

COLLECTIVE BARGAINING AGREEMENT

between

National Oceanic and Atmospheric Administration,
National Ocean Service
Office of Response and Restoration
Emergency Response Division

and

International Federation of Professional and Technical Engineers
Local 8A
ERD Chapter

This Collective Bargaining Agreement is entered into by and between local 8A of the International Federation of Professional and Technical Engineers, AFL-CIO, as the exclusive representative of all full-time and part-time non-supervisory personnel of the National Oceanic and Atmospheric Administration Emergency Response Division, hereinafter known as the Union, and the National Oceanic and Atmospheric Administration, Emergency Response Division, hereinafter known as the Agency or Management.

For Management

For the Union:

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Preamble

This Collective Bargaining Agreement (CBA) is entered into by and between the National Oceanic and Atmospheric Administration (NOAA) Office of Response and Restoration (OR&R) Emergency Response Division, hereinafter referred to as Management, and the International Federation of Professional and Technical Engineers (IFPTE), Local 8A, as the exclusive representative of all full-time and part-time non-supervisory personnel of the Emergency Response Division of OR&R, hereinafter referred to as the Union .

The parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows (5 U.S.C. §7101):

“...the right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government.”

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

Management and the Union agree to abide by the Federal Labor-Management Relations Statute. Both parties agree to recognize the rights of the other as established by this Statute. Both parties also recognize the rights of the bargaining unit employees as established by this statute. The parties acknowledge the importance of free and open communications and the importance of building a partnership that enables the workforce to develop its full potential and be aligned with NOAA objectives. The Parties endorse the use of formal and informal meetings to promote the exchange of information and the discussion of appropriate matters of concern. The parties do not intend by this CBA to discourage or impede in any way open communications among the Union, individual employees and Management representatives. Management and Union share in building an organization that can successfully meet NOAA goals and objectives. The partnership that is needed for a high-performing organization requires the ability to demonstrate:

- A genuine concern for people, whether employees, environmental stakeholders, or the public.
- An unflagging desire to improve in every possible way
- A clear alignment of all strategies, processes, and activities with visions and missions.
- A wise use of data and information to measure and improve performance
- A strong position as leaders in our fields

The Parties agree that should the IFPTE request certification to include subsequently organized groups of employees in OR&R, such certification will not be opposed by Management if the groupings would be considered an appropriate unit under the law.

Governing Laws and Regulations

Section 1

In the administration of all matters covered by this agreement, the parties are governed by government-wide rules and regulations in effect on the effective date of this agreement and not in conflict with existing agreements between the parties. Where the terms of this agreement conflict with government-wide rules and regulations issued after the effective date of this agreement, the terms of this agreement shall be controlling. All applicable Federal laws also govern this agreement. Such laws will take precedence over this agreement.

Section 2

This agreement supersedes all previous agreements between Management and the Union and any negotiable past practices in conflict with this agreement. Any prior benefits and practices and understandings which were in effect on the effective date of this agreement and are not specifically covered by this agreement and do not detract from it will not be changed except in accordance with this agreement and 5 USC §71.

Terms of Agreement

Section 1

This Agreement will be implemented and become effective when it has been approved, ratified and signed by the parties, including review pursuant to 5 U.S.C. § 7114

Section 2

This Agreement will remain in full force and effect for a period of three (3) years after its effective date. It will be automatically renewed for one (1) year periods unless either party gives the other party notice of intention to renegotiate no less than sixty (60) days prior to its termination date. Such proposal will be accompanied by written proposals to be renegotiated unless mutually agreed otherwise by the parties. Negotiations will begin no later than thirty (30) days after these conditions are met. This CBA will be automatically extended until a new agreement is negotiated.

Employee Rights

Section 1

Employee rights are codified in the FLSMRS at 5 USC § 7102:

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

- (1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- 2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

Section 2

Both parties recognize that employees have the right to refrain from participation in bargaining unit activities and to do so, freely, without fear of penalty or reprisal. Therefore, both parties agree that there will be no undue pressure placed on employees to become active members of the Union. This section is not intended to limit the reasonable recruiting efforts of the Union in their attempts to increase active membership.

Section 3

All employees shall be treated fairly and equitably in all aspects of personnel management, and without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, handicapping condition, union membership, and with proper regard and protection of their privacy and constitutional rights.

Section 4

Employees will be protected against reprisal for the disclosure to NOAA officials, members of Congress, or appropriate legal authorities, information that the employee believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a waste of funds, or an abuse of authority. However, in the case of misconduct associated with the disclosure of information, employees may be subject to disciplinary action.

