

AGREEMENT BETWEEN
HEADQUARTERS, MILITARY TRAFFIC MANAGEMENT COMMAND
AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 909/2, AFL - CIO

JULY 24, 2000

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Article 1 – Basic Agreement and Exclusive Recognition

Section 1. Pursuant to the policy set forth in Title VII of the Civil Service Reform Act of 1978, the following articles constitute an agreement by and between the Headquarters, Military Traffic Management Command, hereafter called the Employer, and the American Federation of Government Employees, Union 909/2/2 hereafter called the Union.

Section 2. The Employer recognizes the Union as the exclusive representative for all eligible bargaining unit employees of the Headquarters, Military Traffic Management Command and the MTMC Field Operating Agency (FOA) located at HQMTMC only. Excluded are professional employees, guards, and employees described in 5 USC 7112 (b) (1) (2) (3) (4) (6) (7).

Section 3. This agreement shall apply to bargaining unit employees of HQMTMC and the FOA. The term “employee” as used herein means an employee who is a member of the bargaining unit. The term “Commander” as used herein means the Commander, HQMTMC. Any reference to an agreed number of days means work days unless otherwise specifically noted.

Section 4. Termination of this agreement will not, in itself, terminate the recognition granted the Union.

Article 2 – Provisions of Laws and Regulations

Section 1. In the administration of all matters covered by this Agreement, officials and employees are governed by existing, or future laws and the regulations of appropriate authorities; by published agency policies and regulations in existence at the time this Agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities.

Section 2. When changes occur in regulations of which affect personnel policies, practices, or matters affecting working conditions of bargaining unit employees, the Employer will give the Union at least ten (10) days notice prior to the proposed Union implementation date of processes and procedures to review the new regulation and request negotiations.

Section 3. Normally changes will not be implemented until negotiations, when requested, are complete, except in cases of an overriding exigency.

Section 4. The Employer agrees to furnish notification to the Union of new and revised personnel policies and practices and matters affecting working conditions issued by the Employer. The Union shall be given a copy of the issuance and upon request a briefing. The Union will be given at least ten (10) days in which to make a response and request negotiations.

Article 3 – Employer of Choice Programs

Section 1: The Employer recognizes that an Employer of Choice must be committed to providing subsidized programs that will not only promote efficiency and increase production in the workplace, but provide work opportunities to those who might not be in a position to work without the benefit of such programs. These programs are “people programs” and are incentives that will make HQ MTMC competitive in areas of recruitment and retention of the best employees. The programs listed in section 3, below, are some of the programs that are currently in place or projected to be available for HQ MTMC employees.

Section 2: Partnership (Executive Order (EO) 12781). The Employer and the Union jointly resolve that a relationship between labor and management as partners is desirable for the purpose of implementing the provisions of EO 12781 and helping the agency meet its mission, deliver the highest quality service to its customers, and become an Employer of choice. It is agreed that the labor management partnership will use the following guidelines:

- a. Mutual respect and understanding between partners
 - two-way communication
- b. Free-flow sharing of pre-decisional information
 - Decisions based on consensus of the partnership council
 - Labor and management joint training on matters relating to partnership
 - Viewing partnership as an evolving process

The labor-management partnership strives to:

- a. View each employee as a unique and valuable contributor
- b. Produce high-quality services and products as an integral part of mission accomplishment
- c. Provide appropriate level skill training opportunities for employees
- d. Ensure open communications, mutual respect, and trust among employees
- e. Foster enhanced productivity, flexible work processes, improved work conditions, and continuous quality improvement
- f. Bargain in good faith, using interest-based processes, over any workplace issue with the objective of reaching an agreement which integrates the interests of the stakeholders, i.e., the employees/Union, and management

Section 3. Programs. The Employer agrees to offer the following programs to employees:

a. Recruitment, Retention, and Relocation. The Employer agrees to continue the Recruitment, Retention and Relocation Program currently covered under separate policy. This is a management program whereby, at management's discretion, special funds are made available for certain actions involving the recruitment, retention, and relocation of employees.

b. Transportation Subsidy. The Employer agrees to take the necessary actions within its authority to participate in federal, state, and Union government programs designed to encourage the use of public transportation by offering public transportation subsidies in the amount of up to \$65 per month, and to negotiate and amount over \$65 per month to the extent authorized by Public Law 101-549, The Clean Air Act of 1990, as amended. The Union agrees to implement reasonable methods for reducing the expense of such subsidies that the Employer may propose. Any dispute is subject to grievance and arbitration.

c. Child-care Subsidy. The Employer agrees to take the necessary actions within its authority to offer a childcare subsidy program which will be governed by separate policy. It is intended that this policy be integrated into this article of this agreement at the next negotiation.

Article 4 - Equal Employment Opportunity (EEO)

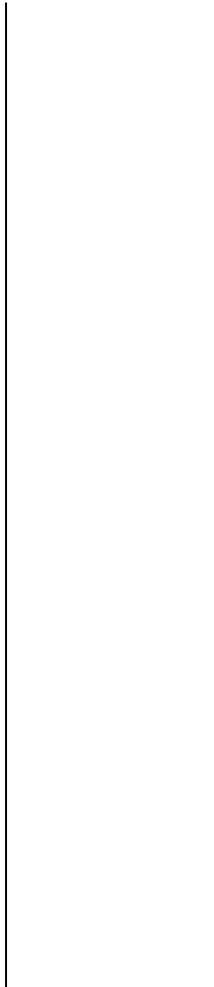
Section 1. The principle of equal employment being of vital concern to both the Employer and the Union, both parties agree to cooperate in providing equal opportunity in employment of all persons to prohibit discrimination or reprisal because of race, color, religion, sex, age, national origin, or handicap condition (physical or mental), and to promote the full realization of equal employment opportunity through a continuing affirmative action program in accordance with the Government Executive Orders, laws, OPM/EEOC directives, and DA regulations.

Section 2. The Employer agrees to conduct a continuing campaign to eradicate every form of prejudice or discrimination from personnel Policies and Practices and working conditions.

Section 3.

a. The Employer recognizes that the Union serves as a source of information on problems, needs and attitudes of the employees in bargaining unit. One Equal –Employment Opportunity Committee member will represent the interest of the bargaining unit.

b. The Committee will meet at least semi-annually to assess the EEO Program and to make recommendations as deemed appropriate. The Union will be given normal notice of committee meetings.



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Section 4. When new collateral duty EEO counselors are to be selected from among employees, the Union will provide a Union representative to be a voting appointed member. The Commander will consider all nominations and will appoint EEO counselors. The criteria for selecting part-time EEO counselors will be in accordance with the criteria established in AR 690-700, Ch 714 and applicable DA regulations and OPM qualifications requirements. It is further understood that anyone selected for appointment as an EEO Counselor will be precluded from serving as an employee representative in a discrimination complaint case or a grievance case did and will be so advised prior to appointment.

Section 5. The Union shall be informed of, as appropriate, meetings with other groups or associations involved in the Equal Employment Opportunity Program if such meetings are for the Purpose of discussing personnel policies and practices or matters affecting working conditions of unity employees covered by this Agreement. If the situation precludes the Employer from advising the Union of such meetings, no commitments to bargaining unit members will be made regarding Personnel Policies or Practices or working conditions affecting the bargaining unit without Prior consultation with the Union.

Section 6. In recognition of the Union's role as the exclusive representative and of the rights conferred upon employees by law and the regulations of OPM, EEOC, and Army, the Employer agrees to the law and the regulations of the following:

- a. EEO counselors will inform complainants of their right to representation of anyone of their choice including officials of the Union.
- b. Union officials shall be notified and given the opportunity for appropriate involvement if a disposition proposed as a result of a negotiated settlement agreement includes corrective action which impacts other employees in the bargaining unit.
- c. The authority to permit observers at and designate participants in the hearing rests solely with the Administrative Judge appointed by the EEOC.
- d. The Union shall be given reasonable notice of all proposed remedial or corrective actions affecting personnel policies and practices and general working conditions of any employees in the unit. The parties agree that all corrective or remedial actions will be consistent with the provisions of this Agreement except that provisions of this Agreement may not serve to prevent implementation of EEO decisions.

Section 7. In accordance with AR 690-700, Chapter 714, the Employer will have an Upward Mobility Program. Upward Mobility positions will be filled in accordance with merit promotion principles. The Employer agrees to counsel unit employees upon their request regarding qualifications for and benefits of the Upward Mobility Program. Applicants for Upward Mobility Positions will be sought through vacancy announcements, which specify the positions to be filled as an Upward Mobility position. The Employer, with consideration of the selectee's comments, will prepare an Individual Development Plan (IDP) for selectees of Upward Mobility positions. The IDP will outline on-the-job and formal training required to enable the employee to meet the full level of performance. The trainee's performance will be evaluated at specific intervals to assure his/her adequate performance of on-the-job and formal training assignments.

Article 5 - Health and Safety Environment

Section 1. The Employer shall furnish to each employee employment and a workplace environment that are free from recognized hazards that cause or are likely to cause death or serious physical harm.

a. The Employer and employees will comply with the occupational safety and health standards contained in Executive Order 12196, Occupational Safety and Health Act and with all rules, regulations and orders issued by the Commander with respect to the command's occupational safety and health program.

b. Vehicles, furniture and equipment will be functional and safe. During the normal workday, unsafe equipment will be determined by the supervisor and verified by the Headquarters Safety Office. Needed repairs to equipment will be reported to the supervisor at once. The Employer will take necessary action to replace, remove or have repairs accomplished in a reasonable amount of time.

Section 2. The Employer will inform all employees on actions they are to take in emergency situations that the Employer anticipates may occur in the workplace. The Employer will develop and explain in detail what emergency medical, and first aid duties are to be performed for them, and by whom regarding the availability and contacts for medical, rescue and fire assistance within and outside the building in the event of an accident or other emergency situation, and the procedures to obtain such assistance. All accidents shall be processed IAW applicable safety and occupational health regulations.

Section 3. When an on-the-job injury occurs, the employee/supervisor will notify the Headquarters Safety Office and will complete the form CA-1 (Notice of Traumatic Injury and Claim for Continuation of Pay) and process it through the Employer's Safety and Personnel offices. The CA16 (Authorization for Examination and/or Treatment) will be provided by the Employer to the employee at once.

