees of the Union may be given the opportunity to attend.

## **Article 22**

### **Actions Based on Unacceptable Performance**

#### **Section 1. Conditions for Removal or Reduction in Grade**

An employee may be reduced in grade, contract non-renewed, or removed for unacceptable performance as follows: When an employee is performing at an unacceptable level, the employee will be notified, in writing, of the unacceptable performance, what action must be taken to improve the performance to an acceptable level, and the assistance that will be provided by Management. The employee will be given at least thirty (30) calendar days in which to bring the performance up to an acceptable (Minimally Successful) level. At the end of the above period, a written appraisal of the employee's performance will be issued. If the performance has not improved to an acceptable level, Management will give the employee a thirty (30) calendar day advance written notice of the proposed action. The employee will have ten (10) calendar days within which to respond to the proposed action. The proposed action will identify:

- A. Specific instances of unacceptable performance by the employee on which the proposed action is based; and
- B. Critical elements of the employee's position involved in each instance of unacceptable performance.

#### **Section 2. Final Decision**

The final decision will be made, or concurred in, by an official in a higher position than the official who proposed the action.

#### **Section 3. Appeal Options**

Any decision letter to an employee stating that action under Section 1 of this Article will be taken, will inform the employee of his/her option to appeal the action to the MSPB or through the negotiated grievance procedure, but not both. Contract education employees can only appeal through the negotiated grievance procedure.

## **Article 23**

### **Discipline and Adverse Actions**

#### **Section 1. General**

The purpose of discipline is to correct the offending employee's behavior and maintain discipline and morale among other employees. Accordingly, it is the policy of Management that after determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. However, management retains the right to take disciplinary action as it deems appropriate and on a case-by-case basis. A minor disciplinary action is a reprimand or a suspension of 14 days or less. An adverse action is a removal, suspension of more than 14 days, or reduction in grade or pay (not at the employee's request). A furlough of 30 days or less (for a permanent full-time employee when furlough is not a condition of employment) also constitutes an "adverse action" but furloughs are taken for programmatic reasons, and not for cause. In determining the penalty, Management should consider such factors as the nature of the offense, the employee's past disciplinary record, the nature of the position, and any aggravating/mitigating or unusual circumstances. Discipline and adverse action must be consistent with applicable laws and regulations and will be taken only for just cause. Letters of Reprimand shall not remain in the Official Personnel Folder (OPF) for longer than twelve (12) months, however, the letter may be removed at an earlier date at Management's discretion. It is agreed that no employee who enrolls and participates in good faith in the Employee Assistance Program (EAP) will be subject to disciplinary action based on the employee's participation in EAP. Management shall consider, as appropriate, the employee's participation in EAP in mitigation of any disciplinary action resulting from conduct related to the employee's problem. At the point Management becomes aware or should have reasonably been aware of a disciplinary action, a proposal should occur within a reasonable period of time from the date Management became or should have reasonably become aware of the facts forming the basis for the disciplinary action.

#### **Section 2. Representation**

An employee is entitled to Union representation at any examination by the employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against him or her, and the employee requests representation. Prior to issuing a notice of proposed disciplinary action, or a notice of proposed adverse action, the manager issuing the letter or notice, or his/her designee, may undertake an appropriate inquiry, which should normally include discussion with the employee, in accordance with all applicable laws and regulations.

#### **Section 3. Notice**

The Supervisor/Manager agrees to give a thirty (30) calendar day notice of a proposed disciplinary/adverse action to the employee and will furnish the employee a second copy of the proposal letter which the employee may provide to their representative, except for a letter of reprimand (which requires no notice). This notice will be in writing and will include:

- A. Description of the specific incident(s) on which the proposed action is based;
- B. The name of the management official who will receive the employee's oral and/or written response;
- C. That employees will normally receive up to a total of eight (8) hours of official time to prepare an answer to the proposal;
- D. The right to review all evidence used to support the charge(s);
- E. The right of the employee, or the representative designated by the employee, to request an extension of the time to respond; and

**Section 4. Action by the Deciding Official**

- A. After considering the evidence, the employee's response, if any, the Douglas Factors or other aggravating/mitigating factors, the Management official shall take an appropriate action such as:
  - (1) Withdraw the proposed action;
  - (2) Institute a lesser action;
  - (3) Institute the proposed action;
  - (4) Stay the action; or
  - (5) Settle.
- B. Absent any extenuating circumstances, Management will issue the decision no later than sixty (60) calendar days from the date the employee's final reply is received. If a reply is not provided by the employee, the decision will be issued no later than ninety (90) calendar days from the end of the reply period. This decision will be in writing, and, in (2) and (3) above, will include the employee's right to file a grievance under the negotiated grievance procedure for a disciplinary action or in the case of an adverse action under 5 USC 7512, to file an appeal to the Merit Systems Protection Board or a grievance under the negotiated grievance procedure, but not both. The decision will include the name and work phone number of the designated local Union official when such information has been furnished to the appropriate Human Resources Office or the name and work phone number of the Union's national office or staff representative assigned to the area.
- C. In adverse actions, the decision will inform the employee that they will have exercised their option to raise the matter under one procedure or the other at the time the employee files a timely grievance or files a notice of appeal under applicable MSPB procedures. In addition to issuing the employee one copy of the letter, Management will furnish a second copy of the letter to the

employee which the employee may provide to his/her representative. In no case will the effective date of an adverse action be sooner than thirty (30) days from the date of the proposal.

### **Section 5. Crime Provision and Indefinite Suspension**

- A. Crime Provision: If the Bureau has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, the required thirty (30) day advance written notice period before imposition of an adverse action may be shortened.
- B. Indefinite Suspension: Management may impose an indefinite suspension for the reason noted in paragraph 5.A. above. The reasonable cause requirement may be satisfied by such things as an indictment (or a similar judicial finding) or a separate investigation. Management may initiate/continue an indefinite suspension under the following, but not limited to, circumstances:
  - (1) When the Bureau/Office is contemplating further action and has advised the employee of the possibility of further action;
  - (2) When the Bureau/Office takes final action within a reasonable period after the resolution of criminal charges.
- C. The indefinite suspension is grievable or appealable to MSPB.



## Article 24

### Alternative Dispute Resolution (ADR)

**Important Note:** The intent of this article is to discuss the option of using Alternative Dispute Resolution under the Department of the Interior Conflict Resolution Plus (COREPLUS) Program to resolve grievances filed under the negotiated grievance procedures described in Article 25 of this collective bargaining agreement. Time frames discussed in Article 25 for filing a grievance must still be met. Grievances submitted under COREPLUS that are outside the time frames of the grievance procedure will be considered not timely, but will be accepted by the COREPLUS to attempt resolution of the issue. Also note that COREPLUS does **NOT** replace any legal or administrative avenues of redress available to employees or provide any extension of time frames in which to seek redress under any formal administrative processes unless otherwise provided for within a specific administrative process such as (but not limited to) Equal Employment Opportunity (EEO) complaint process or Merit Systems Protection Board Appeals.

#### Section 1. Overview

- A. The parties agree that employees may utilize the Department of the Interior's alternative dispute resolution process, Conflict Resolution Plus (COREPLUS). The parties agree to follow the procedures established in Part 370 Chapter 770 of the Departmental Manual (370 DM 770).
- B. Employees may elect to be represented in the COREPLUS process. Provisions for official time for the COREPLUS process are in accordance with the basic agreement between the parties.
- C. Grievances submitted under COREPLUS that are outside the time frames of the grievance procedure will be considered not timely, but will be accepted by the COREPLUS to attempt resolution of the issues.
- D. In the event the employee chooses COREPLUS, the time frames established for the handling of a timely filed grievance by the grievance procedure described in Article 25 are extended to either the issuance of a Notice of Results and Options or written notice by the employee or his/her representative that he/she no longer elects to utilize COREPLUS.

#### Section 2. Grievance Mediation

- A. The parties agree the Department of the Interior's alternative dispute resolution process, Conflict Resolution (COREPLUS), may serve as an early intervention alternative to the traditional dispute process. The purpose of the COREPLUS program is to provide a fair, equitable and effective means for resolving workplace disputes at the earliest opportunity, at the lowest organizational level, and to the mutual satisfaction of the parties.

- B. The parties agree that grievance mediation may be an effective method of resolving grievances efficiently and economically by using the services of an objective third party to help the parties gain mutually acceptable grievance resolutions. Either a mutually agreed to mediator or a Federal Mediation and Conciliation Service (FMCS) Commissioner will act as a mediator in grievance procedures. The parties agree to the following as governing procedures for the grievance mediation process.
- C. Grievance mediation may occur in each grievance step providing:
- (1) Either party requests mediation in writing; and
  - (2) The other party agrees to mediation, although pursuant to 370 DM 770, it is understood that a supervisor will participate in mediation if requested by the employee(s).
- D. Coverage:
- (1) All matters subject to the negotiated grievance procedure are appropriate for inclusion in the grievance mediation process.
  - (2) In the case of disciplinary action, grievance mediation may be invoked as an intermediary step between the decision of the deciding official and before arbitration, if arbitration has been invoked.
- E. Requesting Mediation: While the mediator shall have no authority to impose a resolution on the grievance, either or both parties may request that the mediator suggest a resolution or offer a recommendation to the parties. The mediator will have the authority to meet separately with either or both parties.
- F. Proceedings:
- (1) The grievant or his/her representative will request mediation in writing.
  - (2) Proceedings before the mediator will be informal. Rules of evidence shall not apply. No record of the meetings shall be made.
  - (3) The parties may be represented by the representative(s) of their choice.
  - (4) Those employees and supervisors who were successful and reached a resolution of the grievance will develop a written settlement agreement.
  - (5) An employee who agrees to utilize mediation does not waive his/her right to continue to process the grievance once the mediation phase is completed.
- G. Termination of Mediation:

- (1) Either party may terminate the mediation at any time during the process.
- (2) Employees and supervisor cannot be forced to reach agreement. If the employee is not satisfied with the mediation results, he/she may proceed with the next step of the grievance procedure.
- (3) Any materials presented to the mediator shall be returned to the party presenting the materials at the termination of the mediation conference.

## Article 25

### Grievance Procedure

#### Section 1. Purpose

The negotiated grievance procedure (NGP) provides a mutually acceptable method for prompt and equitable resolution of grievances for bargaining unit employees. It is the intent of the Parties to resolve grievances informally at the earliest possible time and at the lowest possible level. This negotiated procedure shall be the sole and exclusive administrative procedure available to employees for settlement of grievances.

#### Section 2. Definition

A. Grievance means any complaint:

- (1) By any bargaining unit employee concerning any matter relating to their employment; or
- (2) By the Union concerning any matter relating to the employment of any bargaining unit employee; or
- (3) By any bargaining unit employee, the Union, or Management concerning:
  - a. The effect or interpretation or a claim of breach of this Agreement; or
  - b. Any claimed violation, misinterpretation of any law, rule or regulation affecting conditions of employment.