Management Rights

Section 1

Management rights are codified in the FLSMRS as 5 USC § 7106:

Management Rights

- (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency --
- (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 - (2) in accordance with applicable laws --
 - (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.
- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating --
- (1) 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 the technology, methods, and means of performing work;
 - (2) procedures which management officials of the agency will observe in exercising any authority under this section; or
 - (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

Representational Rights and Duties

Section 1

Consistent with 5 U.S.C. § 7114 (a)(2)(B) the Union shall be given an opportunity to be present at any examination of an employee in the unit by a Management representative in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation. At any examination of an employee as part of an investigation, the Management representative will explain the purpose of the meeting to the employee prior to the examination.

Section 2

If the employee being interviewed requests representation, no further questioning will take place until the employee has been given a reasonable amount of time, normally one (1) work day, to contact an appropriate representative.

Section 3

Consistent with 5 U.S.C. § 7114 (a)(2)(A), the Union will be afforded an opportunity to be represented at any formal discussion between one (1) or more representatives of Management and one (1) or more employees or their representatives concerning (a) any grievance (a meeting concerning a grievance is, by definition, a formal discussion), or (b) any personnel policy or practice or other general condition of employment. For formal discussions as in (b) above, the Union will be given advance notice of the meeting via electronic mail and/or telephonically by contacting the designated Union representative, when practicable, at least five (5) work days in advance of the discussion. The Union representative need not be present at routine informational meeting during which no discussion occurs regarding changes in personnel policy or general conditions of employment.

Section 4

At those meetings where the Union is represented, Management will acknowledge the attendance of the Union representative at the start of the meeting. Furthermore, Management will permit the Union representative to ask questions, and to present a brief statement before the end of the meeting outlining the Union position concerning the issues. The Union Representative will refrain from activities designed to disrupt the meeting. All issues to be discussed at the meeting by Management will be listed in a written agenda, where practicable, which will be forwarded to the Union at the same time that the Union receives prior notice of the meeting.

Official Time

Section 1

Consistent with 5 U.S.C. § 7131, the employer agrees to allow Union representatives a reasonable amount of official time to effectively complete their representational duties. The official time shall be limited to an average of six (6) hours per pay period per Union representative. If additional official time is required for a given pay period the Union representative will normally request and receive approval from their supervisor for the use of official time in advance. The request shall include an explanation of the circumstances establishing the need for additional time. In the event the supervisor is unavailable, or in emergency situations, the Union Representative may proceed to use a reasonable amount of official time as provided by this contract and provide to the supervisor a record of the amount of official time used. The Union understands that there may be occasions when official time could be denied by the supervisor due to workload considerations.

Section 2

Official time may only be used on the days and during the times that a local Union official would be otherwise in a duty status. The Union shall provide the Employer with the name of local Union representatives authorized to use official time. All uses of official time for union business will be recorded by the employee in their timesheet as per standard time and attendance procedures. The term official time shall include the purposes set forth in 5 U.S.C. § 7131, as well as other representational activities including:

- A. Attendance at formal meetings;
- B. Attendance at meetings involving unfair labor practice charges or unit clarification petitions and preparation time for such meetings;
- C. Representation of employees in disciplinary matters in which employees are entitled to representation;
- D. Presentation of appeals in connection with statutory or regulatory procedures in which the Union is a party or is designated as the representative, (e.g., MSPB and EEOC proceedings);
- E. Attendance at Employer examinations of any bargaining unit employee, in connection with an investigation at which an employee requests such representation;
- F. Attendance at grievance meetings and arbitration hearings;
- G. Attendance at meetings of committees or workgroups when the Employer has given authorization for Union attendance;
- H. Attendance at negotiations as a member of the negotiations team;

- I. To confer with employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this agreement wherein the employee has elected to have a representative and is entitled to such representation;
- J. To complete research in preparation for labor-management related meetings, negotiations, and hearings;
- K. To prepare and maintain records and reports required of the Union and its representatives by any Federal Agency;
- L. To respond to Congressional contacts relative to representational matters;
- M. Time spent in preparing replies to Employer proposals and proposed Employer policy changes submitted to the Union for comment or consideration;
- N. Time spent in labor-management meetings, or special projects mutually agreed to by the parties.

Section 3

Internal union business will be conducted on non-duty time.

The term internal union business shall include the purposes set forth in 5 USC § 7131(b), including such actions as

- the solicitation of membership,
- elections of labor organization officials, and
- collection of dues.

Section 4

Employees covered by this agreement will be accorded reasonable duty time to consult with a union representative for representational purposes or for representing themselves consistent with the terms of this agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the employee for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. The employee will make every reasonable effort to request and have advance approval of such use of duty time. The employee will continue to administer and control his/her work-load in a manner that is in the best interest of the Division.