Section 4. When an employee makes a written request for reassignment, or temporary assignment to light duty work, for job-related illness or injury, he or she is entitled to consideration of the request for reasonable accommodation.

a. Requests will be accomplished by medical certification stating the employee's specific limitations and length of time it is anticipated the employee will be incapacitated. The employee will also submit a written medical release authorizing the physician to provide the Employer with additional medical information should it become necessary.

b. If the Employer determines that reassignment or temporary assignment to light duty work is not warranted or possible, the Employer will give a written reply to the employee.

Section 5. In recognition that inherent hazards are associated with protecting Federal government property and personnel, the Employer will conduct, at a minimum, annual occupational safety and health training.

a. Training for employees will include specialized job safety and health training appropriate to the work performed by the employee, e.g. clerical, printing, operations, or computer technician. Such training shall inform employees of the occupational safety and health program, with emphasis on employee rights and responsibilities.

b. Immediately upon appointment of an employee to a collateral duty position or, within 30 days of appointment to a safety committee (paragraph 5, below), the Employer shall provide training commensurate with the scope of their assigned responsibilities. Training for collateral duty and command safety committee members shall include: Agency occupational safety and health program; section 19 of EO 121`96; procedures for the reporting, evaluation, and abatement of hazards; procedures for reporting and investigating allegations of reprisal; the recognition of hazardous conditions and environments; identification and use of occupational safety and health standards, and other appropriate safety and health rules and regulations.

Section 6. The Employer will conduct a minimum of annual safety inspections of MTMC facilities, equipment and operations, and will make necessary correction as soon as possible of resulting findings. The Union will be provided with the opportunity to participate in such inspections and will be provided a copy of the inspection reports.

Section 7. The Employer will appoint a safety committee composed of three (3) management members and three bargaining unit members, one of which will be a Union representative. The principal function of the committee will be to monitor and assist in the execution of the command's safety and health policies and program at the workplace within its jurisdiction.

Section 8. If an employee is required to work after his/her regularly assigned hours or overtime, where there is concern for his or her safety, the Employer will consider the employee's concern and will not require the employee to work unless no alternative arrangement can be made.

Section 9. The Employer and employees will comply with the provisions DOD Instruction 1010.15, subject: Smoke-Free Workplace.

a. The Employer shall protect all employees from the health hazards caused by exposure to tobacco smoke by banning smoking of tobacco products in all DOD workspaces.

b. Employees desiring to smoke will use designated outdoor smoking areas, which are reasonably accessible to provide a measure of protection from the elements.

Article 6 – Labor Management Relationships

A. Labor Management Partnership.

Section 1. The Union and the Employer will follow established Partnership procedures to meet and confer on issues. If the Partnership procedures are abolished, the UNION designee and the Employer designee will continue to meet at mutually agreed times and confer on issues on a regular basis, but at least quarterly.

Section 2. The Employer agrees that representatives of the Union and the Commander's designee for labor relations will meet as needed, but not less than quarterly, for the purpose of reviewing and discussing common policies, practices and matters affecting the conditions of employment of all bargaining unit employees.

Section 3. The Employer agrees that non HQMTMC employees, Union officers and other non HQMTMC employees Union representatives may meet with Union unit Union officers or representatives on off duty time and may coordinate meetings with Employer officials through the Commander's designee for labor relations.

B. Labor Management Relations (LMR).

Section 1. The Union and Employer agree to continue an LMR Committee for the purpose of exchanging information and discussing the matters of concerns or interest to each party in the area of personnel policies or practices, and working conditions.

Section 2. The LMR Committee shall consist of no more than 3 representatives from each party, unless mutually agreed otherwise.

Section 3. At least 2 working days prior to each meeting, each party will submit to the other a written list of any items they wish to discuss and individuals to be in attendance.

Section 4. The LMR Committee shall meet on the first Tuesday of each quarter and other times when the parties mutually agree there is a need. These meetings may be cancelled or rescheduled by mutual consent. When the parties agree that one is necessary, the Employer will prepare a memorandum for the record of the meeting. The memorandum will include, but not limited to the name of the attendees, subjects discussed and decisions reached. The concurrence of the Union will not be obtained prior to distribution to attendees.

Section 5. The LMR Committee shall not consider or discuss individual grievances and/or complaints. However, this will not preclude the parties from discussing general personnel policies, practices, or working conditions giving rise to individual grievances and/or complaints for the purpose of identifying appropriate measures to prevent future problems.

Article 7 - Management Rights

Section 1. Subject to Section 2 of this Article nothing in this agreement shall affect the authority of the Employer:

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, layoff, 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 for appointments from:

(a) among Properly ranked and certified candidates for Promotion; or

(b) any other appropriate sources; and

(4) to take whatever actions may be necessary to carry out the mission of the activity during emergencies.

Section 2. Nothing in this section shall preclude any agency and any labor organization from negotiating:

a. At the election of the Agency on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty or on technology, methods and means of performing work.

b. Procedures which management officials of the agency will observe in exercising any authority under this section; or

c. Appropriate arrangement for employees adversely affected by the exercise of any authority under this section by such management officials.

Article 8 - Union Rights

Section 1. The Employer shall in no way restrain, interfere with, coerce or discriminate against designated representatives of the Union in the responsible exercise of their right to serve as representatives for the purpose of collective bargaining, handling of grievances and appeals, furthering effective labor-management relationships, or acting in accordance with applicable regulations and agreement on behalf of an employee or group of employees within the bargaining unit, nor shall the execution of said responsibilities be reflected in their performance evaluation.

Section 2. The Employer will recognize a maximum of eight stewards who have been designated by the Union.

Section 3. The Employer will recognize the Union President who normally will be the spokesman for the Union with the Employer under provisions of the agreement and law.

Section 4.

a. Union Business. Solicitation of memberships and activities concerned with the internal management of the Union, such as the collection of dues, membership meetings, campaigning for officers, and conduct of elections, will not be conducted during duty time of the employees involved or in work areas.

b. Representation. The Union representatives identified in Section 2 above, shall represent all employees regularly assigned within the unit and may receive, investigate, and process their complaints or grievances during duty hours, being expected to be judicious in the time spent on such matters, and will be allowed reasonable and necessary official time. Reasonable time during working hours, without loss of leave or regular pay, will be allowed the Union representative for attendance at meetings called by a supervisor or management officials.

c. Any officer or steward shall request from the immediate supervisor permission to leave the work area on appropriate matters, and will inform the supervisor as to the work area to be visited, the expected approximate duration of absence, and other information in order for the supervisor to complete the Official Time Report. The supervisor will authorize the absence unless the services of the representative cannot reasonably be spared at that time, in which case the supervisor will immediately advise such representative as to the time authorization that will be granted, normally within the next work day. The representative will report back to the supervisor upon completion of the labor management business, so that the official time report can be completed. The supervisor is responsible for annotating the Official Time Report (provided by the servicing CPAC).

Section 5.

a. Employee officials or representatives of the Union may, upon written request, be excused without charge to leave to attend training sessions provided that the subject-matter of the training is of mutual concern to the Employer and the employee in the capacity as a Union representative. The Employer agrees to grant the Union a block of 450 hours to train representatives. Such training will be on labor relation's matters that assist the Union in meeting its representational duties. Requests for training will

be made in writing and must be received at least seven (7) workdays in advance to the Employer. Each request by the Union for training will not exceed six representatives per training session. Each request for training will include a copy of the training agenda and the names of the representatives that seek to attend. Normally, the representatives seeking to attend training will be allowed to attend, unless the mission of HQ MTMC requires them to remain and work. If the agency is not able to approve the attendance of any Union representatives to any particular training session, the Employer agrees to make every effort to approve any future request for these individual representatives. The representatives that attend training are required to provide a letter or certificate of completion to the Employer when they return to duty or no later than thirty (30) workdays after their return when possible.

b. The Employer agrees to provide space where available to conduct Union sponsored training, provided that: (1) the Union requests space at least ten (10) days in advance of scheduling training; (2) the Union will be responsible for all housekeeping upon completion of training.

Section 6. In keeping with 5 USC 7114, the stewards and officials identified in this Article must be named in writing. If said stewards or officials are not known to the custodian of records, they will, upon request, present acceptable proof of their representational status.

Section 7. The Employer agrees to advise the Union prior to the reassignment or detail of any Union officials from one section to another or change their tour of duty.

Section 8. The Employer agrees to consult and negotiate with the Union in the development of new and revised personnel policies and practices and matters affecting working conditions issued by the Employer. The Union shall be given a copy of the proposed issuance and if desired a briefing and a reasonable time frame in which to make a response.

Section 9. The parties recognize that Union officers and stewards are responsible for performing both their duties as Union officials and their duties as employees. If an officer or steward's use of official time in carrying out representational duties under this agreement and/or the Law as amended, unduly interferes with the proper performance of duties as an employee, the Employer agrees to first discuss the matter with the Union before taking appropriate action.

Section 10. The Union shall be given the opportunity to be represented at formal discussions concerning grievances, personnel policies and practices or other matters affecting general working conditions of employees in the unit.

Section 11. When the questionnaires/surveys are to be filled out by the bargaining unit employees, whether initiated by the Employer or higher authority, the Union will be notified in advance and provided a copy of the questionnaire.

Section 12. Full-time Representation.

The 100% official time for representational duties now provided for one Union representative shall be continued, subject to termination by either the Agency or the Union, each time a new Commander is named at HQ MTMC. Termination must be within the first 120 days of command. This representative shall be the Union or Union designated representative.

Article 9 - Use of official Facilities

Section 1. The Employer agrees that upon advance request by the Union, facilities as available may be furnished for meetings of the Union during non-duty hours of the employees involved. It is agreed that the Union will comply with all security and housekeeping rules in effect at the time and place. Scheduling will be arranged through existing procedures.

Section 2. The Employer also agrees to provide the Union with private office space. This office space will be equipped by the Employer with standard government office furniture, including desk, file cabinet, chairs, and telephone with Union outside capability. Phones will not be used for internal Union business or for long distance calls of any type.

Section 3. The Employer agrees to furnish the Union with a standard computer system compatible with Agency employee systems. The Employer agrees to provide the Union with access to PERSONNET (Personnel Network)-type software used to manage personnel.

Section 4. The Employer agrees to furnish bulletin board space to the Union (a minimum of 24" x 12") on each floor of the Hoffman Building occupied by HQ MTMC bargaining unit employees.

a. The bulletin board is to be used for the display of Union literature, correspondence and notices and other matters concerning the relationship between the employees and the Employer representatives. The names, work locations, and telephone extensions of the Union officers and/or Union may also be displayed.

b. The Union agrees that literature posted or distributed will not libelously reflect on the integrity of any individuals of Government agencies or activities of the Federal government.

c. All material will be posted or removed by the Union ONLY.