#### Section 3. Exclusions

The following matters are excluded from coverage under the grievance procedure and will be rejected if grieved. However, questions concerning application of procedures may be addressed by the Union representative to the Bureau Labor Relations Officer or designee.

- A. Matters relating to prohibited political activities (5 USC, Section 7321);
- B. Retirement, life insurance, or health insurance;
- C. Examination, certification or appointment;
- D. Non-selection for promotion from lists of properly ranked and certified candidates;
- E. Non-selection for detail;
- F. Furloughs of employees under appointments subject to furlough;

- G. Termination of a Temporary Promotion;
- H. Termination or Expiration of Temporary Appointments;
- I. Expiration of Time-limited Appointments;
- J. Termination During Probationary Period;
- K. Classification of any position that does not result in the reduction in grade or pay of an employee;
- L. Counseling with a proper oral warning between a supervisor and an employee;
- M. Proposal of disciplinary, adverse, or performance related actions;
- N. Suspension or Removal for National Security purposes (5 USC, Section 7532);
- O. Removal for failure to pass background investigation based on suitability (e.g., PL 101-630);
- P. Periodic discussions of performance between the supervisor and employee during the appraisal period;
- Q. Content of written policies and regulations of OPM, DOI, AS-IA, BIA, BIE, and OST;
- R. Non-adoption of a Suggestion; disapprovals of Quality Step Salary Increases, Performance Awards, or other Discretionary or Honorary Awards.

#### **Section 4. Other Applicable Procedures**

As provided for in 5 USC Section 7121, the following actions may be filed either under the statutory procedure or under the NGP but not both:

- A. Actions based on unsatisfactory performance (5 USC Section 4303);
- B. Adverse Actions (5 USC Section 7512), and/or
- C. Discrimination (5 USC Section 2302(b)(1)).
  - (1) The employee shall have the option of choosing a procedure. Filing constitutes a final decision of the employee's choice.
  - (2) Nothing in this Agreement shall constitute a waiver of any further appeal or review rights permissible under 5 USC Chapter 71 in accordance with this agreement. Only Title 5

employees can appeal adverse actions or unsatisfactory performance based actions to the Merit Systems Protection Board (MSPB).

- (3) If the employee files with the MSPB, Equal Employment Opportunity Commission (EEOC), or under the NGP, the respective procedure will be used.

### **Section 5. Representation**

Any Employee desiring representation under the negotiated grievance procedure at any step may have only Union representation or someone appointed by the Union. An employee may personally present a grievance and have it resolved without representation by the Union provided the Union is at all discussions between Management and the employee in the grievance process and resolutions.

### **Section 6. Resolution**

Most grievances arise from misunderstandings or disputes that can be resolved promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employee and their immediate supervisor, or the Management Official who has the authority to resolve the matter, are encouraged to meet to discuss any cause of dissatisfaction in an effort to resolve the matter prior to raising the issue as a grievance. The Union is also encouraged to have discussions with Management in an effort to resolve matters prior to filing a grievance in the matter.

### **Section 7. Procedure**

- A. Time Frame. Unless it is continuing in nature, the grievance must be received (date stamped) within fifteen (15) work days of the incident or personnel action giving rise to the grievance or within fifteen (15) work days after the date that the grievant could reasonably be expected to be aware of the incident or personnel action. A continuing violation is an exception to the general rule for grievance filing time limits. For example, where the Union or an employee asserts that an alleged violation has occurred on a continuing basis, a grievance filed within fifteen (15) work days of a discrete event would be considered timely filed. This exception would exist when neither the Union, nor the employee, nor Management was aware or may reasonably have been expected to be aware of the facts or assertions giving rise to the grievance.
- B. Format: Grievance Form (Appendix E) must be completed and must contain the following:
  - (1) Employee's Name/Union
  - (2) Office, School, or Agency location;
  - (3) Telephone number;
  - (4) Date of the alleged incident or personnel action
  - (5) Description of the facts of the grievance

- (6) Provision of the agreement allegedly violated (if any and how)
- (7) Relief sought by employee
- (8) Issues to be addressed throughout the grievance process (no additional issues may be added later in the grievance process)
- (9) Employee signature(s) or Union representative's signature, and date.

C. Missing Information: A grievance missing any of the abovementioned information will be returned to the Employee/Union who will have five (5) work days from the date received to furnish the additional information and return it to Management. Failure to meet time limits will automatically cancel the grievance.

### **Section 8. Exchange of Information**

- A. The parties have an obligation to share information which is relevant and necessary to the issues raised within the scope of the grievance, to the extent that it is available to the parties at that time and its disclosure is not otherwise precluded by statute or regulation in effect at the time of the signing of this collective bargaining agreement. Information should normally be exchanged prior to a grievance meeting being held or a decision being rendered on the grievance. This information should be promptly provided to the opposing party, and when practicable, at least two (2) full work days prior to a grievance meeting.
- B. The parties may agree, in writing, to extend the time frame for responding to, or otherwise processing, a grievance, if the circumstances warrant such agreement.

### **Section 9. Step 1 Grievances**

- A. Workplace Grievances. A formal grievance over a workplace issue shall be filed with the immediate supervisor.
- B. Disciplinary Grievances (letters of warning, reprimands, suspensions of 14 calendar days or less). A formal grievance over a disciplinary action, shall be filed with the next level supervisor or with the lowest level management official with the authority to resolve the issue. The grievance will proceed through the chain of command no further than the official that has both proposing and deciding authority on disciplinary matters. If the identity of this official is unknown to the employee, he/she may file the grievance with his/her supervisor or with the deciding official, who shall promptly forward it to the appropriate Management official.
- C. Adverse Actions (suspensions more than 14 calendar days, reduction in grade or pay, removals, or furlough of 30 days or less). The grievance over an adverse action will be filed with the supervisor of the deciding official, unless the deciding official has final authority for adverse actions in their organization. In that instance, the grievance will be filed with the deciding

official. If the decision is upheld, the Employee/Union will be notified within ten (10) work days of the decision, at which time they may invoke arbitration.

- D. Group or Class Grievance: The Union may file a single grievance under this procedure on behalf of any number of employees who have similar claims. Several grievances filed by different employees over an identical matter, filed at one or more offices shall be combined and treated as a single grievance upon request of the Union.

### **Section 10. Response to Step 1**

- A. Management shall issue a final written response to the Employee/Union and Union representative (if designated) within ten (10) work days from receipt of the Step 1 grievance. The written response shall include:
  - (1) Rationale for the decision made;
  - (2) Name, Title, Address, and Telephone Number of the Management Official for the Step 2 grievance.
- B. Either party may request a meeting or appropriate conference call be held on the matter. If the grievant does not receive an answer within the designated time limit for responding to the Step 1 grievance, it may be elevated by the Employee/Union or Union representative to Step 2.

### **Section 11. Step 2 Grievances**

If the grievant does not accept the written decision, a Step 2 grievance may be filed within ten (10) work days of receipt of the written decision to the next level supervisor.

### **Section 12. Response to Step 2**

- A. Management shall issue a final written response to the Employee/Union or Union representative (if designated) within ten (10) work days from receipt of the Step 2 grievance. The written response shall include:
  - (1) Rationale for the decision made;
  - (2) Name, Title, Address, and Telephone Number of the Management Official for the Step 3 grievance.
- B. Either Party may request a meeting or appropriate conference call be held on the matter. If the grievant does not receive an answer within the designated time limit for responding to the Step 2 grievance, it may be elevated by the Employee/Union or Union representative to Step 3.



### **Section 13. Step 3 Grievances**

If the grievant does not accept the written decision at Step 2, a Step 3 grievance may be filed within ten (10) work days of receipt of the written decision with the next level supervisor, as appropriate or as designated. The grievance will proceed through the chain of command no further than the official that has both proposing and deciding authority on disciplinary matters. Either Party may request a meeting or conference call be held to discuss the grievance.

### **Section 14. Response to Step 3**

Management must render a written decision within ten (10) work days from receipt of the Step 3 grievance. The decision will include the Union's right to request Arbitration. (See Article 26, Section 5, Invoking Arbitration)

### **Section 15. Expedited Grievance Procedure**

Parties may mutually agree on a case-by-case basis to waive any step of the grievance procedure.

### **Section 16. Management Grievances**

Management may file grievances against the Union within fifteen (15) work days of the incident or the date Management could be expected to be aware of the matter. Management shall bring the matter to the attention of the Union President or designee, who shall render a decision in writing within ten (10) work days.

### **Section 17. Union Grievances**

- A. A union grievance is a grievance as defined in Section 2.A. of this article, i.e., any allegation by the Union concerning any matter related to the employment of any bargaining unit employee, group of employees, or the Union, concerning the effect, interpretation of, or a claimed breach of, this Agreement; or any claimed violation or misinterpretation of, any law, rule or regulation effecting conditions of employment of bargaining unit employees, in which the Union is the Grievant although the allegation of a violation may impact the working conditions of one or more bargaining unit employee(s).
- B. Union grievances which involve a matter that has arisen solely in one of the four Bureaus/Offices in the unit (BIA, BIE, OST, or AS-IA) shall be filed by the Union's President or designee with the respective office director: Director of the BIA, Director of the BIE, the Special Trustee, or the Assistant Secretary. Union grievances which involve a matter that has arisen in more than one of these organizations shall be filed with the senior management official deemed appropriate as captured in official AS-IA, BIA, BIE, or OST organizational charts normally found in the 100 series of the Departmental Manual. Unless they are continuing in nature, Union grievances shall be filed within fifteen (15) work days of the incident or the date the Union could reasonably be expected to be aware of the matter. Management shall render a decision in writing within ten (10) work days.

### **Section 18. Time Limits**

Parties may extend any time limit during any step of the grievance on a case-by-case basis by mutual agreement. Parties will agree to a reasonable extension of the time limits. Failure of the Employee to meet any of the time limits at Step 1 or to request and receive an extension of time shall automatically cancel the grievance, unless mutually agreed otherwise. Failure of Management or the Union to meet time limits or to request and receive an extension of time shall automatically move the grievance to the next step. All time frames in this Article refer to work days, unless specified otherwise.

### **Section 19. Cancellation**

Grievances will be cancelled:

- A. At the Employee's or Union's request;
- B. Upon termination of the Employee's employment with the Agency, unless personal relief to the Employee may be granted after termination of employment;
- C. Upon death of the Employee, unless the grievance involves a question of pay, records, leave or retirement;
- D. When Management has granted the remedy requested;
- E. When the grievance is resolved.

## **Article 26**

### **Arbitration**

#### **Section 1. General**

The purpose of this Article is to provide for the satisfactory settlement of grievances involving the effect or interpretation, or a claim of breach of the collective bargaining agreement, or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. Questions of arbitrability or grievability, which cannot be resolved by the parties, shall be referred to the arbitrator for decision.