Section 5

It is understood that nothing in this agreement is intended to limit the statutory rights to official time provided pursuant to 5 U.S.C. § 7131 or any other statute or regulation.

Communications

Section 1

Management agrees that the Union may have reasonable use of telephone service, fax machines, e-mail, photocopy machines, computers and printers, and regular mail/postage (including priority, express, or overnight mail) for the purpose of preparing for or facilitating labor-management relations, or any other purpose for which official time is permitted under this Agreement. The union will ensure that its use of the above-listed equipment does not unduly interfere with the normal operations of the office.

Section 2

The above-listed equipment may not be used to conduct internal Union business. Furthermore, the parties agree that employees using the above-listed equipment shall be in non-duty or official time status, and shall not impede the work of the Agency.

Section 3

Management will make a bulletin board near the staff offices in Seattle available to the IFPTE Local 8A to post information. Management will also provide a link to the IFPTE Local 8A website on the OR&R intranet site, provided such a site exists.

Section 4

A Union representative may take up to 15 minutes of official time to meet with new employees in the bargaining unit to provide appropriate orientation information. Management will provide new employees with a copy of their position description.

Section 5

Employees will be annually informed of their rights to have Union representation in connection with an investigation, as specified in Federal Service Labor-Management Relations Statute, § 7114(a)(3).

Dues Withholding

Section 1

Eligible employees who are members of the union are permitted to pay dues through the authorization of voluntary allotments from their compensation. This article covers all eligible employees:

- A. Who are members in good standing with the Union;
- B. Who voluntarily complete Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for payment of Employee Organization Dues;
- C. Who receive compensation sufficient to cover the total amount of the allotment;

Section 2

The Union is responsible for:

- A. Purchasing and distributing Standard Form 1187;
- B. Notifying the Human Resources Office in writing of:
 - 1. Current authorized names and titles of officials who will make the necessary certification of Standard Form 1187 in accordance with this Article.
 - 2. Any change in the amount of dues to be deducted.
 - 3. Any employee who is no longer in good standing within ten (10) days of the date of such determination.
 - 4. Forwarding properly executed and certified Standard Form 1187 to the Human Resources Office on a timely basis;
 - 5. Keeping the Human Resources Office informed of the name, title and address of the allottee to whom remittance should be sent.

Section 3

NOAA is responsible for:

- A. Permitting and processing voluntary allotment of dues in accordance with this Article;
- B. Withholding dues on a bi-weekly basis;
- C. Notifying the Union when an employee is not eligible for an allotment.

- D. Withholding new amounts of dues upon certification from the authorized Union official;
- E. Transmitting remittance checks each pay period to the allottee designated by the Union.
- F. Providing the Union, upon request, a list of amount withheld per employee

Section 4
Joint Stipulations

- A. The amount of the dues to be deducted as allotments from compensation will normally not be changed more frequently than once each twelve (12) months.
- B. Administrative error in remittance checks will be corrected and adjusted as soon as practicable in a check to be issued to the employee organization. If the Union is not scheduled to receive a remittance check after discovery of an error, the gaining party agrees to promptly refund the erroneous remittance.

Section 5

The effective dates for actions under this Agreement are as follows:

- A. Starting dues withholding: First pay period after date of receipt by Human Resources Office of properly executed Standard Form 1187. An employee must remain on payroll deduction for one (1) year after commencement of dues withholding.
- B. Changes in amounts of dues: First pay period after receipt of certification by Human Resources Office.
- C. Revocation by employee: First pay period after receipt of properly executed and signed by appropriate Union official of a Standard Form 1188 or Request for Revocation Memorandum from the employee.
- D. Termination due to loss of membership in good standing: First pay period after receipt of notification by Human Resources Office.
- E. Termination due to loss of exclusive recognition on which allotment was based: First pay period after date of receipt of notification by Human Resources Office.

Information Requests

Section 1

The Union will make all requests for information, in accordance with 5 USC 7114 (b) Federal Service Labor-Management Relations Statute, in writing. The written request will include a description of the specific information needed, an explanation as to why the information is needed, a description of how the information will be used, and a description of the legal basis for seeking the information.

Section 2

Management will provide a written response to the Union within ten (10) work days. The response will include the information or a detailed explanation as to why the information is not being provided. The Union will agree to any reasonable Management written request for delay in providing any or all of the requested information provided such a delay does not interfere with the timeliness of the underlying issue. Such a request must include an explanation for the delay and expected delivery date.

Section 3

In order to encourage exchange of information, Management may, but is not required to, have Union representation or observers on management committees that recommend changes in workplace conditions affecting the bargaining unit.

Grievances

The grievance procedure is pursuant to the Federal Service Labor-Management Relations Statute (FSLMRS), subchapter III, 5 U.S.C. § 7121 et. seq.