Section 5. The Employer will provide access to this agreement to each MTMC employee at the time of publication. The agreement shall be printed in type that can easily be read. Thirty copies of the agreement will also be provided the Union by the Employer.

Section 6. The Union may distribute newsletters to the employees during non-duty hours, or, upon request make use of HQMTMC mail distribution facilities/email. These methods will be used for the express purpose of mailing newsletters. They will not be used to conduct internal Union business such as campaign solicitation of due or solicitation of new members, etc.. Normally, mail facilities/email will be available for use not more than quarterly. The Union will be responsible for ensuring proper addresses (name and directorate) on all material so distributed. The preparation and distribution of such material will be without cost to the Employer unless specifically covered by this Article.

Section 7. The Employer agrees to provide the Union lists of employees who have left the bargaining unit and the reason (i.e. promotion, retirement, resignation) and new bargaining unit employees at least monthly.

Section 8. The Union will be given the opportunity to be present at the orientation of new employees for positions within the bargaining unit. The Employer will notify the Union when the orientation will take place.

Section 9. The Employer agrees to furnish the Union a complete and up to date listing of employees in the unit no more than twice per year. Each such listing shall include the name, work location, and occupational code of each employee.

Article 10 - Rights of Employees

Section 1. Any employee has and is protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity. Except as limited in Title 5 USC Chapter 71, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of the organization's views to officials of the Executive Branch, the U.S. Congress, or other appropriate authority.

These rights do not extend to participating in the management of a labor organization, or to acting as a representative of any such organization, where such participation would result in a conflict of interest or apparent conflict of interest, or otherwise be incompatible with law or the official duties of the employee. This provision does not preclude any employee from membership in the Union.

Section 2. Nothing in this Agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by an employee for the payment of dues through payroll deductions or by direct payment.

Section 3. An employee shall not be precluded from exercising grievance or appellate rights established by law or regulations; or from choosing his own representative in an appellate action, except when presenting a grievance under the Grievance Procedure Article of this Agreement.

Section 4. This Agreement applies to all employees of the Unit described in Article I, Section 2.

Section 5. Employees have the right, regardless of labor organization membership, to bring matters of personal concern to the attention of appropriate officials in accordance with applicable laws, rules, regulations or established policy, and to present their views to Congress.

Section 6. The Employer affirms the right of employees to conduct their private lives, as they desire. In the performance of official duties employees will be guided in their conduct by the Code of Conduct for Government Employees and AR 600-50. Only in situations when an employee's behavior or conduct off the job, i.e., in his/her personal life, is of such nature as to preclude the employee from satisfactorily performing his/her duties as an employee or is not consistent with applicable laws, regulations, or published policy, will the conduct be of concern to the Employer.

Section 7. Normally, the Union and the Employer encourage employees to participate in the Combined Federal Campaign, Bond Drives, etc., however, the Employer will not require any employee to invest his money, donate to charity, participate in activities, meetings, or undertakings not related to the performance of official duties (participation in the administration and management of charity or other activities will be strictly voluntary and not to be construed as an official duty). The Employer may also require that employees on official undertakings that will time Participate in activities meetings, or be assigned lead to the development of skills, knowledge, or abilities which will qualify them for performance of duties to which they may be assigned.

Section 8. The Employer shall not request an employee to make any report concerning any of his/her activities or undertakings unless such activities or undertakings are related to his/her employment or security clearance, to the performance of official duties, or to the development of skills, abilities which qualify him/her for knowledge or the performance of such duties or unless there is a documented reason to believe that the employee is engaged in outside activities or employment which is subject to reporting under the Code of Conduct for Government Employees and AR 600-50.

a. It is agreed that to the extent it is not contrary to law, each employee and/or his designated representative who has been so authorized in writing by the employee shall, have access to review any document appearing in his/her Official Folder and reasonable request for copies will be honored, normally not to exceed seven sheets without charge.

b. The employee may put on record any statement he/she wishes to make about unfavorable information contained in the aforementioned folders and records.

c. It is further agreed that where law Prohibits disclosure of any record, file, or document to an employee and/or his/her representative, then such record, file, or document may be made available only to those officials whose official duties require access to such material.

Section 9. The Official personnel records shall be only those listed in the Federal Personnel Manual and will constitute only records of the Employer. No derogatory material of any nature, which might reflect adversely upon the employee's character or Government career will be placed in his Official Personnel Folder, or any other file without the employee seeing or being aware of the document with the exception of material required by law to be kept.

Section 10. The Parties agree that employees should present their work-related problems to the lowest level of supervision that can deal with such problems. The employee has the right to communicate with a Union representative, a representative from the CPAC, and Equal Employment opportunity representative, or management officials of higher rank than the employees immediate supervisor concerning personnel policies, practices, or general working conditions. When an employee seeks a meeting with one of the above officials (or their designee) or representatives, the employee shall request to be excused from official duties by the immediate supervisor. Appointments with management officials will be arranged at a mutually agreeable time. Details and/or subject of such visits need not be revealed- No record of the details of such meetings or requested meeting will be obtained Or-kept by the supervisors) (unless he/she is the official with whom such meeting is requested). No action can be taken against the employee for requesting such meeting.

Section 11. Employees may be permitted to withdraw their resignation provided such withdrawal is made within a reasonable period of time before the effective date, no commitment has been made either internally or externally for a replacement, and there is no undue administrative disruption.

Article 11 - Voluntary Dues Deduction

Section 1. Eligible Employees. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- a. be in the bargaining unit covered by this agreement,
- b. receive a salary, and
- c. voluntarily request an allotment for the payment of Union dues on the prescribed form (SF-1187) which has been certified by an authorized Union official.

Section 2. Changes in Dues.

- a. The amount of dues certified on the SF-1187 will remain unchanged until an authorized Union official provides written certification to the payroll office that the amount of dues has changed. New SF-1187's will not be required.
- b. Changes in the amount deducted for Union dues will be effective not later than one (1) full pay period following receipt by the payroll office of the Union's certification of changes in its dues.

Section 3. Termination of Allotment.

- a. Dues allotment by an employee shall be automatically terminated:
 - (1) upon loss of exclusive recognition by the Union, to be effective at the beginning of the first full pay period after loss of recognition;
 - (2) when an employee ceases to be eligible for inclusion in the bargaining unit covered by this agreement for which the Union is the exclusive representative;
 - (3) when an employee is suspended, expelled, or ceases to be a member of the Union in good standing, to be effective at the beginning of the first full pay period following the date of receipt of such notification in the payroll office from an authorized Union official.
- b. Dues allotment may be voluntarily revoked:
 - (1) in accordance with 5 USC Section 7115(a), namely that "any such (dues) assignment may be revoked for a period of one (1) year
 - (a) the initial revocation period will be effective the first full pay period after an elapse of one (1) year from initial voluntary allotment
 - (b) thereafter an employee's SF-1188 will be honored the first full pay period after September 1st of each year
 - (2) Revocation by employees shall be in duplicate, preferably on the SF-1188, and shall be forwarded by the employee through CPAC to the Payroll office.

(3) Copies of any voluntary revocation will be forwarded to the Union Treasurer at the address on record, within five (5) working days of the date received in the CPAC.

Section 4. Responsibilities of the Union.

The Union shall:

a. Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of dues allotments

a. Purchase and distribute the SF-1187 to its members

b. Certify on the SF-1187 the amount of dues to be withheld each biweekly pay period

c. Promptly forward completed SF-1187's to the CPAC

d. Furnish written notice to the payroll office the name and address of the Union official to whom dues withheld from employees' pay are to be transmitted

e. Provide the Payroll office written notification concerning:

(1) Changes in the amount of Union dues

(2) The name of any employee who has been suspended, expelled or ceases to be a member in good standing in the Union within ten (10) days after the date of such determination

(3) Changes in the address of the Treasurer, Union 909/2 to whom dues withheld from the employees' are to be mailed.

Section 5. Responsibilities of the Employer.

The Employer shall:

a. Purchase SF-1188's and have them available for employees in the CPAC.

b. The CPAC shall notify the Treasurer of employee's revocation of allotments within Five (5) working days after receipt.

Section 6. Procedures.

It is agreed that the following procedures shall govern the voluntary allotment of dues:

a. Withholding of Dues.

(1) Upon receipt of a properly completed SF-1187, the payroll office shall arrange to withhold Union dues in accordance with existing pay periods (26 biweekly pay periods) and procedures under which employees are regularly compensated.

(2) The dues deduction shall be effective not later than two full pay periods following receipt of the SF-1187 by the CPAC.

b. Remittance of Dues.

(1) The payroll office shall remit, by check, the dues withheld after each pay period for which deductions are made. Checks in the payment of dues shall be made payable to and forwarded to: Treasurer of Union 909/2 at the address of record.

(2) The remittance checks shall be accompanied by a Union Dues Deduction Report which will contain the following information:

(a) Identification of the payroll office reporting the data and the Union to receive the dues

(b) Pay period ending date

(c) The name of each member whose dues were forwarded to the Union and the amount of dues withheld

(d) The gross amount deducted and the amount remitted for the Union.

(3) Checks will be forwarded to the Union with ten (10) workdays following the close of the pay period.

Article 12 - Hours of Work

Section 1. Hours of Duty.

a. Administrative workweek. The administrative workweek begins at 0001 on Sunday and ends at 2400 the following Saturday. Shift employees will be assigned duty hours based on the administrative workweek. All full time employees must work 8 hours per workday or be in an approved leave category. Employees are responsible for compliance with scheduled conferences, meetings, TDY, security duties, and other known requirements for his/her presence.

b. Basic workweek. The basic workweek for employees other than shift employees will consist of 40 hours or five 8-hour days, Monday through Friday, with the exception of those employees working a compressed work schedule (see section 3, below and the glossary).

c. Hours of work. The normal hours of work are 0800-1630 with a 30 minute lunch period. Each employee other than shift employees will be required to observe a 30 minute lunch period.

d. Shift employees will be allowed a 20 minute lunch break to be taken at the work place or designated area.