#### **Section 2. Grievability/Arbitrability**

When it is determined by an arbitrator that an issue is not grievable or arbitrable, the grievance shall terminate and no ruling on the merits of the case shall take place.

#### **Section 3. Arbitrator's Authority**

The arbitrator shall have no authority to alter, amend, add to or subtract from the negotiated agreement. The arbitrator shall be bound by and must comply with all terms of the agreement.

#### **Section 4. Expedited Arbitration Procedures**

When mutually agreed upon, the parties may utilize an expedited arbitration proceeding as an alternative to a full hearing. Options for such an expedited proceeding are:

- A. A Bench decision whereby the parties waive briefs and/or transcripts. Any such Bench decision need not be lengthy, but must contain the rationale and basis for the award.
- B. Written submissions and arguments from each party, which presents their respective cases, without a hearing.
- C. Hearing by telephone with briefs.
- D. An arbitrator inquiry when a formal hearing would serve no purpose. In this case the arbitrator would make such inquiries, as he/she deemed necessary, e.g., inspecting work sites, taking statements.

#### **Section 5. Invoking Arbitration**

If a decision on a grievance processed under the negotiated grievance procedure is not satisfactory, the President or designee, acting on behalf of the Union, or Management may invoke arbitration by a written memorandum identifying the matters to be submitted, within twenty-one (21) work days of the decision at the last step unless the time limit is extended by mutual agreement of both parties.

## **Section 6. Hearing Site**

An arbitration hearing will normally be held at the site where the grievance originated; however, to reduce costs and in the interests of efficiency, the hearing site may be changed by mutual consent. If mutual consent cannot be reached, the arbitrator may be requested to determine the hearing site.

## **Section 7. Arbitration Panel**

The parties will jointly contact the arbitrators on the list in the order in which they were provided by the Federal Mediation and Conciliation Service (FMCS) to determine availability and willingness to serve on the panel. A negative reply by an arbitrator will result in the parties continuing through the list until an arbitrator is reached who agrees to serve. If the initial list is exhausted without an arbitrator agreeing to serve on the panel, a new list will be obtained from the FMCS and the above noted process will continue until an arbitrator agrees to serve on the panel. Fees for this service shall be equally shared by the parties.

## **Section 8. Notification of Selected Arbitrators**

The arbitrator list shall be jointly managed by the Director, Office of Human Capital Management – Indian Affairs (OHCM-IA) or designee and the Union President or designee. Disputes concerning the arbitrator order should be resolved between these parties prior to an arbitrator being notified of his or her assignment to a specific case. It shall be the responsibility of the party who invokes arbitration, the Union President or designee, to notify the Director, OHCM-IA. The Director, OHCM-IA, shall notify the next arbitrator on the list of his or her assignment to a particular case and a copy of this notice will simultaneously be provided to the Union President or designee. (See sample notification letter in Appendix F). The parties shall promptly notify the opposing party and the arbitrator of the name, phone number, address, and e-mail address of their respective representatives or point of contact. Normally, the notification of the respective representatives will occur within ten (10) work days of the notice being provided to the arbitrator.

## **Section 9. Exclusive Panel**

The panel will be used for all arbitrations.

## **Section 10. Mediation**

Nothing shall prevent use of the arbitrators for mediation, if mutually agreed by the parties.

## **Section 11. Decisions**

Arbitrators will be requested to render decisions no later than thirty (30) days after the close of the arbitration hearing or no later than thirty (30) days after receipt of post-hearing briefs.

## **Section 12. Visitors**

Visitors and observers will be allowed to attend and observe arbitration proceedings if mutually agreed upon by the parties and the arbitrator.

## **Section 13. Witness Work Schedules**

To allow approved witnesses to participate in arbitrations, employee schedules may be adjusted to allow for travel or conflicts with regular days off, subject to mission and workload requirements. The parties will work to resolve any problems or disputes in this regard well in advance of scheduled arbitration hearings, provided that witnesses have been timely identified. Overtime pay will not be paid to witnesses or any other arbitration participants.

## **Section 14. Scheduling of Arbitration**

The arbitrator will be responsible for scheduling the hearing on a mutually agreeable date. However, the scheduling of a hearing shall not be delayed due to a parties' failure to designate a representative. Nor should the hearing be unreasonably delayed, in which case the arbitrator has the authority to unilaterally determine the hearing date with notice to all parties.

## **Section 15. Withdrawal**

A grievance may be withdrawn in writing by the grieving party at any stage prior to the arbitration hearing. The arbitrator cancellation fees, if any, will be shared equally by the parties, except when a negotiated settlement may apportion costs differently.

## **Section 16. Arbitrator's Fees**

Arbitrator fees and expenses shall be borne equally by the parties. All arbitrator fees, per diem, travel costs, and court reporter fees, and expenses will be equally split. If either party requests a transcript, that party will bear the entire cost of such transcript.

## **Section 17. Witnesses and Representatives**

- A. The parties will pay 100 percent of their own representative(s) and witness fees, travel, per diem, and expenses. The parties will equally share the costs of travel and per diem, as appropriate for any witnesses deemed necessary by the arbitrator.
- B. The Arbitrator, prior to the hearing, will resolve questions raised as to whether a witness is necessary. The Union representative, if an employee of the agency, the grievant(s), and any employee called as a witness whose presence is determined to be necessary, will be excused from duty and authorized official time, if they would otherwise be in duty status, to the extent necessary to participate in and prepare for the official proceedings. Overtime will not be paid to witnesses, representatives, or any other arbitration participants.

- C. The parties will furnish names of any witnesses and representatives, their installation and work location, if not located at site, to the other party at least ten (10) work days in advance of the arbitration. If witnesses are added to the list after the 10-day deadline, the other party will be informed in writing immediately. When witnesses are outside a 200-mile radius, the parties will attempt to obtain testimony without requiring witness travel.

### **Section 18. Attorney's Fees**

Reasonable attorney fees may be awarded, notwithstanding Section 4 of this Article if they could be awarded based upon criteria outlined in 5 USC 7701(g)(l). If the arbitrator determines that payment is warranted in the interest of justice in any case in which a prohibited personnel practice was engaged in by the Agency or where the Agency's action was clearly without merit, such fees may not exceed the salary of the attorney representative for the time actually devoted to the case if the representative is an employee of the Union.

### **Section 19. Exceptions**

- A. Either party may file an exception to an arbitrator's award with the Federal Labor Relations Authority under procedures established by the authority. A copy of any filed exceptions will be provided to the other party at the time of filing; or
- B. Either party may seek judicial review of the arbitrator's decision on matters which could have been appealed to the MSPB within thirty (30) calendar days of the issuance of the decision.
- C. Either party may seek review as outlined above, but in the event a review is filed only on the attorney fees and expenses portion of the award, the remedy shall be effected immediately.

### **Section 20. Back Pay Awards**

Awarding of back pay by an arbitrator will be in accordance with the Back Pay Act.

## **Article 27**

### **Training**

#### **Section 1. Determination**

Although it is expected that personnel are basically qualified to perform their duties as a prerequisite to employment, the Parties recognize the importance of additional training, or retraining, to assure development and career planning for employees and to maintain the competence of the work force.

#### **Section 2. Training Program**

Management is responsible for establishing training programs to improve employee efficiency, to contribute to merit promotion from within the unit, whenever practicable, and to assist employees impacted by a Reduction In Force, reorganization, or transfer of function to obtain placement in another agency. Professional or staff development programs shall be of the highest quality possible as determined by Management and instructed and administered by qualified people in the appropriate work-related matters. In developing such programs, Management agrees to consider the views of the Union.

#### **Section 3. Union Sponsored Training**

Management is encouraged to approve training to enhance job skills for employees. If such training is Union sponsored, the Union will submit a timely request that contains: an agenda/written description of the training or seminar, the dates, and the location of the training. The Union will submit all requests, for informational purposes, to the Human Resources Office at least one (1) month in advance of the scheduled training or conference. Approval of training requests will be based on workload needs, budgetary considerations, and the determination that the Union sponsored training is of mutual benefit to both Management and the Union. Agency funds may or may not be used to pay training or travel expenses associated with any such training.

#### **Section 4. Scheduling**

It shall be a matter of interest and concern for Management and the Union that appropriate courses, seminars, conferences, and meetings be scheduled, whenever possible, during work hours to allow the employees the opportunity to gain information, education, and training. To the extent feasible, education employees shall not schedule such training during the students' instructional time. Mandatory training after normal duty hours shall entitle the employee to compensation.

### **Section 5. Records**

It is the responsibility of Management to document and maintain employee training records. The Union agrees to encourage employees to review the appropriate records to assure that training is accurately recorded.

### **Section 6. Expenses**

Management agrees to extend every reasonable consideration to the reimbursement of expenses incurred by an employee in attendance at work-related courses on his/her own time. An employee desiring to enroll in a non-Government facility shall submit a memorandum of request via the supervisor prior to the registration. Partial or full reimbursement, if approved, shall be in accordance with existing policies and regulations. This Section shall not apply to educational leave as specified in Article 30, Section 7.

### **Section 7. Use of Equipment**

Management may make available academic aids such as desks, calculators, computers, etc, if available on the premises of the activity, to all employees enrolled in approved training courses, at mutually agreeable times during the employee's non-duty hours.

### **Section 8. Self-Development**

The Parties mutually agree to encourage employee self-development.



## **Article 28**

### **Motor Vehicle Operation**

All processes of obtaining or retaining such special licenses shall be on official duty if the employee would otherwise be in duty status. In remote localities, where travel and transportation would be required to complete the licensing or renewal process, management will authorize travel and per diem. All such travel shall be duly authorized in accordance with Agency regulations.

## **Article 29**

### **Law Enforcement**

#### **Section 1. General**

All articles of this contract apply to Law Enforcement Services employees except those articles that pertain exclusively to Education personnel. The parties agree that Community Policing philosophy will be implemented. The mission of the Bureau of Indian Affairs, Office of Law Enforcement Services, is to provide quality law enforcement services to Indian Country by promoting a safe environment through police and community interaction which identifies and resolves community problems and employs innovative, pro-active problem solving strategies based upon community policing philosophy.

#### **Section 2. Purpose**

Law Enforcement employees at all levels have the responsibility to reduce crime in Indian Country through community policing activities such as:

- A. Participate in alcohol and drug abuse prevention and crime prevention activities;
- B. Organize individual communities to develop strategies to combat domestic violence;
- C. Public relations program to generate community involvement with community law enforcement efforts; and
- D. Utilize media to enhance the mission of the Bureau of Indian Affairs through authorized public announcements.

#### **Section 3. Code of Conduct**

Law Enforcement employees at all levels will continually strive to adhere to applicable codes of conduct.