Section 1

Both parties recognize the importance of prompt and equitable disposition of any grievance at the lowest organizational level possible using flexible and informal procedures. The union or any bargaining unit employee shall have the right to present a grievance and have it promptly considered on its merits. The initiation of a grievance by any bargaining unit member shall not cast any adverse reflection on his or her standing as an employee and Management will refrain from any reprisal or adverse action to the employee or Union representative due to the initiation of a grievance. Likewise, the initiation of a grievance by Management shall not cast any adverse reflection on Management and bargaining unit members will refrain from any reprisal or adverse action to Management due to the initiation of a grievance

Section 2

A grievance is defined as any complaint by any employee concerning any matter relating to the employment; a complaint by the Union concerning any matter relating to the employment of any employee; or, a complaint by any employee, the Union, or the Management concerning the effect or interpretation, or a claim of a breach of, this agreement. The union also has the right to file, as a grievance under this contract, any alleged unfair labor practices. When it does so, however, it waives its right to file an unfair labor practice charge over the same issue with the appropriate authorities under law and regulation.

Section 3

Excluded from this grievance procedure are the following:

- (1) Any claimed violation of subchapter III of Chapter 73 of Title 5, United States Code, relating to prohibited political activities;
- (2) Retirement, life insurance, or health insurance;
- (3) A suspension or removal under Section 7532 of Title 5, United States Code (national security) ;
- (4) Any examination, certification, or appointment;
- (5) The classification of any position that does not result in the reduction in grade or pay of an employee;
- (6) Termination of a probationary employee in accordance with Office of Personnel Management regulations and appropriate United States Code.
- (7) Notice of proposed personnel action;

- (8) Matters excluded by law or government-wide rule not in conflict with this agreement; and
- (9) Complaints or appeals from persons outside the bargaining unit..

Nothing in these exclusions is intended to prevent any employee from filing an EEO complaint using the established protocols for such complaints.

Section 4

Any bargaining unit member or group of members may present such grievances to Management and have them adjusted, without involvement of the Union, as long as the adjustment is not inconsistent with the terms of this agreement. In these cases the Union must be given an opportunity to be present at any meeting with the grievant regarding adjustment of the grievance. A bargaining unit member or group of members proceeding without the involvement of the Union must follow the negotiated grievance procedure. When an employee files a grievance and does not designate the Union as his or her representative, if the Union requests, Management shall furnish the Union with a copy of the filed grievance, and the response issued at each step.

Section 5

For discussions with bargaining unit members concerning grievances, the member will be given reasonable time to notify the a Union representative.

Section 6

Under circumstances involving EEO complaints a bargaining unit member has the option of filing a grievance under the negotiated grievance procedure or an EEO complaint under the EEO complaint procedure, but not both. For the purpose of this article an bargaining unit member shall be deemed to have exercised his/her option at such time as the bargaining unit member timely initiates an action under the applicable statutory procedure or timely files a grievance in writing in accordance with the provision of the procedure in this Article, whichever occurs first.

Section 7

The Parties acknowledge that this grievance procedure neither expands nor contracts the jurisdiction of the Merit Systems Protection Board as provided by law. Further, nothing in this Article is intended to limit the arbitrator's authority to determine questions of arbitrability.

Section 8

The grievance shall be filed at the step at which the subject matter of the grievance arose, except in the case of grievances involving disciplinary actions that may be filed at the next higher supervisory level. In the event that Management decides that the grievance can effectively be resolved at a lower level than that at which it was initiated, Management may remand the grievance to the appropriate level and the remand shall be accomplished in a timely manner. In such cases the time requirement for an answer shall be fifteen (15) working days from the date of the remand.

The grievance procedure shall consist of the following steps:

STEP ONE. Any bargaining unit member may refer a grievance to the union if he or she desires. At step one in accordance with this Article, a grievance is to be presented to the first level

supervisor of the grievant, or his or her designee, in writing. The grievance must be received not later than thirty (30) working days following the date on which the grieving party knew or should have known of the facts giving rise to the grievance. When the basis for the grievance is a continuing practice or condition then the grievance can be filed at any time. The bargaining unit member or his/her representative may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received. A written grievance answer will be issued by the first level supervisor within thirty (30) working days following the date on which the grievance was received.

The written grievance shall include:

- A. the name and office address of the bargaining unit member;
- B. a statement with details of the issue and the grounds for the grievance, including, any law, rule or regulation violated, if known;
- C. corrective action requested and the reasons for such action; and,
- D. the name of the designated representative, if any.