Section 2. Flexitour.

a. Within the guidelines outlined below, employees may establish work other than the normal 0800-1630 tour of duty.

b. Flexible periods are from 0630-0900, and 1500-1730. Within these periods, employees may, with supervisor's approval, establish a scheduled workday. All employees must be present, however, during the core time of 0900-1500 or use appropriate leave. Sufficient personnel must be on duty during normal working hours (0800-1630) to ensure that the agency mission is properly carried out.

c. Once a prearranged schedule has been approved, it becomes the basic workweek for the employee. Employees who desire to change their prearranged work schedules must request it in advance and in writing to their supervisor. The change is subject to approval by the supervisor.

d. Recognizing the uncertainties of daily life and the realities of commuting, employees will be permitted to occasionally arrive up to 15 minutes late without penalty provided the time is made up within the same workday.

e. The existence of the flexitour schedule does not alter other applicable laws and regulations concerning the utilization of leave, overtime compensation, or rights of employees.

f. Flexitour will not interfere with special working arrangements, established shift work, training classes, or any other special instances which require a standard schedule.

Section 3. Alternate Work Schedules (Compressed Work Schedules (CWS)).

- a. The basic work requirement for CWS is a 5/4-9 compressed plan (see glossary). Employees may request CWS from supervisors and after ensuring appropriate office coverage, supervisors may approve the request. All employees must be present, however, during the core time of 0900-1500 or use appropriate leave. Sufficient personnel must be on duty during normal working hours (0800-1630) to ensure that the agency mission is properly carried out.
- b. This section applies only to full time employees. Under CWS, a full time employee works eight 9 hour days and one 8 hour day for a total of 80 hours in a bi-weekly pay period.
- c. Overtime Work. Overtime work is ordered or approved in advance by management and is in excess of the compressed work schedule's basic work requirement (see Article 13).

Article 13 - Overtime

Section 1. Overtime will be paid under either Title 5 or Section 1 of the Fair Labor Standards Act as amended whichever is applicable.

Section 2. The Employer agrees to follow relevant laws, regulations, rules and policies in paying overtime when an employee works in the performance of official duties. Overtime will normally be paid when an employee works in excess of eight hours a day or forty (40) hours a week.

Section 3. Overtime assignments will be determined by the needs of the Employer and every effort will be made to distribute such assignments among qualified dependable personnel equitably. When overtime is required, the Employer will give as much advanced notice as possible to employees and seek volunteers. If no employees volunteer, the Employer may mandate overtime by roster, alphabetically according to grade.

Section 4. Employees called back to work outside their regularly scheduled duty hours will be paid a minimum of two (2) hours overtime or the actual number of hours worked, whichever is greater, or with compensatory time IAW applicable regulations.

Section 5. If overtime is required at the end of the regular work shift, employees will be given additional breaks. An employee will be allowed a fifteen (15) minute break for each additional two hours beyond the normal duty schedule and may take these breaks when reasonable, but based on agency needs and employee desires.

Section 6. The Employer agrees to make overtime information available pursuant to applicable laws and regulations to the Union upon request whenever a case or controversy arises over the distribution of overtime.

Section 7. Overtime is a mission necessity, not a right; therefore it must be treated with the same dedication as other duty requirements. Individuals who have proposed disciplinary action pending or have demonstrated unacceptable behavior involving attendance or work performance may be denied the privilege of performing overtime. Individuals who are off work due to illness will not be required or allowed to perform overtime the day of their return to duty. Individuals will not use overtime to make up a lost day of work. Request for exceptions will be made to the appropriate management official over the bargaining unit.

Section 8. Overtime **WILL NOT** be performed while in leave status. Leave status has been designated for specific purposes and the performance of overtime while in leave status defeats the purpose of taking leave. Managers will not schedule personnel nor use personnel who are in leave status (Annual, Sick, or LWOP) to perform overtime.

Section 9. It is agreed that employees officially ordered to work outside regularly scheduled working hours may be reimbursed for taxicab fares in accordance with applicable provisions of the Joint Travel Regulations.

Section 10. Employees required to make official telephone calls at home during other than regular duty hours will be compensated at the appropriate overtime rate. The employee shall maintain a log of the time actually spent on the telephone in the performance of said duty. The log will be presented to the supervisor for verification on the duty day immediately following the period in which the duty was performed.

Section 11. When food is not available at the job site during an overtime assignment, on a straight eight hour shift, which precludes the Employer from granting a non-paid lunch break, one employee shall be allowed time by the Employer to obtain food for his/her fellow employees.

Article 14 – Leave (Duty Status/Non Duty Status)

Section 1. During working hours, employees are either: (1) Present for work, (2) on approved absence, (3) absent without leave.

a. Present for work indicates that an employee is at the assigned place of work indicated by the supervisor.

b. Authorized absences fall into four categories: annual leave, sick leave, leave without pay (LWOP), and other leave.

(1) Annual leave is approved absence from duty in a pay status and is provided to allow every employee an annual vacation period(s) for rest and recreation as well as time off for personal and emergency purposes. Although accrual of annual leave is an employee right, the use of annual leave is subject to the prior approval of the appropriate supervisor.

(2) Sick leave, if accrued, shall be granted to employees when they are incapacitated for the performance of their duties for reasons of illness, injury, or other reasons as provided by leave regulations. Employees will submit leave requests for non-emergency medical, dental, and optical examination or treatments with as much advance notice as possible. The Union and the Employer recognize the importance of sick leave and will encourage employees to use sick leave appropriately.

(a) An employee may be required to furnish medical certification to substantiate requests for sick leave of more than three days duration. The Employer has the right to require that an employee furnish medical certification for any absence when the employee has been counseled on leave and then issued a letter of warning-attendance.

(b) The Employer will review the sick leave record of every employee required to furnish a medical certificate for each absence of alleged sickness. The requirement shall be rescinded, in writing, at the time of the review by the supervisor, if satisfactory improvement has been made.

(3) LWOP is authorized absence from work in a non-pay status and will be provided, if approved, should the employee require time away from work, time which does not fit into another approved leave status.

(4) Other leave is a paid absence for purposes such as court duty, voting, excused absence (administrative leave), military leave, or donating blood.

(a) Military leave is approved absence from work in a pay status and is provided to Reserve and National Guard personnel for the purpose of military training on active duty. Leave for military training is subject to prior approval of the appropriate supervisor.

c. Absent without leave (AWOL) is the time charge category when employees are not at their place of duty and are not in an approved absence category. Employees may be disciplined as a result of being placed on AWOL status.

Section 2. For leave planning purposes, employees will inform their supervisors in writing of desired periods of leave to be used throughout the year not later than March 1, using an SF 71, Application for Leave. This leave will normally be approved/ disapproved within five working days of submission. Where two or more employees request the same period for annual leave and all cannot be spared, the conflict will be resolved in favor of the employee who first submitted the SF 71 to the supervisor. New employees assigned to an area after 1 March will request leave using an SF 71 within 15 days of arrival. Normally, the leave priority of reassigned employees with approved leave will be based on the original date of submission of the SF 71.

Section 3. Unscheduled leave. Employees will follow the following procedures when requesting unscheduled leave (including emergency leave):

a. Employees, other than shift employees, will call the supervisor as soon as possible, but not later than, two hours after the beginning of the employee's tour of duty.

b. Shift employees must call the supervisor at least 30 minutes prior to the beginning of the employee's scheduled shift. Normally, the employee will make the call.

c. Approval of unscheduled leave is normally at the supervisor's discretion; therefore, the employee will explain the reason for the request and probable duration of the absence. If the absence exceeds the original period of approved leave, the employee will again call the supervisor and state the expected arrival time. If the request is denied, the employee will be given a reasonable amount of time to report to work and the total duty time missed will normally be charged to annual leave.

Section 4. Unscheduled sick leave. The following procedures will be followed when requesting unscheduled (or emergency) sick leave:

a. Employees other than shift employees will call the supervisor as soon as possible, but not later than, two hours after the beginning of the employee's tour of duty.

b. Shift employees must call the supervisor at least 30 minutes prior to the beginning of their scheduled tour of duty. Normally, the employee will make the call.

c. When the employee calls the supervisor, he/she will explain the general nature of the illness and probable duration of the absence. If the absence exceeds the original estimate, the employee will call the supervisor again with a revised estimate of the absence.

Article 15 - Training

Section 1. The Employer and the Union recognize that training and development of employees within the unit is of primary importance and is a valuable means of improving the efficiency and effectiveness of operations. The Employer shall provide the maximum feasible opportunity to employees to enhance their skills through classroom training, on-the-job training, technology based training, satellite training, employees' self-development activities, and other training measures so employees may perform at their highest potential and advance in accordance with their abilities. The Employer and the Union agree to consult periodically regarding the effectiveness of the training program.

Section 2. Employer agrees to ensure that supervisors discuss individual developmental and training needs and/or opportunities periodically with their employees. Employees are encouraged to discuss training opportunities with their directorate training coordinator, and Career Program Manager.

Section 3. Supervisors and employees will identify those situations in the specific work environment where training can improve performance and aid in achieving defined objectives and goals of the Employer and employee. Approval of any recommended training will be contingent upon the availability of necessary resources, needs of the Employer, and within budget limitations.

Section 4. The Employer has the right to determine training needs and may assign employees to perform such training, as the Employer deems necessary or appropriate. The Employer will attempt to provide employee on-the-job training to the maximum extent practicable.

Section 5. The servicing Civilian Personnel Advisory Center shall furnish technical advice and assistance as required or requested.

Section 6. The Employer and the Union recognize that training and development are based on initiative and ability. However, the Employer shall make every reasonable effort to provide assistance and to take appropriate action to ensure that equal opportunity is given to all employees to participate in training programs. There shall be no favoritism in providing training opportunities.

Article 16 - Performance Appraisal

Section 1. Total Army Performance Evaluation System (TAPES), AR 690-400, Chapter 4302, will be followed and adhered to until such time the regulation or system for managing performance for the civilian workforce is changed by appropriate law, rule or regulation.

Section 2. In order to insure continuity and an objective appraisal, employees must normally be supervised by the same supervisor with first hand knowledge and observance of their performance for a minimum of 120 days before receiving an appraisal.

Section 3. The employee's appraisal and rating will be based solely on the employee's performance in relation to the written performance plan.

Section 4. Employees will receive feedback throughout the rating period as to their progress. Supervisors will conduct initial and mid-point counseling sessions as a minimum.

Section 5. At the close of the rating period, supervisors will discuss with the employee the results achieved for each objective and the basis for such determination as well as the overall rating. The employee will have an opportunity to submit written documents to be made a part of the appraisal record.