#### **Section 4. Uniforms, Weapons and Safety Equipment**

Management will provide required uniforms, weapons, and safety equipment, as appropriate, for Law Enforcement employees. Union pins may be worn on the uniform.

#### **Section 5. Court Appearances**

Off duty Police Officers required to appear before a court of law in connection with official duties shall be compensated in accordance with applicable laws, rules and regulations.

## **Section 6. Training**

Management will provide a systematic approach to training, such as:

- A. Training commensurate with the employee's official duties as applicable,
- B. Community Policing training,
- C. Stress Management training,
- D. Employee Assistance Program services for employee and family counseling as appropriate.

## **Section 7. Awards**

Management will utilize the DOI incentive awards program in an equitable manner at all levels. Management will reference Article 19 of this agreement for guidance, as appropriate.

## **Section 8. Surveys**

Law Enforcement employees will periodically be surveyed regarding working conditions and issues of concern. This information will be shared with the Union.

## Article 30

### Education Personnel System

**This Article covers Contract Education Employees. Where 62 BIAM 11 and this Agreement conflict, this Agreement will govern.**

#### Section 1. Employment

Contract Education Employees under the authority of P.L. 95-561 are recognized as employees of the Bureau of Indian Education. They will be evaluated, supervised, rewarded, disciplined, compensated, hired and removed by BIE management employees. Where 25 CFR Part 38 and this Agreement conflict, the provisions of this Agreement will govern.

#### Section 2. Employment Contract

- A. There will be a contract between the Bureau of Indian Education and the individual employee hired or converted under P.L. 95-561, as amended. In the event the terms of such contract conflict with the terms of this agreement, this agreement will govern. The contract will show the position title, the beginning and ending dates of the contract of the career seasonal employee, the hourly and contract salary, the number of vacation days, and the number of administratively determined work days.
- B. The number of instructional days in the school year will not be changed without first obtaining a waiver as required in 25 CFR.
- C. When a pre-employment or post-audit review of the qualifications of the employee shows that the employee is not suitable or qualified for the position or salary assigned, the contract may be adjusted or terminated. If an error in pay step or level is found that is no fault of or is done with no knowledge of the employee, and if the employee requests a waiver of overpayment, the Human Resource Officer will recommend to the Bureau's Payroll office that the overpayment be waived. If an error is found that indicates the employee is at a lower level or increment, the correction in pay will be made in the first pay period following the end of the audit. The audit must be completed within 90 days of the appointment.
- D. Where underpayment is found to be solely due to Management administrative error, the employee will be made whole and paid interest on the unpaid amount at the statutory rate.

#### Section 3. Probationary Period

##### A. Probationary Period

- (1) New employees will serve a probationary period of one (1) academic year. An academic year is further defined to be the equivalent of two (2) academic semesters. The following

are examples of the reasons Management may cite to extend an employee's probationary period for an additional academic semester:

a. Performance or conduct related problem

b. Conformance with professional standards

(2) Deficiencies will normally be identified during mid probationary year review. If Management does elect to extend the probationary period, Management must provide a written probationary extension notification within the last thirty (30) calendar days prior to the end of the initial probationary period. If there is a probationary period extension, the extended probationary period will commence the effective date that the normal probationary period would have ended. Management will notify the employee in writing and will provide the employee an opportunity to annotate that he/she has received the notice. Refusal of the employee to acknowledge receipt of the notice does not negate the notice of extension.

(3) Upon request of the employee, a meeting will be held with management to discuss the reasons cited for the extension of the probation as well as to provide guidance.

B. Transfers: An employee who transfers within the duty station will not have to serve another probationary period. An employee who voluntarily transfers within the bargaining unit but outside the duty station, may serve a new probationary period of one academic semester unless the employee transfers to a position whose duties are comparable (e.g., a teacher to a teacher position).

#### **Section 4. Contract Renewal/Non-Renewal**

A. Employees will be notified in writing by management of their employment contract renewal/non-renewal not less than sixty (60) calendar days prior to the end of the contract. Deficiencies will normally be identified during mid-year review, for a non-renewal based on performance when those deficiencies are apparent prior to the review. The employee will be notified in writing of the projected level and step of the next year's contract no later than the last day of the current contract.

B. If non-renewal is for budget or program conditions, the procedures for reduction-in-force will be used. Non-renewal for cause or inadequate performance is grievable if the employee is not serving a probationary period.

(1) An employee whose contract is recommended for non-renewal will be given ten (10) work days to request an informal hearing before the appropriate official to appeal that recommendation. The employee may utilize union representation during this informal hearing. The appropriate Federal official has fifteen (15) work days to render a written decision to the employee. If the recommendation for non-renewal is sustained, the

employee will be given ten (10) work days to request subsequent review by the appropriate Associate Deputy Director of that determination.

- (2) The Union and/or the employee will be given an opportunity to provide all evidence and statements, as applicable, to the Associate Deputy Director either in person, by mail, or both. The associate Deputy Director will review the determination and sustain that decision or overturn it. The employee and/or the Union will be notified of that decision within fifteen (15) work days of the meeting, if requested, or receipt of the information if a meeting was not requested. Failure to render a decision within that timeframe will not overturn the prior determination.

### **Section 5. Temporary Position**

Contract education employees will be moved to the pay level of temporary position within ten (10) work days of assuming the duties of the position, if it is a higher-level position, and the employee is qualified as determined by Management (post audited by Human Resources). The pay will be retroactive to the first day of the position.

### **Section 6. Vacation/Personal Leave**

The use of earned leave and compensatory time shall be considered a right, rather than a privilege, subject to work restrictions and management approval. Leave will be pre-credited to employees who are to be employed more than twenty-four (24) weeks. Following are the types of leave available to contract education employees.

- A. Vacation Leave. Year-long employees earn and are granted vacation leave in accordance with 25 CFR 38 and 62 BIAM 11.62(D).
- B. School Vacation Leave. Contingent upon the school calendar, school-term employees may receive up to 136 hours (17 days) of school vacation. Approval for use of this leave will be administratively determined by management and shall be scheduled when school is not in session. Should work requirements demand that an employee is required to work during school vacation time, compensation shall be received at the base rate of pay or the employee may choose equivalent time off.

<b>NOTE:</b> Teachers, Home living Specialists and Counselors are not eligible for school vacation leave.
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- C. Personal Leave. Personal leave applies only to School Term employees. Full-time employees with appointments receive forty-eight (48) hours of pre-credit personal leave. Full time employees hired with appointments of less than twenty-four (24) weeks will receive twenty-four (24) hours of pre-credit personal leave. Personal leave will be granted at the employee's request subject to Management approval. This leave will not necessarily be limited to non-instructional time. Management will make every attempt to accommodate the employee's request. Reason for denials will be written. Personal leave which has not been used by the end of an employee's contract period (end of school year contract) will be paid to the employee at

75% of the rate of pay which would have been payable to the employee during the last full pay period of that contract. Payment is only made for any personal leave credited to an employee at the beginning of that contract term. Personal leave may not be carried over from one contract term into another.

### **Section 7. Education Leave For Status Quo Education Employees**

Education leave for Status Quo education employees is designed to improve the educational program of the Bureau. It is subject to determination and approval by Management, whenever funding permits. Education employees, listed in 44 BIAM 630, Subchapter 14, may apply for thirty (30) calendar days of education leave after serving one (1) school year or sixty (60) calendar days in alternate school years.

### **Section 8. Sick Leave**

- A. General: Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required. Employees normally shall not be required to furnish a medical certificate to substantiate a request for approval of sick leave unless such sick leave exceeds three (3) consecutive work days. Unscheduled absences are any absences from work that are not requested and approved in advance. Failure to avoid unscheduled absences and maintain a regular schedule may form the basis for disciplinary action and/or contract non-renewal.
- B. Sick Leave is earned by full-time employees at the rate of four (4) hours per pay period while in a pay status. Advanced leave and pre-credit leave is not authorized under the contract education leave system.
- C. Purpose: Sick Leave may be used to:
  - (1) Receive medical, dental, or optical examination or treatments;
  - (2) Address the employee's incapacitation due to physical or mental illness; injury, pregnancy, or childbirth;
  - (3) Provide for the care of a family member as a result of a serious health condition as defined in the regulations promulgated for application of the Family and Medical Leave Act (29 CFR 825) to contract education employees;
  - (4) Address the exposure to a communicable disease;
  - (5) Address the adoption of a child, including any necessary requirements to complete the adoption.
- D. Approval Process: Normally anticipated sick leave should be requested as far in advance as possible. In the event that the employee is compelled to request unanticipated sick leave, he/she should make every effort to notify his/her supervisor as soon as possible, and in no event, later

than one (1) hour from the start of the work day and every day thereafter. If circumstances prohibit immediate communications, as stated above, the employee will report his/her absence as soon as possible and may be required to submit appropriate documentation to substantiate their inability to timely report their absence. Unless the employee is on sick leave restriction, an immediate family member may report the absence.

- (1) Where applicable, teachers and bus drivers should make every effort to notify their supervisor one (1) hour prior to the start of the work day, and in no event, later than one (1) hour from the start of the work day.
  - (2) An appropriate call-in procedure will be established at the local sites to ensure that employees have a clear understanding as to their point of contact, the phone number(s) to call, and the specific manner to notify management of an inability to report for duty.
- E. Medical Restriction: Employees normally shall not be required to furnish a medical certificate to substantiate a request for approval of sick leave unless such sick leave exceeds three (3) consecutive work days. However, should the supervisor have reason to believe that the employee may be abusing sick leave, the employee may be placed under leave restrictions and be advised in writing that a medical certificate will be required for each absence chargeable to sick leave, including any leave type used in lieu of sick leave. After six (6) months the sick leave restriction will expire. Management may reinstate the requirement for cause.
- F. Eligibility: Contract employees earn sick leave. The rate of sick leave earned will be based on the type of contract, i.e. school year, yearlong, part-time permanent, full-time temporary. Intermittent employees do not earn sick leave.
- G. Re-credit of Sick Leave: Sick Leave which remains to the employee's credit at the time of separation or at the end of the contract year will be available for re-credit if the employee returns to a contract education position within three (3) years of separation. Sick leave will not be paid upon separation.
- H. Unused Sick Leave: Employees are not paid for unused sick leave upon separation.
- I. Sick Leave Substitution: Sick Leave may be substituted for Personal Leave *if an employee becomes ill during a pre-approved period of leave.*

### **Section 9. Sick Leave Donor Bank**

- A. Leave sharing will be available for use by Contract Education employees. Sick leave may only be donated and used by Contract Education employees.
- B. Purpose. A Sick Leave Donor Bank will be established at each site where Contract Education employees are employed. Employees may donate sick leave into the bank at any time during the year. Sick leave may be donated in any amount up to 120 hours. Only employees who have depleted their sick leave hours are eligible to access sick leave hours from this bank. Sick leave



may not be donated to a specific employee; it is donated to the Bank and disbursed by the Committee in accordance with the procedures established for equitable distribution. Unused year end balances will be carried over from year to year.