STEP TWO. Absent resolution of the grievance at step one, the bargaining unit member and/or his or her representative may present the grievance at step two. The step two grievance must be in writing and signed by the grievant or his or her representative, and received by the second level supervisor or his or her designee within twenty (20) working days of the issuance of the step one answer. The bargaining unit member or his/her representative may request an oral presentation in the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received unless the parties mutually agree otherwise. The step two answer will be issued in writing, within twenty (20) working days following the date on which the step two grievance was received.

Failure on the part of Management to meet any of the time requirements of this procedure during step 1 will permit the grievance to advance to step 2 upon written initiation by the bargaining unit member or designated representative. Failure on the part of Management to meet any of the time requirements of this procedure during step 2 will mean that Management agrees to the position of the bargaining unit member or designated representative, provided that the position is consistent with applicable law or government-wide regulation. If the bargaining unit member or representative fails to prosecute the grievance within the stated time frames, the grievance will be terminated.

Section 9

Management grievances must be filed within thirty (30) working days of the date Management knew or should have known about the matter, unless the matter is a continuing practice or condition, which may be filed at any time. Management grievances shall be in writing addressed to the Chief Steward. In the event the Chief Steward is the subject of the grievance, the grievance shall be addressed to the chapter president. The Chief Steward or his or her designee, shall issue a written answer addressed to the Employer representative who signed the grievance. The answer shall be provided within thirty (30) working days after receipt of such grievance. Management may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received.

Section 10

Nothing herein should be deemed as foreclosing either the union or Management from attempting to adjust the grievance by using alternative dispute resolution procedure.

Section 11

Any of the foregoing time requirements can be extended by mutual written consent of all parties. All correspondence between the parties for grievance and arbitration processing shall be by United States Postal Service, a commercial delivery service, fax machine, electronic mail or delivered in person. Time limits under this Article shall commence on the date of receipt.

Arbitration

Section 1

If the answer at the final step of the grievance procedure does not resolve the grievance, the Union or Management may refer the grievance to binding arbitration by mailing or otherwise transmitting written notice to the other party within twenty (20) working days after receipt of the last answer. If Management fails to issue a timely decision at the last step of the grievance procedure, or fails to deliver the decision to the Union, the Union may invoke arbitration under Section 7 below within forty (40) workdays of the date when a decision should have been issued by Management.

Upon referral of a grievance to arbitration, the party invoking arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to submit a list of five arbitrators having federal sector experience. The party requesting the list of arbitrators shall pay the fee charged by the FMCS for production of the list. The parties will meet within ten (10) days of receipt of the list of arbitrators. If the parties cannot mutually agree upon one of the listed arbitrators, they shall alternately cross off one name at a time until one arbitrator remains, who shall then be the arbitrator selected by the parties. The right to be the first to cross off the name of an arbitrator shall be determined by coin toss.

Section 2

The parties agree that arbitrations will be held in Seattle unless mutually agreed otherwise. To the extent available, the arbitrators will be from the Seattle area.

Section 3

The parties may mutually agree to consolidate grievances containing substantially common issues of law and fact. The parties will endeavor to accomplish any mutually agreed upon consolidation five (5) days after a grievance has been referred to arbitration.

Section 4

The arbitrator will be requested by the parties to render a decision as soon as possible, but no later than thirty (30) days after the conclusion of the hearing unless the parties agree otherwise.

Section 5

The Arbitrator is bound by applicable law. Further, the Arbitrator shall have no authority to alter the terms of this agreement. The decision of the arbitrator will be final and binding on the Parties, subject to the right of appeal set forth in the FSLMRS.

Section 6

Any arbitration involving alleged prohibited personnel practices will allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 USC 1221 (c) with respect to the Merit Systems Protection Board (MSPB); and the taking, by an agency, of any disciplinary action identified under 5 USC 1215 (a)(3) that is otherwise within the authority of such agency to take.

Section 7

Should either party refuse to participate in arbitration or should either party fail to respond in a timely manner at the last step of the grievance procedure, the other party may unilaterally employ an arbitrator and present the case to the arbitrator. The arbitrator will have the authority to render a decision. At least ten (10) work days before an arbitrator is contacted by a party under this section, that party will send written notice to the party refusing to participate in arbitration of its intention to contact an arbitrator. The parties acknowledge that refusal to participate does not include reasonable requests for postponements made by either party.

Section 8

- (a) The union and Management will share the arbitrator's fees and expenses equally, and the cost, if any, of a mutually agreed upon hearing facility if government space is not available.
- (b) A transcript of the proceedings will be made unless the union and Management mutually agree that one is not needed. The cost of the transcript will be shared equally.