Section 6. When personal notes are made by the supervisor/manager concerning an individual employee's performance which are intended for use as supporting documentation to appraise the employee, the employee will be given a copy of these notes upon request.

Section 7. Employees in the bargaining unit must use the negotiated grievance procedure to file a grievance in relation to their performance appraisal or other matters relating to the appraisal program.

Section 8. Performance Based Action (Unacceptable Performance).

a. When an employee is considered to be performing at an unacceptable level at any time during the performance year, the employee will be notified and counseled on the deficient performance. Such notifications will include the critical objectives on which the unacceptable performance is based, specific instances of unacceptable performance, what action must be taken to improve the performance to an acceptable level, and what assistance, including training if appropriate, will be provided by the Employer to help the employee. Employees will be given a reasonable period of opportunity (at least 120 days) in which to improve their performance to an acceptable level. At the end of the opportunity period, the supervisor will appraise the employee's performance again. If the performance is unacceptable, the Employer will give the employee a written notice of proposed action which specifies the specific instances of unacceptable performance, the critical objectives involved, the employee's right to representation, and the period of time (i.e. at least 10 working days from receipt of the advanced notice) in which the employee may respond orally or in writing, and the name and title of the official designated to hear an oral and/or receive a written reply. Such notice of proposed action will be given to the employee at least 20 working days in advance of a final decision on the unacceptable performance action.

b. Prior to and during the opportunity period, the supervisor's goal shall be to assist the employee in every way possible and appropriate to improve performance.

c. The Commander or other designated officials may extend the advance notice period for an additional 20 working days. Further extensions, not to 20 working days, can only be made with prior approval from the Commander. Extensions of the time limit for replying to notice(s) of proposed action may be granted if requested in writing by an employee or designated representative for valid reasons.

d. In no case will the final decision to take corrective action be based on a matter not specified in the notice of proposed action.

e. A decision to remove, reduce in grade or reassign may be based only on these instances of unacceptable performance by the employee which Occurred during the one (1) year period ending on the date of the notice of proposed action.

f. The decision to remove or reduce in grade shall specify the critical objectives of the employee's position involved in each instance of unacceptable performance on which the reduction in grade or removal is based. It shall be concurred by an official in a higher position than the official who proposed the action (unless proposed by the Commander) and shall specify the employee's right of appeal to the Merit System Protection Board (MSPB) or the right to file a grievance under the negotiated grievance procedures; but not both. It shall provide the time limits for filing under both systems, with the address of the appropriate MSPB office and a copy of the MSPB's Regulations and Appeal Form.

Section 9. Promotions and Incentive Awards.

a. General schedule employees in the bargaining unit will receive within-grade increases when eligible if their performance is at an acceptable level of competence. Under this plan, acceptable performance equates to a performance rating of successful.

b. Performance appraisals must be used as a basis for determining promotions. An employee will not be recommended for a career promotion unless performing at successful level-3, or better.

c. Incentive Awards. The law (5 U.S.C., Chapter 45) provides that incentive awards may be used as a form of recognition. They may be used to recognize superior performance by an individual employee, or to recognize a special act or service by an employee or by a group of employees. The incentive award *may* be a monetary, honorary, time off award or any combination thereof. When used to recognize a special act or service, the award is intended to recognize performance which exceeds job requirements as a one-time occurrence, such as performance on a particular project or assignment, a creative effort that contributes to science or research, or an act of heroism. While the periodic appraisal provides the opportunity to review and assess how actual performance compares with standards set for the job, supervisors should also recognize employees through awards at other times. If the supervisor determines that recognition is merited, the recommendation should be submitted as soon as possible so that the award will be timely.

d. Quality Step Increases (QSI). QSIs are designed to recognize and to reward an employee who performs, on a continuing basis, the most important functions of the job in a manner that substantially exceeds normal requirements. Factors that may affect the decision to grant a QSI, include performance rating rendered under this program, availability of funds, other cash or honorary awards, and previous quality increases. Awarding of a QSI is only authorized once in a 52-week period for an individual employee.

e. Training. Training, when properly used, can improve the efficiency and economy of operations of the organization, and provide for the development of maximum proficiency in the performance of an employee's official duties.

Section 10. Rating Periods.

Rating periods are governed by DA or higher HQs.

Article 17 - Merit Promotion

Section 1. The Employer agrees to provide the Union with a courtesy copy of all recruit actions (PERSACTION).

Section 2. The primary objectives of career management are to anticipate and meet continuing and future personnel needs with the highest quality staffing and to provide foreseeable career opportunities, which will attract, develop, and retain qualified employees. The Employer agrees to administer the career management program in accordance with applicable rules and regulations (AR 690-950-1) and to provide counseling and assistance to employees enrolled in the programs.

Section 3. The right of an employee to have their career records protected from unauthorized disclosure will not be infringed.

Section 4. The Employer will have a Department of Army Career Intern program that is dictated by the personnel needs of HQ, MTMC and is in consonance with Department of the Army program guidance and budget limitations. The career intern program will be administered to assure availability of replacement personnel for career program positions.

Section 5. The Employer agrees to establish upward mobility positions wherever possible.

Article 18 - Grievance Procedure

Section 1. Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. The Employer and the Union agree that every effort will be made by management and the aggrieved party(s) to settle grievances at the lowest possible level. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, his performance, or his loyalty or desirability to the organization. Furthermore, the filing of a grievance will not normally reflect unfavorably on the quality of supervision or on the general management of this organization.

A grievance is any complaint:

- a. by any employee concerning any matter relating to the employment of the employee;
- b. by the Union concerning any matter relating to the employment of any employee; or
- c. by any employee, the Union, or the Employer concerning
 - (1) the effect or interpretation or a claim of breach, of this agreement;
 - (2) any claimed violation, misinterpretation, or misapplication of any law, rules, regulation, or policy affecting condition of employment.
- d. except that it shall not include a grievance concerning
 - (1) any claimed violation relating to prohibited political activities; or
 - (2) retirement, life insurance, or health insurance;
 - (3) a suspension or removal under Section 7532 of title VII;
 - (4) any examination, certification or appointment; or
 - (5) the classification of any position which does not result in the reduction in grade or pay of an employee.
 - (6) reduction in force (RIF)

Section 2. This negotiated procedure shall be the exclusive procedure available to the employees in the bargaining unit and/or the Union for resolving such grievances except as provided in Section 4 of this Article. Only the Union and/or designee will represent employees under this grievance procedure. The grievant may represent him/herself.

Section 3. Appeal and Grievance Options.

An aggrieved employee affected by discrimination, a removal or reduction in grade based on unacceptable performance, or adverse action may at his/her option raise the matter under a statutory appellate procedure or the negotiated grievance procedure, but not both. For the purposes of this section and pursuant to Section 7121(e) (1) of the Act, an employee shall be deemed to have exercised his option under this section only when the employee files a timely notice of appeal under the appellate procedure or files a timely grievance in writing under the negotiated grievance procedure, whichever occurs first. (See Section 7).

Section 4. If an employee presents a grievance, without a representative, directly to the Employer for adjustment consistent with the terms of this Agreement, the Union shall have an observer present and the decision received at step 4 of Section 5 or step 1 of Section 6 will be final.

Section 5. Employee Grievance Procedure:

Step 1. Employees, the Union, or the Employer are encouraged to discuss issues of concern informally with the appropriate lowest level supervisor, management official, or Union representative at any time. Issues concerning any matter relating to the employment of an employee must be discussed informally with the appropriate lowest level supervisor, management official, or Union representative with the authority to settle the grievance. Grievances resulting from a one time act or decision must be initiated within fifteen (15) working days following such act or decision, or following the date the grievance became aware of such act or decision. Grievances resulting from continuing conditions may be initiated at any time. The responding party will respond within ten (10) working days in writing to the grievance.

Step 2. If the grievance is not resolved at the first step, the aggrieved employee and/or his representative will present the grievance oral or in writing within five (5) working days on the grievance form to the appropriate Director, or equivalent, who has the authority to settle the matter. Grievances should be specific and provide adequate facts from which the Director, primary staff officer, or equivalent, may determine the issue(s) being grieved. Once the Director, or equivalent, has received the grievance form pertaining to the issue(s), he/she will schedule a meeting with the grievant and or representative with five (5) working days. Following the meeting, the Director, or equivalent, will render a written decision within five (5) working days.

Step 3. Alternate Dispute Resolution (ADR). If the grievance is not resolved at the Second Step, the employee and/or the Union representative must seek resolution from the Alternate Dispute Resolution (ADR) Council as further described under Appendix 2.

Step 4. If the grievance is still unresolved at the third step, the employee and/or his Union representative may submit the grievance in writing to the Civilian Personnel Advisory Center (CPAC). The employee's written grievance must be submitted and received in the CPAC within five (5) working days after the time limit for ADR has expired. The Commander or his/her designee and the Union or his/her designee will review the grievance and jointly will provide a final written decision within five (5) working days after receipt of the grievance.

Step 5. If after step 4, the matter is still unresolved, the Union and only the Union may refer the matter to arbitration within fifteen (15) working days from receipt of the final decision. No new issues will be raised before the arbitrator that has not been introduced at the third step.

Section 6. Disciplinary Actions Grievance Procedure.

Step 1. Any complaint which involves a disciplinary action, i.e. in which a proposed notice was issued and a chance to reply provided, including a grievance filed in accordance with Section 4 of this article, shall first be presented in writing by the concerned employee and/or the Union representative, to the Commander or designee within twenty (20) working days of the effective date of final notice. Within five (5) working days of receipt of the grievance the Commander or designee will make arrangements to meet with the grievant and the Union to discuss and attempt to settle the grievance. The Employer will have ten (10) working days in which to answer the complaint in writing after the final meeting.

Step 2. If this matter is not satisfactorily settled at step 1, the Union may invoke arbitration within thirty (30) days of receipt of the Commander's decision in step 1.

Section 7. Union Grievance Procedure.

a. Grievances that may impact on more than one employee may be submitted in writing by the President or designee directly to the Commander or designee. The Commander or designee and the President or designee will meet within ten (10) working days after receipt of the grievance to discuss the grievance. The Commander or designee shall give the Union President or designee his written answer within 10 working days after the final meeting. If the grievance is not settled by the above method, the Union may refer the matter to arbitration. Nothing herein will preclude either party from attempting to settle such grievances informally at the appropriate level.

b. Grievance by the Employer will be submitted in writing to the Union President. The Union President or designee will meet with the Commander designee within 15 working days of receipt of grievance to discuss and attempt to settle this grievance. The Union President shall give the Commander a written answer within 10 working days after the final meeting. If the grievance is not settled by this method, the Employer may refer the grievance to arbitration in accordance with Article 19.