- C. Committee. Within the first forty-five (45) work days of the school year, a three-member Sick Leave Donor Bank Committee will be established to include at least two Union representatives. Its authority does not extend beyond the boundaries of the site. Committees will function according to implementation procedures contained in appendix G. Committee responsibilities will include:
- (1) Establish internal decision-making procedures in accordance with appendix G;
  - (2) Review, approve and disapprove applications;
  - (3) Monitor the status of each recipient's injury or illness;
  - (4) Monitor leave in the bank and the number of applications received;
  - (5) Strive to maintain an adequate amount of sick leave in the bank to the extent possible;
  - (6) Maintain an accurate record of sick leave donations and distributions.
- D. Eligibility. For the purpose of this Section, an injury or illness is defined as long term if it incapacitates the employee for three (3) or more weeks.
- (1) Leave for Short Term (less than three weeks) Injury/Illness. Eligible employees will receive up to twenty (20) hours of sick leave during each six-month interval for non-long term injury or illness.
  - (2) Leave for Long Term Injury/Illness. Eligible employees will receive forty (40) hours of sick leave for every three weeks incapacitated due to a long term injury or illness.
  - (3) Sick Leave Bank for Maternity. Employees absent for normal maternity shall be eligible to receive forty (40) hours of sick leave upon exhaustion of sick, school vacation, and personal leave.
  - (4) Use. Leave will be available for withdrawal on a first come, first serve basis.
- E. Liaison. Management will be responsible for all liaison with servicing payroll and human resources officials.
- F. Annual Donation. A total of four (4) hours [2 hours are donated as administrative leave from management and 2 hours are donated from each employee's personal leave balance] of leave per year, per employee, per work site, to this bank to be used as indicated above. The leave will be

donated on the basis of the total employees employed at a worksite on the first day of the school term.

## **Section 10. Family and Medical Leave Act**

- A. Contract employees are entitled to a total of twelve (12) administrative workweeks of unpaid leave during any 12-month period for the conditions specified in [29 CFR 825](#). The 12 month period is a rolling 12 month period beginning on the date on which an employee's FMLA leave first begins. A poster concerning rights and responsibilities under the FMLA is contained in [appendix H](#). Contract employees must meet the eligibility requirements specified in 29 CFR 825 and may take leave for the:
- (1) Birth of a child and care of a newborn;
  - (2) Adoption or foster care of a child;
  - (3) Care of a spouse, son, daughter, or parent with a serious health condition; and
  - (4) Serious health condition of the employee that makes the employee unable to perform his/her position. See also the fact sheet contained in [appendix I](#).
- B. Upon return from such leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. This leave is not in addition to personal, vacation, annual, leave without pay, and sick leave, but can be substituted with any combination of the aforementioned leave.
- (1) Definition of Family Members: Spouse (includes common law marriage in States where it is recognized); Son or daughter under 18 years of age or 18 years of age or older and incapable of self care due to mental/physical disabilities; biological, adopted, foster, step child or legal ward, or a child of a person who served as a surrogate parent (in loco parentis) when the employee was a child.
  - (2) Notice of Leave. An employee shall provide written medical certification to his or her immediate supervisor at least thirty (30) calendar days notice when the need for leave is foreseeable unless there is a reasonable excuse for the delay in notification. Medical documentation shall include: date the serious condition commenced; probable frequency and duration of periods of incapacity, and appropriate medical facts within the knowledge of the health care provider. This information should be submitted using the appropriate form contained in [appendix J \(for an employee's serious health condition\)](#) or [appendix K \(for the serious health condition of a family member\)](#) depending upon the circumstances surrounding the need for leave.
  - (3) Sick Leave for Adoption. Federal employees are entitled to use sick leave for purposes related to the adoption of a child.

- (4) Leave for Bone Marrow or Organ Donation. Federal employees are entitled to use seven (7) days of paid leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow donor and thirty (30) days each calendar year to serve as an organ donor.
- (5) Termination of a medical emergency occurs when the recipient's employment is terminated; the employee notifies the agency that the medical emergency is over; or when OPM approves the employee's disability retirement.
- (6) Military family leave.
  - a. Military caregiver leave permits eligible employees who are family members of covered service members up to 26 workweeks of leave in a "single 12-month period" to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty. Documentation to support leave for this reason is submitted using the form in [appendix L](#).
  - b. Qualifying exigency leave makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. Qualifying exigency categories for which employees can use FMLA leave are documented using the form in [appendix M](#) and are as follows:
    - i. Short-notice deployment;
    - ii. Military events and related activities;
    - iii. Childcare and school activities;
    - iv. Financial and legal arrangements;
    - v. Counseling;
    - vi. Rest and recuperation;
    - vii. Post-deployment activities; and
    - viii. Additional activities not encompassed in the other categories, but agreed to by Management and employee.

## **Section 11. Military Leave**

- A. Reserve members of the Armed Forces or members of the National Guard are entitled to leave without loss of pay, time, performance or efficiency rating for active duty or engaging in field or

coast defense training. Military leave may be granted for not more than fifteen (15) calendar days in any calendar year. Employees are requested to schedule their military leave at times other than when school is in session.

- B. Eligible Employees. School Year, Year Long Contract employees, Part-time (16-32 hours/week), and Temporary Indefinite Appointments. (Extensions of appointments exceeding one year do not qualify as meeting the one-year requirement; therefore, temporary employees are not eligible for military leave.)
  
- C. Military Leave will be granted in accordance with the provisions of 5 U.S.C. 5519 and 5 U.S.C. 6323. Detailed information about Military Leave may be found at the following URL:  
<http://www.opm.gov>.

### **Section 12. Administrative Leave/Excused Absence**

Administrative Leave may be granted when a school/activity shuts down due to circumstances beyond the Agency's control provided the employee is not already on scheduled leave. Administrative leave for emergency reasons shall not be approved for more than three (3) consecutive days per contract year. Such leave shall not reduce the minimum number of instructional days required by regulation, and when administrative leave has been approved, the instructional days may not be made up by lengthening the instructional day. Normally such days are made up by instructing on days scheduled as school vacation days or by adding extra days to the end of the school year for snow days.

### **Section 13. Leave Without Pay**

- A. Leave without pay (LWOP) is a temporary non-pay status and absence from duty. Approval of LWOP will be granted if the manager deems the leave necessary based on the circumstances. This includes emergencies or other appropriate circumstances supporting the request other than those stated in "Approval Authority and Appropriate Uses."
  
- B. Approval Authority and Appropriate Uses. Authorizing LWOP is a matter of administrative discretion. LWOP requests will be examined in conjunction with the feasibility of granting other leave types for each individual case, as well as granting LWOP on an extended basis while waiting on a retirement or OWCP claim, but not to exceed one year. An employee is not entitled to LWOP unless the following situations exist:
  - (1) Disabled veterans in need of medical treatment;
  - (2) Guard and Reserve personnel performing active duty military service;
  - (3) Conditions meeting the Family & Medical Leave Act; or
  - (4) In receipt of compensation for an injury/illness incurred on the job.

## **Section 14. Pay Setting Practices**

- A. Additional credit hours in education from an accredited institution can be submitted to the Human Resources Office to qualify the Employee for increases on the pay scale. Documents submitted by October 1st of the contract year will be credited as of the first day of the contract. Documents submitted after October 1st will be credited as of the date processed by the Human Resources Office.
- B. For any employee in a BIE school which is near one or more surrounding public school systems that pay a corresponding wage which is higher than the BIE school, Management will consider paying a post differential for those locations to equalize pay as compared to the local public school district, in accordance with 25 USC Section 2012(g)(2). If denied, an explanation will be provided to the employee and the Union.
- C. Within thirty (30) calendar days of the effective date of this agreement and prior to the beginning of each school year where there has been a significant increase or decrease in staffing (plus or minus 10%), the parties shall meet to review the attrition/retention statistics for each school, and other conditions of environment or work (such as geographic isolation or unusually difficult environmental working or living condition) that may warrant additional pay (post differential) authorized by 25 USC section 2012(g)2) as a recruitment and retention incentive.
- D. Before any rate of compensation or annual salary rate is established pursuant to 25 USC Section 2012(g)(2) that is lower than the rates that are payable under the Defense Department Overseas Teachers Pay and Personnel Practices Act, the Union will be given notice and an opportunity to bargain over said rates.
- E. No rate of compensation or annual salary rate for new hires established pursuant to 25 USC Section 2012(g)(C) that is lower than the rates that are payable under the Defense Department Overseas Teachers Pay and Personnel Practices Act shall be applied to employees who are already working at the school.
- F. In the event that the adoption of new rates of compensation or annual salary rates under 25 USC Section 2012(g)(C) leads to an increase in the payment of compensation above that which employees had been previously paid, such rates shall be made applicable in their entirety to employees already teaching at the school.
- G. Except for employees occupying positions of teachers and counselors, including dormitory counselors and homeliving counselors, adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:
  - (1) Each employee with a minimum rating of Fully Successful on his/her Employee Performance Appraisal Plan whose contract is renewed shall receive one pay increment for longevity until he or she reaches the highest increment of his or her salary level; and

- (2) Employees whose performance is rated Superior will be considered for an additional salary increment or an award (as outlined in 370 DM 430) to reward performance and encourage continued performance; and
- (3) Employees whose performance is rated Exceptional shall receive one additional salary increment and serious consideration will be given to a second increment to reward performance and encourage continued performance.
- (4) Teachers who become certified by the National Board of Professional Teaching Standards or the National Council on Teacher Quality may receive an annual stipend up to twenty (20) percent of their base salary under the authority of 25 USC Section 2012(r).
- (5) The annual salary rate for those employees on a school year contract shall be based on 180 days of service. Employees shall be paid on a prorated basis (1/180 of annual salary) for any additional days of service in a school year.

### **Section 15. Stipends**

- A. Stipends for extracurricular activities will be established jointly by Management and the Union Contact for the affected area and will be determined in the following manner:
  - (1) The three largest school districts in the area with schools having comparable enrollments will jointly be surveyed to determine schools with student populations in the categories named below. Such surveys will be conducted by mail or telephone at each area by a representative of Management and the Union by July 1 of each year. A simple arithmetic average, rounded up to the nearest dollar, will be made of the rates paid by the surveyed schools for each enrollment category as follows: 600 to 1,000; 300 to 599; 50 to 299. This average will be the scheduled stipend for the upcoming school year for all Bureau operated schools in the area. In those instances where less than three comparable schools, by size, are found, the next smaller school district will be surveyed until an average can be computed. If no comparable activities are found, i.e., Pow Wow Club, the stipend will be determined by arithmetic average of club stipends in the schools surveyed. This survey will divide athletics and non-athletics to arrive at separate schedules for each of these extracurricular activities.
  - (2) Any recognized extracurricular activity which consumes a minimum of twenty-five (25) hours per semester of time beyond an employee's tour of duty will be considered a stipend activity.
  - (3) Elementary and junior high stipends will be set at seventy (70) percent of high school stipends in each category of enrollment.
  - (4) Stipends for an activity will be advertised to the entire staff at the beginning of each new school year. Advertisement of activities may not be circumscribed by dollar limits. All

employees may, at their option, select overtime up to the dollar amount of the stipend. It will be entirely up to the employee's discretion.