Section 9

In the event the party invoking arbitration fails to contact the arbitrator selected by the parties for the purpose of scheduling a hearing date(s) within 60 calendar days of the date the party invoked the arbitration process, the arbitration shall be deemed dismissed with respect to subject grievance, unless the parties agree otherwise. The parties will cooperate in agreeing upon arbitration dates in an effort to resolve the dispute expeditiously.

Official Travel

Section 1

The Division shall follow the NOAA Travel Regulations (NTR). If there is no reference in the NTR that deals with the issue in question, the agency will consult the Department of Commerce Travel Regulations (DOCTR), then the Federal Travel Regulations (FTR). If any changes are made to either the DOCTR or the NTR regulations during the term of this agreement the provisions of this agreement shall be binding.

Section 2

Management will make a reasonable attempt to ensure that travel assignments are made on a fair basis. When practical, Management will solicit volunteers from among qualified employees for travel assignments. Both parties understand that Management has the final authority to determine all the qualifications necessary to perform all assignments and to assign work to individual employees. Upon employee request, Management will provide an explanation in writing as to why an employee was not selected for a specific assignment.

Section 3

When practical, time spent on travel status will be scheduled during normal working hours of the traveling employee. However, employees may travel on their own time provided it does not impede the mission or increase costs to the Division.

Section 4

Employees will use a government travel card for official travel expenses unless such use is impractical or would cause exceptional inconvenience to the traveler or where exemption from use of the travel card is specified in the FTR. Exemption of the use of the card as described in the Federal Travel Regulation, Section 301-51.2, are as follows:

- (a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card;
- (b) Laundry/dry cleaning;
- (c) Parking;
- (d) Local transportation system;
- (e) Taxi;
- (f) Tips;
- (g) Meals (when use of the card is impractical, e.g. group meals or the Government contractor-issued travel charge card is not accepted);
- (h) Phone calls (when a Government calling card is available for use in accordance with agency policy);
- (i) An employee who has an application pending for the travel charge card;

- (j) Individuals traveling on invitational travel;
- (k) New appointees;
- (l) Relocation allowances prescribed in Chapter 302 of this title, except en-route travel and househunting trip expenses; and
- (m) Employees who travel 5 times or less a year. Even though exempt, agencies have the discretion to issue a travel charge card to such an employee.

Upon request, supervisors will help employees overcome any administrative issues that may be causing the delay of reimbursement for any timely submitted travel voucher.

Section 5

Employees will not be required to use privately owned vehicles (POVs) for official travel. However, an employee may elect to use a POV if the Agency mission is not impeded. Employees will be responsible for any additional cost, beyond what is authorized, that is incurred by their use of their POV.

Section 6

Employees will not be required to share lodging accommodations unless emergency conditions require this. If sharing of lodging is required, this will be discussed with the employee as a condition of, and prior to, the travel. Employees will not be required to share lodging with a person of the opposite gender under any circumstance. Employees may, at their discretion, agree to share lodging with persons of the opposite gender in a bunk house, RV or dormitory type setting in which 4 or more people share accommodations. No employee will be penalized for deciding not to share lodging with a person of the opposite gender, although such a decision may require management to assign the job in question to another person if no other arrangement for lodging is available. Management will not preclude participation of an employee in a response or project without first giving the employee the opportunity to accept or decline available or reasonable alternative lodging arrangements.

Section 7

The Union may request travel and per diem expenses related to any official time activities listed in Article - Official Time of this agreement. Such requests must explain the need for the Union's physical presence and the unavailability of local representation. The parties agree to utilize teleconferencing capabilities to minimize travel cost whenever practicable. Management will approve, on a case-by-case basis, any reasonable request that is necessary to avoid impeding the effectiveness of the meeting provided funds are available and travel does not negatively impact the Division.

Section 8

- (a) When an employee files a grievance and the parties agree that travel is necessary (i.e., alternative forms of meeting such as conference calling would fail to provide for an effective grievance meeting), Management and the Union agree to equally share the travel and per diem costs for one Union representative (when no local representative is

available), the grievant, and a reasonable number of witnesses for each step of the grievance.

- (b) When the Union files a grievance, and the parties agree that travel is necessary (i.e., alternative forms of meeting such as conference calling would fail to provide for an effective grievance meeting and no local representative is available), Management and the Union agree to equally share the travel and per diem costs for one Union representative when necessary to represent the Union.

Section 9

In the event of arbitration, Management and the Union agree to equally share the travel and per diem costs of any employees who are serving as a witness for both Management and the Union. This section does not apply to cross-examination of witnesses.

Section 10

The Union may request travel and per diem expenses for employees who are officials/stewards of the Union who have been designated in writing and who are otherwise in a duty status to participate in activities including labor-management related meetings or special projects mutually agreed to by the parties. Management will approve on a case-by-case basis any reasonable request provided funds are available and the travel does not negatively impact the Division . The Union shall make every practicable effort to rely on employees who are locally available for participation in such activities.