Section 8.

- a. Time limit under this Article may be extended by mutual agreement.
- b. If the Employer does not respond within the time limits, the grievance may be moved to the next step.
- c. Failure of the Union or grievant to observe the stated or extended time limits shall constitute withdrawal of the grievance.

Article 19 - Arbitration

Section 1. Management and Union agree that before invoking formal arbitration procedures, management and Union will continue to seek resolution through the Alternate Dispute Resolution (ADR) process (mediation) from a shared, neutral source from outside HQMTMC to hear the issue in an attempt to reach resolution. Should the parties fail to reach a satisfactory adjustment of the issues through the grievance mechanics defined in Article 7, either may exercise the option to refer the matter to arbitration within twenty (20) working days of receipt of the final decision by management.

Section 2. Within ten (10) working days from the date of the request for arbitration either party may request the Federal Mediation and Conciliation Service (FMCS) to provide a list of five impartial persons qualified to act as arbitrators. The parties shall meet within ten (10) working days after the receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, then the Employer and the Union shall each strike one (1) arbitrator's name from the list of five (5) and will repeat this procedure until only one (1) name remains; this remaining person shall be the duly selected arbitrator. The parties will toss a coin to determine which shall have the first strike.

Section 3. Should either party refuse to participate in the selection of an arbitrator, fail to take action, or unduly delay the proceedings, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an impartial arbitrator to hear the case.

Section 4. The arbitrator's fee and the expense of arbitration, if any, shall be equally borne by both parties. The arbitration hearing will be held, if possible, on the Employer's premises during the regular hours of the basic workweek. Employees serving as Union representatives and Appellants in the minimum number necessary for the purpose, and employee witnesses who have direct knowledge of the circumstances and factors bearing on the case, shall be excused from duty to participate in the arbitration proceedings without loss of pay or charge to annual leave.

Section 5. The arbitrator's award shall be binding upon the parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority under regulations prescribed by the Authority. If either party seeks clarification of the award from the arbitrator within ten (10) calendar days of receipt of the award, the parties will not consider the award served and complete until both parties receive the arbitrator's response to the request for clarification.

Section 6. Except as mutually agreed by the parties, arbitration under this Article will be conducted as oral proceedings with no verbatim transcript and no filing of briefs unless required by the arbitrator.

Section 7. Absent a negative arbitrator's decision upon the arbitrability of a grievance, the arbitrator shall hear arguments regarding both the arbitrability and the merits of the case at the same time.

Section 8. If no exception to an arbitrator's award is filed during the thirty (30) calendar day period beginning on the date of such award, the award shall be final and binding. The Employer or the Union shall take the action required by an arbitrator's final award.

Article 20 – Disciplinary and Adverse Actions

Section 1. Objective of Discipline. The broad objective of discipline is to prevent prohibited activities and to motivate employees to conform to acceptable standards of conduct. Discipline is a part of the daily responsibility of supervisors and not merely the action taken at times when an employee deviates from acceptable forms of conduct. The supervisor's most effective means of maintaining discipline is through the promotion of cooperation, of sustained good working relationships, and of the self-discipline and responsible performance expected of all employees.

Section 2. Categories of Disciplinary and Adverse Actions. Disciplinary/Adverse actions are taken by management officials for the purpose of correcting an employee's conduct, attitude or work habits, in order to maintain efficiency, discipline, and morale of the civilian workforce.

a. Disciplinary actions fall into two categories: informal disciplinary actions and formal disciplinary actions.

(1) Informal disciplinary actions consist of oral or written warnings. The supervisor takes admonitions on his/her own initiative in situations of a minor nature involving unacceptable behavior. Oral admonitions and written warnings are normally the first steps in progressive discipline for behavioral offenses and they should be documented. In taking an informal disciplinary action, the supervisor will advise the employee of the specific infraction or breach of conduct, when and where it occurred and advise the employee that continued violations will result in formal disciplinary action. The employee should then be allowed to explain his or her side of the incident.

(2) Formal/Adverse disciplinary actions consist of written reprimands, suspensions, and demotions, involuntary reductions in grade or pay, and removals. Formal disciplinary actions are initiated by supervisors, but must be coordinated with the servicing civilian personnel advisory center. Depending on the severity of the offense, however, formal discipline may be initiated for a first infraction. A formal written reprimand is appropriate for use when more stringent disciplinary action than an oral admonishment is warranted and the circumstances justify the inclusion of a record of the action in the employee's official personnel folder.

b. Similarly, employee conduct requiring discipline falls into two categories:

- (1) Behavioral offenses for which progressive discipline aimed at correcting the behavior are appropriate.
- (2) Offenses related to violation of regulations or laws for which punitive sanctions are required.

c. Disciplinary action should be taken for the purpose of either correcting offensive employee behavior or for the purpose of imposing punishment necessary to maintain discipline, and morale among other employees. Where, in the Employer's judgement, behavior can be corrected through closer supervision, on-the-job training, oral admonitions or written warnings, formal disciplinary actions normally will not be taken. Delay weakens the relationship between any offending behavior and discipline. Disciplinary actions should be taken as soon, is reasonably practicable under the circumstances in a particular case.

- d. This article does not cover probationary employees and those serving trial periods.

Section 3. Disciplinary actions will be taken only for such cause as will promote the efficiency of the service.

Section 4. In the event of a proposed formal disciplinary action, the employee will receive a notice in duplicate, one copy of which will be marked for employee distribution to the Union if the employee so desires. The notice will contain:

- a. The charge and reason for the proposed action.
- b. The employee's right to representation to include Union representation.
- c. Information as to time limit for reply and grievance rights on which the proposed actions are based.
- d. The party the employee is to respond to.
- e. The fact that management has considered the Douglas Factors.

The employee has at least 10 days in which to answer the proposed charges, orally or in writing or both.

Section 5. The employee has the right to Union Representation when being questioned by a representative of the agency, if in his/her opinion, the discussion may lead to disciplinary action against the employee, and the employee requests representation.

Section 6. The Employer agrees that the employee has the right to petition the immediate supervisor in writing for removal of reprimands, which have been on file for six months or more. They will be removed after two (2) years. When reprimands are removed, all pertinent documents will be destroyed by the supervisor or the servicing Civilian Personnel Advisory Center in the presence of the concerned employee.

Section 7. Material that reflects adversely upon the employee will not be placed in any official personnel file without the employee knowledge.

Section 8. Upon request of the employee and/or a Union Representative, designated in writing by the employee, official personnel records of the requesting employee will be made available for review and/or copy.

Section 9. The management official making the decision will fully consider the employee's answer before issuing a decision on suspension or adverse action.

Section 10. An employee dissatisfied with the decision on a disciplinary action as defined in Section 2 of this Article may file a grievance pursuant to the grievance procedure.

Section 11. Penalties.

a. Disciplinary actions under 5 U.S.C. 7503 and 7513 must not be arbitrary or capricious; the penalty selected must not be clearly excessive in relation to the offense and to prior practice, and must be not otherwise unreasonable.

b. In choosing the appropriate sanction from the Army Table of Penalties, a prior offense of any type forms the basis for proposing the next higher sanction. Thus, a documented first offense of insubordination followed by a charge of fighting triggers the "SECOND OFFENSE" identified in the Army Table of Penalties. The appropriate sanction to be considered for the fighting charge becomes the range from 5-day suspension to removal. When considering a prior offense, the supervisor should consider the relationship in time of "freshness" of the previous offense in relation to the current infraction.

c. Aggravating factors on which the agency intends to rely for imposition of an enhanced penalty, such as prior disciplinary record or the egregiousness of the offense, should be included in the notice of proposed discipline so that the employee will have a fair opportunity to respond to those factors.

d. Decision notices should contain information demonstrating that the deciding official has considered all of the relevant information available, both aggravating and mitigating, and should explain what weight was given to the aggravating factors cited in the proposal notice in reaching the final decision. They should also should reflect the deliberation of such official concerning the reasons for arriving at the judgement that the employee did or did not commit the offense charged, as well as the reasons for selecting the specific penalty in question rather than another (lesser) one. A responsible balancing of the relevant factors in the individual case will be sought, not in a mechanistic way, but with "practical realism".

e. It is essential that strong and effective measures be applied, consistent with applicable law and regulation, to those bargaining unit employees who are found to have engaged in theft, fraud, or other intentionally dishonest conduct against the Army. Effective with the promulgation of Army Regulation 690-700, and/or US Code, it is the policy of the Army that the bargaining unit employee found to have engaged in theft, fraud, or other intentionally dishonest conduct against the Army will be considered for removal from the federal service. Any lesser penalty will require justifiable mitigation circumstances.

Article 21 - Contracting Out

Section 1. Management right. The Employer has the right to make determinations concerning contracting out of Employer functions and activities in accordance with this article and applicable law and regulations.

Section 2. The Employer agrees to notify the Union prior to and contracting out of work that will result in displacement of employees within the bargaining unit and to keep the Union informed of Commercial Activity (CA) review actions that may affect their jobs.

Section 3.

a. The Employer will consult with and provide the Union the opportunity to submit their comments during development of performance work statements (PWS), management studies, quality assurance plans, the most efficient organization (MEO) and in developing milestones.

b. Controlling regulations in effect at the time of the contracting out of activity will govern Union participation in matters dealing with contracting out. (Title X, USC, Section 2467, OMB Circular A-76 and its supplement, and this agreement).

c. The opportunity of the Union to comment does not restrict the Employer statutory authority to make decisions on contracting out. Union officials will be subject to the same nondisclosure statements as other participants.

Section 4. The Employer agrees to provide the Union with a copy of the solicitations for bids on the date the solicitations are mailed out.

Section 5. The Union may appeal the cost comparison analysis and its result. The appeal will be in accordance with controlling regulations.

Section 6. The Employer further agrees to minimize the displacement action by making reasonable efforts to place eligible employees in accordance with Article 22 (Reduction in Force).