- (5) All educators whether contract educators or status quo employees are eligible for stipends when performing additional activities outside the regular tour of duty.
- a. Stipends may be paid to any educator who performs additional activities outside of his/her regular tour of duty, which provides services to students or otherwise support the school's academic or social programs. Stipends may not be paid for these activities or services if they are carried out during the regular work day or tour of duty.
  - b. A stipend received by an education employee under this section is considered a fee for participating.
  - c. Those who are to receive a stipend may elect to receive the stipend in either of two ways:
    - i. In equal installments over the term of the stipend activity; or
    - ii. In a lump sum paid at the end of the pay period following the completion of the stipend activity.
  - d. Stipends must be established and approved by the school supervisor or Education Line Officer and the appropriate school board in advance of the stipend activity. All those who are to receive a stipend must submit the required election to his/her supervisor, who must forward the form to Human Resources for processing no later than the pay period preceding the start of the stipend activity.
  - e. Stipend schedules are established by the local school supervisor or Education Line Officer in consultation with the appropriate school board in accordance with Section 15A (1) through (4) above.

#### **Section 16. Prompt Pay or Supplemental Pay**

A. Management agrees to pay employees on designated paydays. All employees will receive pay by Electronic Funds Transfer (EFT), commonly referred to as Direct Deposit. Employees are responsible for reviewing their leave and earning statements and making timely notification to their supervisor of any unexplained discrepancy.

- (1) Any employee who does not receive their pay as scheduled is responsible for notifying their supervisor that they have not been paid. When an employee does not receive their pay as scheduled (within three work days), the employee will become eligible for supplemental pay.

- (2) Subsequent to receiving such notification, the supervisor, within eight (8) business hours, will make arrangements for supplemental pay and initiate action to determine the reasons for non-receipt. Employees are free to contact the BIE Human Resources Office directly when they do not receive pay on time.
- (3) Employees are responsible for making timely notification to the Human Resource Office or Employee Express of any changes in banking information.
- (4) Underpayment due to a Management error will follow the guidelines under this article, Section 2, Paragraph C.



## **Article 31**

### **Education Activities**

#### **Section 1. Classroom Activities**

- A. Teachers shall be afforded the right to maintain discipline in accordance with the policies of the student handbook established at the school.
- B. Any person at the school or on its grounds whose behavior is a threat to the safety and/or health of others will be reported to the appropriate supervisor. Management will take whatever steps are available to protect students and staff.
- C. Each school is by statute required to have a code of student conduct. This code of conduct should be developed by students' administrators, the Union, staff, and the appropriate school board and in the interest of all concerned should be strictly enforced by appropriate officials. The developed code will conform to all applicable laws and regulations.
- D. Management will make every attempt to schedule administrative meetings before or after the end of the students' instructional day.

#### **Section 2. School Calendar**

- A. The appropriate school administrators will furnish the Union national office and the local steward with the proposed school calendar for the next school year before submitting the calendar to the local school board. The Union will be afforded ten (10) work days to submit written comments if it chooses. Management agrees to give the Union's comments consideration; and, if comments are made, the Union will receive a written explanation for the actions that are taken, or not taken. Management and the School Board are recognized as having the final decision.
- B. For higher education, academic calendars will be submitted to the Union national office and local steward at the same time they are provided to the Board of Regents.
- C. For BIE schools within close proximity to public schools, efforts will be made for the BIE school calendar to coincide as nearly as possible with the local public school calendar.

#### **Section 3. Formula Funding**

The Bureau will consult with the Union concerning changes to the Indian School Equalization Formula used to fund Bureau schools under P. L. 95-561. The Union shall have an opportunity to make written comments. If the Union makes comments, the Bureau will give the Union a written explanation of actions taken that change the Formula. Management is recognized as having the final decision.

#### **Section 4. School Boards**

In accordance with 25 CFR 38.10(a): “School Boards may not direct, control, or interrupt the day-to-day activities of the Bureau of Indian Affairs employees carrying out Bureau operated education programs.” Management will grant official time for the Chief Steward or designee to attend both local school board meetings as an observer, when school board meetings are held during regular duty hours.

#### **Section 5. Lunch Periods**

- A. BIE supports a duty-free lunch period for employees. Teachers, education assistants, and counselors will normally not have assigned duties during their lunch period. In cases where duties must be assigned, employees will be compensated with compensatory time, overtime or a shortened work day (straight eight hours) at the employee’s discretion.
- B. When an employee is required to work through lunch while supervising or instructing students, lunch will be provided at no charge.

#### **Section 6. Teaching Assignments**

A person currently under contract or employed as a teacher who indicates in writing an intention to return to the same school for a succeeding year will be notified of the specific teaching assignment to the extent known at the time contracts are offered. Management will solicit the employee’s preference for a grade level assignment and subject matter, and should make an effort to accommodate that preference. Should a change in the assignment become necessary, the teacher will be informed as soon as Management determines a change is needed and given sufficient time, two week minimum unless there are unforeseen circumstances, for curriculum preparation. This section also applies to instructors in higher education.

#### **Section 7. Inclement Weather Conditions**

*See Article 17 Section 10*

#### **Section 8. Interruptions**

The Parties recognize classroom interruptions as detrimental to a good learning environment and the continuity of a well-planned classroom operation. Therefore, staff and administrators accept the joint responsibility to minimize such interruptions.

#### **Section 9. Emergency Conditions**

*See Article 17, Section 10*

Each school must maintain an Emergency Plan.

## **Section 10. Qualified Substitutes**

- A. Management will make every effort to provide substitute teachers in accordance with 25 CFR Part 36. 11(a)(5), so that combining classes or supervising more than one class will be minimized.
- B. In instances of extended teacher absence, Management, where possible, should make teacher substitute assignments in advance in order to allow time for joint planning.
- C. Management will actively seek qualified teachers in order to avoid the utilization of substitutes on a long-term assignment in any given classroom. Management will strive to find substitutes who possess a high school diploma or equivalent.
- D. Education paraprofessionals are not considered classroom teachers. If a classroom has no teacher for three (3) consecutive work days or more the classroom assistant, if qualified, will be paid at the rate of a substitute if that pay is a higher rate.
- E. If an education assistant works as a teacher for three (3) consecutive work days or more, the education assistant will, if qualified, be compensated at the rate of a teacher with similar length of service.
- F. When a teacher is called to substitute during a preparation period, he/she will earn a time off award after being required to substitute in this manner three (3) times during each academic year (i.e., for every three classes of substitution during what would have been a preparation period, the teacher will earn a one hour time off award). The earned award must be used before the end of the academic year in which it was earned.

## **Section 11. Instructional Planning Time**

The Parties recognize that sufficient time for student evaluation and good instructional planning is essential to the educational process. Supervisors will schedule planning periods during the instructional day as much as practicable, and the planning time will be meeting and duty free, based on school scheduling needs.

## **Section 12. Reporting Periods**

Management will be cognizant of the workload associated with the end of each grading and reporting period, and in dealing with this issue, Management will provide sufficient time for teachers to compute and record grades, up to four (4) hours as determined at the local worksite. If Management changes a student's academic grade, a written explanation will be given to the teacher of that student.

### **Section 13. Student/Teacher Ratios**

Each school is expected to adhere to the classroom student/teacher ratios outlined in the Bureau's Academic Standards guidelines pursuant to 25 CFR 36.11, and the national guidelines for comprehensive community colleges and four year baccalaureate granting institutions.

### **Section 14. Director's Staffing Differential**

The responsible officer of any school unable to meet the Bureau Academic Standards by reason of lack of suitable, qualified professional personnel shall investigate and consider application for a Director's Staffing Differential of sufficient size to bring professional education salaries and benefits to a level comparable to the surrounding public school districts.

### **Section 15. Faculty Lounge and Facilities**

- A. Management will make every effort to provide a teacher lounge and adult restrooms wherever these can be made available without new construction or major renovation.
- B. Education staff will be provided mailboxes for distribution of internal mail.
- C. Copying Machines will be made available for the production of lesson materials and execution of instructional duties.
- D. Where possible, and subject to budgetary constraints, a telephone with local access will be provided in the teachers' lounge.

## Article 32

### Reduction-in-Force (RIF)/Placement

#### Section 1. Policy

Through careful planning and use of other administrative techniques, to the extent it determines practicable and in the public interest, Management officials at all organizational levels should seek to avoid the necessity of entering into a formal reduction-in-force (RIF) action. Management will conduct a RIF only when the release is necessary for the reasons specified in Office of Personnel Management (OPM) regulations, 5 CFR, which includes lack of work, shortage of funds, insufficient personnel ceilings, reorganizations, reclassification due to a change in duties, or the exercise of reemployment rights or restoration rights. OPM regulations will be observed by Management and the Union in carrying out their responsibilities throughout the RIF process. The provisions of this Article will apply to all RIF or transfer of function actions affecting unit employees under 5 CFR.

#### Section 2. Procedure

- A. Union Notification. When it is anticipated that a transfer of function out of the commuting area or reduction in force affecting bargaining unit employee(s) will be necessary, the Union will be given preliminary notification in writing. This notification will be given within seven (7) work days of approval by Central Office, unless circumstances dictate otherwise, and will include the following:
- (1) The reason for the reduction in force or transfer of function as shown in the original request and approval;
  - (2) The approximate number of positions that may be affected initially;
  - (3) The competitive areas that may be involved in a reduction in force; and
  - (4) The anticipated effective date that the RIF or transfer of function will take effect; and
  - (5) Copy of agency internal RIF procedures (See Appendix N).
- B. Performance Ratings. At the time the Union receives its preliminary notification of an anticipated RIF, Management will provide the Union with a list of all employees covered by the notice whose current annual performance ratings of record are overdue, if performance ratings are a factor in the RIF.
- C. Union Contact. The Union will appoint a local contact at the level where the RIF will take place for the purpose of ensuring compliance with regulations. Prior to implementation of a RIF, the Union will receive a copy of such proposed action, including the reason for the RIF.