Computer Security and IT Policy

Section 1

Personal entertainment files, such as music files and movie files, may not be downloaded to government owned computers. Only files that are for official government business may be downloaded to government owned computers. Employees may use an external device (e.g. iPod) or external hard drive to run entertainment files on a government owned computer, provided the BU member informs OR&R IT personnel with the make and model of the personally owned external device. Providing this information informs OR&R IT personnel that the device has been authorized for use should the device be detected during a network scan. It is also understood that peer-to-peer transfers or downloads are in violation of NOAA's IT Use Policy. If security breaches, e.g. peer-to-peer downloads, are discovered during a scan, the BU member's personal device must be sent to OR&R IT personnel for inspection in accordance with NOS's policy.

Section 2

Software that is for purchase and is to be used on government computers is to be purchased by the government. Employees that need such software should make the purchase request through their supervisor.

Section 3

If accountable equipment is generally used by a single individual, and commonly used off-site, such as a laptop computer, a property pass will be obtained by the employee allowing the employee blanket permission to take the property off-site.

Research Programs and Demonstration Projects*Section 1*

Any research or demonstration project as defined under 5 U.S.C. § 4701, approved by OPM and affecting the bargaining unit employees, will be negotiated with the Union and not implemented until agreement is reached. Terms of this CBA will take precedence over any provision of the research or demonstration project unless specified by law or otherwise agreed to by Management and the Union.

Section 2

Employee participation in research and demonstration projects under this Article will not be construed as a forfeiture of an employee right provided for by law, regulation, or this Agreement.

Publication Policy

Section 1

Management encourages employees to conduct, present, and publish scientific and technical research. Such publications give opportunities for professional development to the individual employee, provide recognition to the Division for its achievements, and help to improve the state of scientific knowledge.

Section 2

Publication of scientific papers done during normal working hours and using government resources must comply with NOAA guidelines on implementation of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Information Quality Act).

Section 3

Scientific publications and presentation material by employees will be divided into three categories

a) Papers written as a result of direct assignment by the supervisor as part of the regular employee duties.

The employee has the right to remove his/her name as author from any official NOAA scientific and/or technical papers that do not, in the opinion of the employee, reflect best scientific judgment.

b) Papers written on a voluntary basis during duty status by the employee with approval by the supervisor.

Such papers should not interfere with completion of other regular employee duties. In keeping with Agency philosophy, the supervisor should answer any employee request for paper preparation and publication in a timely manner and not refuse the employee request without good cause. The supervisor will provide the employee written explanation for any refusal and such refusal may be appealed by the employee to the next-level supervisor.

c) Papers written by the employee on non-duty time and not using government resources.

The employee is encouraged to provide, in a timely manner, a copy of the paper to his/her supervisor if it involves NOAA interests. The employee is responsible for ensuring that the paper is consistent with applicable ethics regulations, does not disclose confidential information, or attribute personal views to NOAA.

Section 4

It is the policy of Management to encourage all employees to both participate in and to give technical presentations at scientific and technical conferences. Permission to submit a paper to a conference does not obligate Management to send the employee to the conference.

Promotion and Hiring

Section 1

If a bargaining unit employee is promoted to a position in the bargaining unit, and within one year after the promotion, is demoted for inability to perform at the higher level, Management agrees to make reasonable efforts to return the employee to a position equivalent to the one held before the promotion occurred, whenever practical.

Section 2

Career advancement is the intent and expectation in the career-ladder system. While promotions within career ladders are neither automatic nor mandatory, they will be considered when:

- A) an employee's performance demonstrates the ability to perform the duties at the next higher grade level, as determined by their supervisor ("demonstrates the ability to perform" does not necessarily mean that the employee currently performs duties at the next higher grade level);
- B) the past two year's of performance appraisal ratings of record are at or above the fully successful level;
- C) other requirements of law and regulation are met (e.g., time-in-grade requirements); and
- D) the additional cost is within budgetary limitations.

Section 3

If an appropriate authority decides there was an unjustified or unwarranted personnel action as defined by the Back Pay Act (5 U.S.C. 5596) and applicable decisional law, and the employee would have been selected for promotion, the employee will receive appropriate compensation and allowances as pursuant to the Back Pay Act.

Details and Temporary Assignments

Section 1

A detail is a temporary assignment of an employee, without an official personnel action to change his position assignment of record, to perform duties other than those of the position he holds under his current appointment. An employee may be detailed only when there is statutory authority for such a detail. Proper use of details is specified in DAO 202-334, Section 2.04. If management determines that more than one employee possesses the requisite qualifications for a particular detail, it will normally request volunteers unless it determines that there are programmatic reasons not to do so. If temporary relocation is required, Management will approve payment of employee relocation expenses as provided by law and regulation.