Article 22 – Reduction in Force

Section 1. The agency may undertake a reduction-in-force (RIF) whenever it is necessary to release an employee from his competitive level by furlough for more than thirty (30) days, separation, demotion or reassignment requiring displacement of any employee. RIF action may be undertaken because of a lack of work, shortage of funds, reorganization, contracting out, exercise of reemployment rights or job restoration rights by an employee, or reclassification of an employee's positions due to erosion of duties. RIF action will be carried out in accordance with applicable regulations and this article. Employees in the Acquisition Demonstration Project are within a separate competitive area within HQMTMC and where appropriate, will be covered by separate rules.

Section 2. Notice to Union. When a RIF is pending, the agency will provide the Union written notice containing the following:

- a. A statement that a RIF is pending;
- b. The reason (s) for the RIF;
- c. The approximate number of positions/employees that are affected;
- d. The proposed effective date of the RIF; and
- e. When the information becomes available, the specific positions and names of employees who will be affected.

Section 3. Confidential Information. Any information the agency provides the Union concerning a proposed RIF is strictly confidential and may not be disclosed to employees (except employees who are Union representatives) or any third person until the agency has officially notified all affected employees of the RIF.

Section 4. RIF Procedure. The following RIF procedure will be observed:

- a. Competitive Area. A competitive area is the organizational or geographical boundary established by the agency for RIF competition. Employees can displace other employees only within their competitive areas
- b. Notice to Employees. Those employees affected by the pending RIF will receive written notice a minimum of sixty (60) calendar days prior to the effective date of the RIF. The written notice shall contain all information required by applicable regulations.
- c. Access to Retention Registers. Upon request, affected employees or their designated representatives will be afforded an opportunity to review retention register(s) and other documents pertaining with designated agency to the RIF and to discuss RIF procedures with designated agency representatives.
- d. Counseling and Placement Assistance. Affected employees will be offered counseling concerning retirement benefits and the Department of Defense (DOD) Priority Placement Program (PPP) and other available job placement and reemployment programs.

e. Performance Appraisals. Additional service credit based on performance is governed by applicable regulations. The performance appraisal cut-off date is sixty (60) calendar days prior to the date employees RIF notices are issued. Performance appraisals due on or before the cut-off date, but which were not officially approved and made a matter of record until after the cut-off, will not be considered for employees retention standing purposes.

f. Vacant Positions. The agency will give priority consideration to placing employees affected by RIF in vacant Positions. The Agency may waive certain qualification requirements when placing affected employees in vacant positions, as provided by applicable regulations.

g. Relocation Costs. The agency will pay affected employees relocation costs authorized by the Joint Travel Regulations.

h. Individual Employee Counsel Job Placement Assistance. Upon individual counseling, and request, the agency will provide employee I advice concerning job application preparation, placement assistance, etc.

i. Placement and Reemployment Programs. Employees downgraded or separated from Federal Service may be placed on PPP registers. Unless deleted from the RPL for a reason specified in applicable regulations, a career employee can remain on the Reemployment Priority List (RPL) for two (2) years and a career-conditional employee for one (1) year.

j. Excused Absence. Upon request, an employee being separated by reason of RIF may be given a reasonable amount of administrative leave to facilitate his job-seeking efforts.

k. Minimizing Effects of RIF. When appropriate, the agency will endeavor to minimize the negative impact of the RIF on employees using tools it has available for this purpose under applicable law, rules, regulations and policies.

Section 6. Appeals. An employee who has been subjected to an adverse action resulting from a RIF may appeal to the Merit Systems Protection Board in accordance with regulations prescribed by the Board.

Section 7. Impact and Implementation (I&I) Collective Bargaining Agreement. The provisions of this article contain and the impact and constitute the parties collective bargaining agreement concerning implementation (I&I) of any future RIF initiated by the agency during the term of the Collective Bargaining Agreement.

Article 23 – Relationship of this Agreement to Past Practices

Section 1. It is further agreed and understood that any existing conditions of employment, working conditions, or personnel policies and practices which have been mutually acceptable to the parties which are not specifically covered by this Agreement shall not be changed until negotiated by parties.

Article 24 – Effective Date and Duration

Section 1. This agreement shall remain in effect for three (3) years from the effective date. It must be brought into conformance with Government-wide rules or regulations; Agency rules or regulations (unless it has been determined that no compelling need for the rule or regulation exists); the Statute; and applicable laws.

Section 2. If either party wishes to renegotiate this agreement, they must provide written notice to the other of its desire to do so at least sixty (60), but no less than one hundred five (105) calendar days immediately preceding the expiration date. Within a reasonable time after receipt of such notice, the parties will commence negotiations.

Section 3. If neither party serves notice to renegotiate this agreement, the agreement shall automatically be renewed for one (1) year periods.

Section 4. This agreement may be terminated:

- a. By mutual consent of the parties
- b. At any time it is determined and established that the Union is no longer entitled to exclusive recognition.

Appendix A - Official Time Report

Appendix B - Alternate Dispute Resolution (ADR)

1. All employee grievances that are not resolved at step one or step two of the negotiated grievance procedure, Article 18, Section 5, will be submitted to an Alternate Dispute Resolution (ADR) Council for resolution within five (5) working days after the decision made in step 2. The employee will utilize the ADR form (Appendix C) to outline the issues presented to the ADR Council.
2. The establishment of an ADR Council covers all the bargaining units recognized under the negotiated contract. The ADR Council will be under the auspices of the Employer and the Union as respective partners. The ADR Council will be comprised of two representatives of the Employer - one of which will be the CO-Chair and not in the grievant's chain of command and two representatives of the Union - one of which will be the CO-Chair and not the steward representing the grievant.
3. The Commander's designee will appoint the Employer representatives and the Union will appoint the Union representatives. The Employer representatives appointed to the Council should not be involved with the issue and should be the same or higher rank as the manager involved with the issue.
4. The Union representative likewise should not be involved with the issue apart from the Council. If circumstances prevent a Employer representative or Union representative from being appointed, the Commander's designee or the Union President or designee will appoint individuals for these positions.
5. The structure of the ADR Council will be reviewed six months after the implementation of this negotiated contract for the purpose of determining effectiveness. If either party wishes to renegotiate the structure of the ADR Council, they may do so after the six-month review and by proper notice to the other party. Nothing in the Article 24, Effective Date and Duration, shall prohibit negotiations over ADR Council structure if desired by either party and the six-month review has taken place.
6. Council members will be delegated the maximum authority and responsibility to carry out the duties of the ADR Council and meet as required.
7. Issues excluded from the grievance procedure as indicated by Article 18 cannot be brought to the ADR Committee.
8. Once the Council is formed the employee (grievant) and the supervisor or supervisors involved with the issue will have seven (7) working days to present additional information to the Council. If the information consists of statements, the statements must be in writing. No member of the Council will receive or review information from the parties until all Council members have been identified.
9. The ADR Council may interview witnesses, investigate as needed, request information from the Union, employee, or management, and conduct a hearing if they wish to do so, in order to make an equitable decision on any case before them. The ADR Council will have wide latitude to recommend solutions to issues, correct any problems between employee, employees and their supervisors, or between other personnel, and can overturn any proposed action or decision by Management officials, as long as the decision does not violate law, regulation, rule, or existing

negotiated contract. The Council's tasks include additional fact finding, determining legal requirements, developing resolution options, and making a decision. The ADR Council and all participants will be on a reasonable amount of duty time for the necessary ADR functions.

10. The ADR Council must reach a decision by consensus within fifteen (15) working days from the second step decision. If no decision is reached within this timeframe, the Council, by consensus, may request to extend that time frame to the Commander's designee and the Union president or designee. Such requests for extension should only be granted if there is some showing that a consensus decision is likely.

11. If no decision is reached by consensus within the desired time frame or the request for extension is denied the issue will be presented to the Commander and Union President or their designee/s for possible resolution. The Commander and Union President or their designee/s will have five (5) additional calendar days to reach a resolution of the issue. If no resolution is reached the issue/s will be presented to the CPAC as the fourth (4th) step in the negotiated grievance process.

12. If a consensus decision is reached it is final and binding on the parties. Prior to implementation the consensus decision will be reviewed by the Commander and by the Union President or their designee/s to determine that the decision is not contrary to law, regulation, rule, or existing contract. Once approved by the Commander and the Union President or their designee/s, the decision will be implemented and the grievance discontinued. The consensus decision should specify a reasonable timeframe in which to implement the decision and will not establish a precedent.

13. The ADR Council may publicize its decisions subject to privacy issues.

14. Issues over the interpretation or application of this Article will be resolved between the Commander and the Union President or their designee/s.

Appendix C - ADR Form

GLOSSARY

ARBITRATION. See **arbitrator.**

ARBITRATOR. An impartial third party to whom the parties to an agreement refer their disputes for resolution. Most commonly labor arbitrators perform **grievance arbitration**--i.e., they interpret and apply the terms of the agreement (including established practices)--and, in the Federal sector, laws and regulations (see **applicable laws**, above) bearing on **conditions of employment**. But they are also occasionally asked to perform **interest arbitration**--i.e., they resolve bargaining impasses by dictating the terms of the agreement.

CONDITIONS OF EMPLOYMENT (COE). Under § 7103(a)(14), COE "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters--(A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute*["]

CONTRACTING OUT. A right reserved to management by § 7106(a)(2)(B). It includes the right to determine the criteria governing the exercise of the right. For example, a proposal permitting contracting out only if the agency can demonstrate that contracting out would be "economically efficient, effective to the mission, or in the best interest of the Federal Government" directly interferes with the right to contract out.

EMPLOYEE. Under the Federal Service Labor-Management Relations Statute, the term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the U.S. See 5 USC § 7103(a)(2).

EXECUTIVE ORDER 12871, as amended. In order to improve agency performance, the President issued Executive Order 12871 (Order). The Order, among other things, establishes a National Partnership Council (NPC) that is made up of top union, agency, and managerial/supervisory organizations. The NPC advises the President on labor-management relations, supports and fosters labor-management partnerships, and collects and disseminates information on partnerships. The Order also directs agencies to establish partnerships, provide training in alternative dispute resolution techniques, bargain on section 7106(b)(1) matters, and "evaluate progress and improvements in organizational performance resulting from the labor-management partnerships."

EXCLUSIVE RECOGNITION. Under the **Federal Service Labor-Management Relations Statute**, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. (Exclusive recognitions obtained under Executive Order 10988, which didn't require secret-ballot elections, are preserved via a "grandfather" clause.)

The rights a union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable

aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at *formal discussions*, to free *checkoff* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute** (FSLMRS). As such, it decides, among other things, representation issues (e.g., the bargaining **unit** status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards**, as well as resolves disputes over consultation rights regarding agency-wide and Governmentwide regulations.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector--see § 7119(a). FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**.