- D. Official Personnel Folder (OPF). Management will notify all affected employees of the importance of updating their OPFs. It is the responsibility of the employee to ensure that a current application or other appropriate documents are on file in his/her OPF which reflects all work experience, education and qualifications. The employee will also ensure that certificates, diplomas or other acceptable documents are included to support education claimed. [Note: While OPFs are in the physical custody of the employing agency, they are under the control of the OPM. The filing of documents in the OPF must be in compliance with 5 CFR Part 293, and the OPM Guide to Personnel Record Keeping Operating Manual.]
- E. Notification. When Management makes a decision to send out specific RIF notices, a list of affected employees will be sent to the Union including position, grade, location, series, and summary performance ratings for three (3) years. This list must be delivered to the Union five calendar days prior to delivery of notices to employees. In addition, the Union will be provided the following:
- (1) Vacancy announcements for all appropriate DOI jobs in the commuting area;
  - (2) A copy of the RIF approval if applicable;
  - (3) Copies of grade and pay retention law and regulations, if requested;
  - (4) Veteran's preference rights, including those veterans with a service- connected disability of 30% or more;
  - (5) Applicable retention registers that are, or become available to Management;
  - (6) Tentative positions to be abolished.
- F. Implementation. The following constitutes impact bargaining for all positions and precludes further negotiations unless the Union provides rationale acceptable to the Union President and Management that warrants further negotiation. Management will carry out the following actions to provide effective placement of personnel in the RIF and ensure re-promotion and reemployment rights where applicable under 5 CFR as follows
- (1) Review all of the following for the purposes of minimizing downgrades and separations:
    - a. Retirement of any employee in the commuting area;
    - b. Resignations, transfers, or other loss of employment in the competitive area;
    - c. Declination of job offers by employees in the competitive area;
    - d. Any other event which creates a vacant position at or below the current grade of an adversely affected employee for which he/she may qualify in the competitive area.

- (2) In accordance with Indian Preference, where it can be determined that an employee being separated fails to fully qualify for a vacant position but has demonstrated the specialty skills and abilities to perform the duties of that position in a satisfactory manner within 90 days, very serious consideration must be given to placing the employee in that position including waiving qualification requirements to the extent applicable.
- (3) Employees will be counseled to the extent practicable to determine if item F(2) above applies to them.
- (4) Management will consider to the extent possible:
  - a. Placing employees who received no valid job offer in their own competitive area in installations in other competitive areas;
  - b. Freeze appropriate vacancies in the commuting area.
  - c. Approve AWS for affected employees which meet their needs consistent with Agency mission during the RIF process.
  - d. After completion of the placement of permanent employees, Management will attempt to place temporary employees. Temporary employees will be considered for any remaining vacant positions. Management will adhere to 5 CFR, Departmental and Bureau regulations in all RIF actions involving temporary employees.
  - e. Management will consider, to the extent practicable, restructuring unfilled trainee positions to provide positions for journeymen employees who may adversely affected.
  - f. Employees who have been downgraded because of the RIF process will be considered for re-promotion in accordance with the provisions in Article 18.

G. RIF Competitive Areas. Management agrees to comply with the competitive areas as approved by the DOI.

### **Section 3. Authorized Official Time**

- A. The local RIF contact will be permitted to travel and be accorded travel and per diem if appropriate to assist with a RIF covered by that Union. Use of Government owned/leased vehicles may be permitted if available, subject to approval by local Management.
- B. Affected employees will be permitted access to equipment, telephones, copy machines, word processors, typewriters, etc., necessary to prepare applications, resumes and related activities.

- C. Employees will have an opportunity on official time to be counseled by Human Resources Specialists who may travel to the location, concerning updating resumes or other appropriate documents, OPFs, retirement, conversion to Contract, placement programs and other matters prior to the effective date of the RIF. The Union shall be notified in advance of any such meetings.

#### **Section 4. Placement**

- A. Management agrees to participate in a placement program at each activity where a reduction in staff is occurring. This program will be designed to assist employees adversely affected by reorganization, RIF, and closure of facilities to seek employment. The primary aim of this program will be to assist each affected employee in obtaining a position in the Federal service, commensurate with the employee's skills, experience, and career goals. The secondary aim will be assisting to obtain a position in the non-Federal sector.

*The paragraphs noted hereafter represent the full extent of the placement program agreed upon between the parties to this agreement - no other obligations are expressed or implied.*

- B. Reemployment Priority Lists. **Reemployment Priority Lists apply only to Title 5 employees and do not apply to contract education employees.** To be eligible for reemployment priority list consideration, the employee must have separated through 5 CFR Part 351 (RIF) procedures. Employees separated through 5 CFR 752 (adverse action) procedures are not eligible for reemployment priority list placement.
- C. **The subsequent paragraphs, subparagraphs and clauses within this section apply only to contract education personnel.**

- (1) When specific RIF notices are issued to individual employees, Human Resources staff will be involved with the issuance of those notices. This involvement will include counseling each employee about the options available to that employee, i.e., the placement program, retirement, or any other options which may be available, including local or state unemployment services, as well as severance pay, and the estimated amount and duration of such payments, if applicable. During this counseling session, human resources staff will discuss with each employee any education, skills, licenses or certification that the employee may have which are not contained in the OPF and which may be relevant to positions in the Federal sector or general work force. It is the employee's responsibility to provide such certification, license, diploma and/or transcripts within a reasonable period of time following this counseling period, generally within thirty (30) calendar days unless extenuating circumstances are present and are communicated Human Resources in writing, (electronic mail will suffice for this purpose). The purpose of that discussion is to ensure that each employee may receive full consideration for all positions for which he/she may be qualified.
- (2) Management will offer to impacted employees commercially available training on preparing resumes and job interview skills.



- (3) Impacted employees who want to participate in this placement program will provide a completed resume or job application to Human Resources.
- a. Employees will identify to Human Resources, in writing using the document contained in Appendix O, the geographical areas at which they would desire to be employed. Employees may use this form to indicate desire to be considered at all geographic locations.
  - b. Human Resources will provide a list of current vacancies at the remaining BIE worksites where the employee has expressed an interest to each impacted employee and to the local Union contact for the RIF. An employee who has elected not to specify an interest in specific geographic locations and wishes to be considered for vacancies at all geographical locations will be provided with information for all vacancies within the Bureau.
  - c. Human Resources will submit information concerning employees separated by RIF to those BIE locations for which they have expressed interest in being employed. This information will include:
    - i. SF-50, Notification of Personnel Action, indicating separation;
    - ii. Resume or job application(s); and
    - iii. Any other qualifications, skills, licenses or certifications supplied by the employee to Human Resources personnel.
  - d. Information sent to locations at which employees have expressed interest in employment will be retained at those locations for one (1) year from separation. Impacted employees will be considered for each vacancy at those locations for which they are qualified.

### **Section 5. Personnel Files**

The Union and Management will jointly encourage all employees desiring to participate in the program to see that their personnel files, resume and other appropriate documents are up-to-date. Management will add to the personnel files appropriate changes or amendments the employee submits for inclusion. Employees possessing skills in more than one area(s) may request consideration for vacancies in more than one area.

### **Section 6. Labor-Management Cooperation**

The placement program will operate in the event of a RIF. Management and the Union will cooperate in assisting employees seeking placement.

- A. Management will provide a list of current vacancies at all remaining BIE schools to the Human Resources Office to include contact information.
- B. Regardless of the areas of consideration, all employees affected by a RIF will be eligible to apply for vacancies.
- C. At the request of the employee affected by the RIF, Management will forward notification of their RIF status to areas where vacancies exist.
- D. Management will utilize intranet and internet resources for posting all vacancies.
- E. In areas where a RIF is being conducted and electronic access is not available, vacancy announcements will be forwarded by mail.

### **Section 7. Eligibility**

An employee adversely affected by a RIF will be eligible for the placement described herein.

### **Section 8. Duration**

The placement program shall remain in effect for employees adversely affected by the RIF until such time as the employee has declined one valid offer or has been re-promoted or voluntarily separates from Federal service.

## **Article 33**

### **Contracting Out Work**

#### **Section 1. Notice to Union**

Management will notify the Union within thirty (30) calendar days of receipt of a “notice of intent” for entering into grants, contracts, compacts, or A-76.

#### **Section 2. Notice to Tribes**

Notice to the Tribes will contain a statement that includes the level of funding available for contracts or compacts. Management will include a statement in the notice that Management encourages the Tribes to maintain the current qualified workforce.

#### **Section 3. Grant Funding**

Grant funding is determined by formula.

## **Article 34**

### **Negotiation and Supplementation**

#### **Section 1. General**

Supplemental agreements to the Master Agreement may only be negotiated in accordance with the provisions of this Article. In order to maintain a constructive relationship, negotiations will be conducted in the most expeditious manner possible through the procedures of this Article. Supplemental agreements shall not duplicate, conflict with, or otherwise be inconsistent with the Master Agreement. When a conflict arises, that part of the supplemental agreement shall be null and void.

#### **Section 2. Interest Based Bargaining**

The parties agree to use the techniques of interest-based bargaining where appropriate.

#### **Section 3. National Level Negotiations**

- A. Except as provided in Section 4 below, Management shall furnish written notice of a proposed substantive change affecting conditions of employment to the Union President or designee. Such notice shall include the proposed implementation date or a reasonable estimate of the date with revisions as they are made. Notice shall be given the Union at least twenty-one (21) work days prior to implementation unless the Bureau is not given sufficient notice from higher authority to allow it to meet such time frames or, if, an exigency of the public business exists. The Union President or designee will have reasonable time to review the proposal. Telephone calls may be used to clarify or redefine issues or proposals. However, it is the parties' obligation to negotiate should the Union so request. Should the Union request negotiations upon the proposed change(s), the parties will meet in accordance with provisions of 5 USC, Chapter 71 and this Agreement.
- B. The Union will provide written proposals within ten (10) work days of the receipt or within ten (10) work days of the next Labor-Management Relations (LMR) meeting, whichever is appropriate, unless the parties mutually agree to extend these time frames. Negotiations may be held at other times and proposals will be provided at a mutually acceptable time to meet a Management need for expeditious implementation. The parties will negotiate for a period not to exceed 40 hours. The number of Union negotiators on travel and per diem and official time shall not exceed the number of Management negotiators on official time. If the issue(s) remain unresolved the parties shall use the services of a mediator. Should mediation fail to resolve the issue(s), final offers by each Party shall be submitted to the Federal Service Impasses Panel (FSIP). If Management determines that an exigency of the public business exists, the parties recognize Management's right to implement the change, but such change will be subject to the third party procedures.

#### **Section 4. Bureau/Office Level Negotiation**

Proposed changes in personnel policies, procedures and working conditions at only the Bureau or Office level (that is, Office of the Assistant Secretary for Indian Affairs, Office of Special Trustee for American Indians, BIE or BIA) will be furnished to the national Union office. Such notice shall include a proposed implementation date. If the Union elects to negotiate the parties will select a mutually acceptable time and place. The Union will provide formal written proposals within ten (10) work days of receipt of the proposed changes. The parties will negotiate for a period not to exceed 24 hours. If the issue(s) remain unresolved the parties shall use the services of a mediator. Should mediation fail to resolve the issue(s), final offers by each Party shall be submitted to the FSIP. If Management determines that an exigency of the public business exists, the parties recognize Management's right to implement the change, but such change will be subject to the third party procedures.

#### **Section 5. Negotiations at the local Worksite**

Changes in personnel policies, procedures and matters relating to the working conditions affecting only a local worksite will be furnished to the Union President and the local Chief Steward. Such notice shall include a proposed implementation date. The Chief Steward or designee will be given reasonable official time for review. If Management and the Union elect to negotiate the parties will select a mutually acceptable time and place. Notice shall be given as soon as possible to the Union, normally twenty-one (21) work days prior to implementation, unless the local activity is not given sufficient notice to meet such time frames or an exigency of public business exists. The Union will provide written proposals within fifteen (15) work days. Failure to submit proposals within the time period will waive the right of the Union to bargain on that issue(s). Within 10 work days of receipt of the Union proposals, the parties will meet to negotiate. The time frames may be altered by mutual agreement. The parties will negotiate for a period not to exceed 24 hours over six (6) consecutive work days. If issues remain unresolved the parties shall utilize a mediator. In no case shall time in mediation exceed the hour limitation of negotiations. If issues remain unresolved, the parties shall submit final offers within three (3) work days to the Bureau/Office Labor Relations Officer and the Union President or designee. The parties shall negotiate for a period not to exceed eight hours. Should the issues remain unresolved, the parties at the National level shall submit the above mentioned final offers to the FSIP within ten (10) work days. If management determines that an exigency of the public business exists, the change may be implemented but may be subject to third party procedures initiated by the Union.

## **Section 6. Local Supplements**

A. The following matters have been negotiated at the National level and are not subject to negotiation at the local management level:

- (1) Article 1 - Recognition and Unit Description
- (2) Article 3 - Union Rights, Representation, and Official Time
- (3) Article 4 - Employee Rights
- (4) Article 5 - Management Rights
- (5) Article 6 - Voluntary Allotment of Union Dues
- (6) Article 9 - EEO and Sexual Harassment, except procedures and processes for implementing affirmative action and participating on EEO committees as per the Article.
- (7) Article 12 - Travel and Travel Related Expenses
- (8) Article 14 – Telework
- (9) Article 18 - Merit Promotion and Non-Competitive Promotions
- (10) Article 20 - Position Descriptions
- (11) Article 21 -Performance Standards and Evaluation
- (12) Article 22 - Actions Based On Unacceptable Performance
- (13) Article 23 - Discipline and Adverse Action
- (14) Article 24 – Alternative Dispute Resolution
- (15) Article 25 - Grievance Procedure
- (16) Article 26 – Arbitration
- (17) Article 28 - Motor Vehicle Operation
- (18) Article 30 - Education Personnel System
- (19) Article 31 - Education Activities
- (20) Article 32 - Reduction-In-Force (RIF) Placement

(21) Article 33 - Contracting Out of Work, except for appropriate arrangements for adversely affected employees as per Article 32.

(22) Article 34 - Negotiation and Supplementation

(23) Article 36 - Duration and Extent of Agreement

- B. When the Union indicates a decision to negotiate a supplement to the Master Agreement, it must submit written proposals to local Management level. A local supplement may be negotiated once during the term of the Master Agreement, provided that negotiations are initiated at least one (1) year prior to the third anniversary of this Master Agreement. Negotiations will occur as soon as possible after submission, normally within fifteen (15) work days. The Parties may inform the Federal Mediation and Conciliation Service (FMCS) of the dates of negotiations. The parties will negotiate for a period not to exceed 40 hours over six (6) consecutive work days. If the issues remain unresolved, the parties shall utilize the services of a mediator. In no case will mediation exceed the time allotted for negotiations. Should mediation fail to resolve the issue(s), final offers shall be submitted within three (3) work days to the Bureau/Office Labor Relations Officer and the Union President, or designee. The parties shall negotiate for a period of time not to exceed eight hours. If the issue(s) remain unresolved, the parties shall submit the final offers to FSIP within ten (10) work days.
- C. All supplemental agreements will be titled Supplemental Agreement to the Master Agreement between the Federation of Indian Service Employees, AFT, AFL-CIO and The Assistant Secretary – Indian Affairs, Bureau of Indian Affairs, Bureau of Indian Education, and Office of the Special Trustee for American Indians, located at (name of worksite). The supplemental agreement will become a part of the Master Agreement and subject to the terms and conditions of this Agreement. Supplemental agreements will not change the Master Agreement negotiated by the Union and Management. Supplemental agreements will expire on the same date as the Master Agreement. If negotiation on a new Master Agreement has not been requested the supplement agreements will remain in effect.

### **Section 7. Content of Notices**

Notification of change(s) in policies, procedures, working conditions, and/or conditions of employment, should include a description of the change and proposed implementation date. It shall also include supporting documentation, such as:

- A. Organizational charts;
- B. Change in space assignments;
- C. Staffing patterns; or
- D. Other information when appropriate to the change.

## **Section 8. Approval of Supplemental Agreements**

- A. National Level Supplements. When agreement has been reached on all issues, the supplement will be prepared in final form for signature by the parties. Upon receipt of the ratified supplement, the Union and Management will sign and date the document. Management will submit the document for Agency head review as provided by 5 USC, Chapter 71. Within 30 (thirty) days after execution, if the supplement is not acted upon, the supplement will become effective provided such supplement is consistent with law, rule, and regulation.
- B. Local Work Site Supplements. Upon completion of negotiations, the parties will sign off on the supplement. The date of execution of the supplement will be the date the last Management official signs off. Within three (3) work days of the date the supplement is executed, it will be forwarded to the Director, Office of Human Resources, for agency head review consistent with 5 USC, 7114(c) and applicable DOI policy. A copy will also be forwarded to Central Office. Six (6) signed and dated originals of each supplement will be sent to the Bureau/Office Labor Relations Officer.
- C. Supplemental agreements negotiated under this Agreement may be amended by mutual agreement of the parties at the National level.

## **Section 9. Past Practices**

Practices or procedures that meet the following tests are considered past practice:

- A. They are known to Management;
- B. Those where the Manager responsible, knowingly acquiesces to the practice; and
- C. When such practice continues for some significant length of time.

Such past practices will remain in effect provided they are not contrary to law, government-wide regulations, management rights, and/or this Agreement.

## **Section 10. Negotiability**

After exploring the issue in negotiations and after the Union has provided Management written clarification of the intent of its proposal(s) along with a request for a negotiability determination, Management will provide the Union with a written statement of its position of non-negotiability and its rationale for such claim within ten (10) work days. The Union may, within fifteen (15) work days of receipt of Management's statement, file an appeal with the FLRA.



### **Section 11. Exclusions for Current Wage Bargaining Worksites**

Worksites which have historically negotiated prevailing rates of pay and other employment benefits prior to the passage of P.L. 92-392 will not be precluded by this Contract from continuing to do so as provided for in Section 704 of P.L. 95-454. Limitations on the official time as agreed in this Contract will not apply to this section on wage bargaining.

### **Section 12. Time Limits**

Where time limits for negotiations have been specified, the parties intend that such time will be actual negotiations between the parties and that recesses and/or caucuses of over one hour shall not count toward the official time limit.

## **Article 35**

### **Strikes and Picketing**

It is recognized that by law and regulation the Union and members of the bargaining unit shall not call or engage in a strike, work stoppage, slowdown, picketing of an Agency in a labor-management dispute if such picketing interferes with the Agency's operations, or condone any such activity by failing to take affirmative action to prevent or stop it. However, Management recognizes the right of the Union to participate in informational picketing which does not interfere with Agency operations.

## **Article 36**

### **Duration and Extent of Agreement**

#### **Section 1. Effective Date and Term**

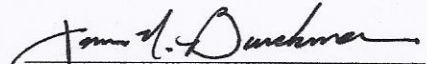
The effective date of this Agreement shall be the date it is approved by the Department of the Interior in accordance with 5 U.S.C. Chapter 71. It shall remain in full force and effect for three years and from year to year thereafter, unless between 105 and 60 calendar days prior to any such date either Party gives written notice to the other of its desire to amend or modify the Agreement. If such notice is given, this Agreement shall remain in effect until the changes have been negotiated and approved.


#### **Section 2. Effective Date of Amendments and Supplements**

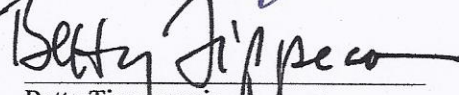
Amendments and supplemental agreements shall become effective on the date approved by the appropriate official of the Department or thirty (30) days following execution if not disapproved.


The parties hereto executed this Master Labor-Management Agreement on September 7, 2011.

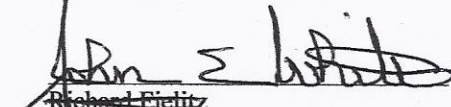
**For AS-IA, BIA, BIE  
And OST  
(Management):**


  
James N. Burckman  
Chief Spokesperson

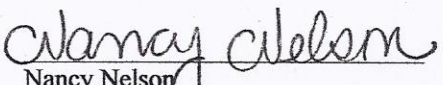
  
Michael Taylor  
AS-IA Representative

  
Betty Tippeconnie  
BIA Representative

  
Jimmy Hastings  
BIE Representative

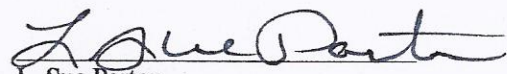
  
Richard Fieditz  
OST Representative  
Management Team Member


  
Glenn Himebaugh  
Human Resources – Technical Advisor

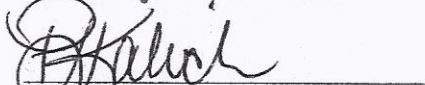
  
Nancy Nelson  
Human Resources – Technical Advisor

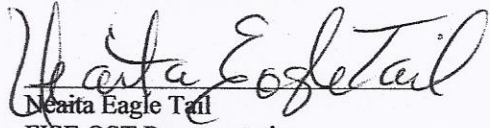
**For The Federation Of Indian Service  
Employees (FISE) AFT/AFL-CIO  
Local 4524 (Union):**

  
Michael Jennings  
Chief Spokesperson

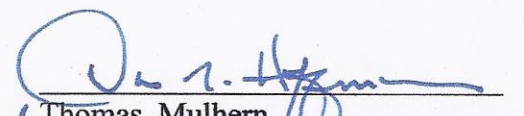
  
L. Sue Parton  
FISE President

  
David Garza  
FISE Executive Vice President

  
Paulette Kalich  
FISE AS-IA Representative

  
Neaita Eagle Tail  
FISE OST Representative  
Union Team Member

**DEPARTMENTAL APPROVAL**

  
for Thomas, Mulhern  
Director, Office of Human Resources

OCTOBER 5, 2011  
Date