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). Entity within FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. It was created as a strike-substitute (strikes are prohibited in the Federal sector--see 7 FLRA No. 10, where the Authority decertified the Professional Air Traffic Controllers Organization (PATCO) because it had engaged in a strike) or other economic tests of strength that frequently determine bargaining outcomes in the private sector. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. Under section 7119(c)(5)(B)(iii), FSIP may "take whatever action is necessary and not inconsistent with this chapter to resolve the impasse." For example, if the parties can't agree on particular provision(s)--i.e., contractually determined conditions of employment, FSIP has authority to tell them what to put (or not put) in their contract. However, it is not a ULP to refuse to comply with a FSIP order dealing with a permissive subject of bargaining. See 15 FLRA Nos. 65 and 100 - 104. See 5 CFR 1470 ff for FSIP's regulations.

GOOD FAITH BARGAINING. Defined by § 7114(b) as the duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any **condition of employment**, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

GRIEVANCE. Under § 7103(a)(9) a grievance "means any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(I) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

GRIEVANCE ARBITRATION. See **ARBITRATOR**.

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under § 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration.

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment (including established practices) of unit employees is protected by management's § 7106(a) rights or is mandated by discovery that the practice is illegal, there is a duty to notify the union and, upon request, bargain on the § 7106(b)(2) **procedures** that management will follow in implementing its protected decision as well as on § 7106(b)(3) **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining**.

MANAGEMENT OFFICIAL. Under § 7103(a)(11), an individual who formulates, determines, or influences the policies of the agency. Under § 7112(b)(1), such individuals are to be excluded from **appropriate units**. Because management officials are not "employees" within the meaning of the **Federal Service Labor-Management Relations Statute (FSLMRS)** (§ 7103(a)(2)(iii)), they do not, among other things, have the FSLMRS-protected right to represent unions. See §§ 7102 and 7120(e). In *AFGE Local 2513 v. FLRA*, 834 F.2d 174 (D.C. Cir. 1987), the court said the following about supervisors, which probably would also apply to management officials:

Congress has not prohibited supervisor's from joining unions. It is inconceivable that supervisor-members' right to belong to a union includes nothing more than paying dues and participating in various health plans. While Congress expressly prohibited supervisors from assuming policy-making and representative functions within the union, § 7120(e), there is no evidence that Congress intended to deny supervisors one of the most essential vestiges of union-membership, the right to cast a vote in the election of their union's officials.

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by § 7106(a) which, with the important exception of matters falling within § 7106(b), are not subject to collective bargaining. In 34 FLRA No. 55, the Authority said that "[m]anagement rights under section 7106(a) cannot be waived or relinquished through collective bargaining."

- **Core rights.** Rights reserved to management under § 7106(a)(1), consist of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency
- **Operational rights.** Rights reserved to management under § 7106(a)(2), sometimes referred to "operational" rights, consist of the rights "(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; (C) with respect to filling positions, to make selections for appointments from--(I) among properly ranked and certified candidates for promotion; or (ii) any other appropriate source; and (D) to take whatever actions may be necessary to carry out the agency mission during emergencies."

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is assumed to be more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations. Under § 7119(a), labor mediation services are provided by the Federal Mediation and Conciliation Service (FMCS). Some writers have distinguished between conciliation and mediation in terms of the degree to which the mediator is expected to be an active participant in the process, with the conciliator playing a more passive role than that played by a mediator.

OFFICIAL TIME. Official time granted for employees serving as union representatives in connection with labor-management relations activities. Use of official time for the performance of internal union business is prohibited. Official time for employees “participating for, or on behalf of, a labor organization” is authorized and the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions may be negotiated.

PARTNERSHIP. A form of employee participation established pursuant to Executive Order 12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. Regarding the latter point, section 3 of the Order says that “[t]his order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review” The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over section 7106(b)(1) staffing patterns, technology, methods and means--matters integral to improving *agency* performance, which is the overriding purpose of the Order.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement.

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership meetings, being present at (1) **formal discussions** and, upon employee request, (2) *Weingarten examinations*.

SUPERVISOR. Under § 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with

respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]” In 45 FLRA No. 57 the Authority also held that a person exercising independent judgment in preparing performance appraisals is a supervisor.

UNION. A labor organization within the meaning of § 7103(a)(4)--i.e., “an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment”

WEINGARTEN RIGHT. Under § 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if the examination is conducted by a representative of the agency, the employee reasonably believes that the examination may result in disciplinary action, and the employee asks for representation. Such examinations are called *Weingarten* examinations as a result of a private sector case establishing such a right.

WORKING CONDITIONS. See **CONDITIONS OF EMPLOYMENT.**

IN WITNESS WHEREOF the parties have hereunder set their hands and seals this 24th day of July in the year 2000.

FOR THE UNION:

FOR THE EMPLOYER:

LEON T. PARRISH
Chief Negotiator

JANICE W. FERGUSON
LTC, USA
Chief Negotiator

MICHAEL A. McCAULEY
Chief Steward, AFGE Local 909/2

WILLIAM J. MERRIGAN
Staff Judge Advocate Office

MARY S. PARRISH
Steward, AFGE Local 909/2

BENNIE BUSTAMANTE
HQMTMC Civilian Personnel
Advisory Center

BILL REED
Steward, AFGE Local 909/2

BILLIEANN M. ROBISON
Steward, AFGE Local 909/2

RUBY L. WARD
Member, AFGE Local 909/2

APPROVED:

LEON T. PARRISH
President, AFGE Local 2

KENNETH L. PRIVRATSKY
Major General, USA
Commander, MTMC

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FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute** (FSLMRS). As such, it decides, among other things, representation issues (e.g., the bargaining **unit** status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards**, as well as resolves disputes over consultation rights regarding agency-wide and Governmentwide regulations.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector--see § 7119(a). FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**.

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). Entity within FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. It was created as a strike-substitute (strikes are prohibited in the Federal sector--see 7 FLRA No. 10, where the Authority decertified the Professional Air Traffic Controllers Organization (PATCO) because it had engaged in a strike) or other economic tests of strength that frequently determine bargaining outcomes in the private sector. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. Under section 7119(c)(5)(B)(iii), FSIP may "take whatever action is necessary and not inconsistent with this chapter to resolve the impasse." For example, if the parties can't agree on particular provision(s)--i.e., contractually determined conditions of employment, FSIP has authority to tell them what to put (or not put) in their contract. However, it is not a ULP to refuse to comply with a FSIP order dealing with a permissive subject of bargaining. See 15 FLRA Nos. 65 and 100 - 104. See 5 CFR 1470 ff for FSIP's regulations.

GOOD FAITH BARGAINING. Defined by § 7114(b) as the duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any **condition of employment**, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

GRIEVANCE. Under § 7103(a)(9) a grievance "means any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(I) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

GRIEVANCE ARBITRATION. See **ARBITRATOR.**

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under § 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration.

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment (including established practices) of unit employees is protected by management's § 7106(a) rights or is mandated by discovery that the practice is illegal, there is a duty to notify the union and, upon request, bargain on the § 7106(b)(2) **procedures** that management will follow in implementing its protected decision as well as on § 7106(b)(3) **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining**.

MANAGEMENT OFFICIAL. Under § 7103(a)(11), an individual who formulates, determines, or influences the policies of the agency. Under § 7112(b)(1), such individuals are to be excluded from **appropriate units**. Because management officials are not "employees" within the meaning of the **Federal Service Labor-Management Relations Statute (FSLMRS)** (§ 7103(a)(2)(iii)), they do not, among other things, have the FSLMRS-protected right to represent unions. See §§ 7102 and 7120(e). In *AFGE Local 2513 v. FLRA*, 834 F.2d 174 (D.C. Cir. 1987), the court said the following about supervisors, which probably would also apply to management officials:

Congress has not prohibited supervisor's from joining unions. It is inconceivable that supervisor-members' right to belong to a union includes nothing more than paying dues and participating in various health plans. While Congress expressly prohibited supervisors from assuming policy-making and representative functions within the union, § 7120(e), there is no evidence that Congress intended to deny supervisors one of the most essential vestiges of union-membership, the right to cast a vote in the election of their union's officials.

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by § 7106(a) which, with the important exception of matters falling within § 7106(b), are not subject to collective bargaining. In 34 FLRA No. 55, the Authority said that "[m]anagement rights under section 7106(a) cannot be waived or relinquished through collective bargaining."

- **Core rights.** Rights reserved to management under § 7106(a)(1), consist of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency

- **Operational rights.** Rights reserved to management under § 7106(a)(2), sometimes referred to "operational" rights, consist of the rights "(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; (C) with respect to filling positions, to make selections for appointments from--(i) among properly ranked and certified candidates for promotion; or (ii) any other appropriate source; and (D) to take whatever actions may be necessary to carry out the agency mission during emergencies."

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is assumed to be more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations. Under § 7119(a), labor mediation services are provided by the Federal Mediation and Conciliation Service (FMCS). Some writers have distinguished between conciliation and mediation in terms of the degree to which the mediator is expected to be an active participant in the process, with the conciliator playing a more passive role than that played by a mediator.

OFFICIAL TIME. Official time granted for employees serving as union representatives in connection with labor-management relations activities. Use of official time for the performance of internal union business is prohibited. Official time for employees "participating for, or on behalf of, a labor organization" is authorized and the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions may be negotiated.

PARTNERSHIP. A form of employee participation established pursuant to Executive Order 12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. Regarding the latter point, section 3 of the Order says that "[t]his order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review" The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over section 7106(b)(1) staffing patterns, technology, methods and means--matters integral to improving *agency* performance, which is the overriding purpose of the Order.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement.

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership meetings, being present at (1) **formal discussions** and, upon employee request, (2) **Weingarten examinations**.

SUPERVISOR. Under § 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]" In 45 FLRA No. 57 the Authority also held that a person exercising independent judgment in preparing performance appraisals is a supervisor.

UNION. A labor organization within the meaning of § 7103(a)(4)--i.e., "an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment"

WEINGARTEN RIGHT. Under § 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if the examination is conducted by a representative of the agency, the employee reasonably believes that the examination may result in disciplinary action, and the employee asks for representation. Such examinations are called *Weingarten* examinations as a result of a private sector case establishing such a right.

WORKING CONDITIONS. See **CONDITIONS OF EMPLOYMENT.**