Section 2

Employees recovering from a serious illness or injury may submit a written request to their supervisor requesting temporary assignment commensurate with their illness or injury and qualifications. Management will consider such requests in accordance with applicable rules, regulations, and medical recommendations.

Section 3

Employees will not be assigned to details exceeding 120 days unless authorized as per DAO 202-334, government-wide regulation or law. Selection for details of more than 60 days to a higher-grade position or a position of known promotional potential will be done through the competitive process.

Section 4

Any employee detailed to a higher graded position will receive a temporary promotion to that higher grade, pursuant to government wide regulation, existing Department of Commerce policy, and the employee's qualifications for holding a higher graded position. An employee being temporarily assigned to a lower-graded position will not have his/her salary or classification adversely affected.

Section 5

Temporary work assignments, particularly those of a higher grade, may be rotated among qualified employees to the extent practicable.

Section 6

Work that, as a result of the detail, is distributed to other members of the bargaining unit will be parceled out in a fair and equitable manner.

Job sharing/Part-Time and Temporary Employees

Section 1

Job sharing involves an arrangement between two or more employees under which they share a full-time job. Employees wishing to job-share must make a written request to Management, including requested work-schedules. Management agrees that entry into job-sharing should be strictly voluntary and initiated by the employee without coercion. Employees who are job-sharing are considered part-time.

Section 2

Part-time career employment is regularly scheduled work of from 16-32 hours a week in either the permanent competitive or excepted service in Tenure Group I or II. Employment on a temporary or intermittent basis is not included. Any full-time employee wishing to convert to part-time must submit a written request to his/her supervisor. Management will make a good faith effort to accommodate the request and will provide a written explanation to the employee within 10 working days if the request is denied. Management will notify the employee that this action may affect employee benefits, and the employee should inform himself/herself of the expected impact on benefits. There is no guarantee that an employee converting to part-time employment may subsequently convert back to a full-time employee.

Section 3

Management will notify the Union when recruiting for a temporary employee to staff a bargaining unit position that was previously filled with a permanent employee. Employees with temporary appointments will be considered members of the bargaining unit and are entitled to representation.

Incident Response

Section 1

Response, for the purposes of this article, is construed to mean answering telephone calls, faxes or emails on technical queries with respect to actual spill events or other emergencies or reacting to said events in person by reporting to the employee's place of work or on scene to perform work. Compensation means one of the many forms of pay or benefits that are afforded to employees for their time, to include, but not limited to: pay, premium pay, credit hours, and compensatory time.

Section 2

When practical, Management will solicit volunteers from among qualified employees for field assignments involving emergency response and try and provide opportunities to all qualified staff. Management may consult with the appropriate Scientific Support Coordinator with regards to needed skills for the response but Management retains the right to determine qualifications necessary to perform any particular field assignment.

Section 3

A) If an employee, either in a duty status or on an unannounced recall, responds to an emergency response incident outside of his/her scheduled working hours, the employee may claim a minimum of 1 hour of compensation. If the employee is required to travel from his/her present location to his/her office or alternative work location to fulfill the duties of the response, a minimum of 2 hours of compensation may be credited to the employee.

B) Although employees are encouraged to choose overtime rather than compensatory time off, they may choose either as a premium pay compensation option except as noted in this Article.

- 1) Supervisors may approve bargaining unit members to earn premium pay compensation only during an emergency or to meet extraordinary program needs. The determinations of "emergency" and "extraordinary program needs" will be made by the employee's supervisor. Incident response will generally meet the definition of "emergency."
- 2) Employees shall not exceed the 80-hour cap for unused compensatory time off.
- 3) Management may put a time limit on the use of any accrued compensatory time of not less than 26 pay periods. Compensatory time that is not used within the time limit or that exceeds the 80 hour cap in 3 B.(4) may revert to overtime pay at the rate at which it was earned.
- 4) Nothing in this section applies to the earning or use of travel compensatory time.

Section 4

If an employee is away from his/her residence while on approved leave and is recalled into duty status, travel from his/her present location he/she will be compensated as per Federal Travel Regulations and the Department of Commerce Travel Handbook.

Awards

Section 1

Management and the Union believe that there should be transparency in award procedures and that all employees should have a fair and equitable opportunity to receive awards.

Section 2

Management will establish and chair a committee to make recommendations to the Chief, ERD, for all awards except for awards linked to performance ratings. The Union will appoint employees, in equal number to Management appointees, from the bargaining unit to serve on the committee for up to one year in length. The Union shall rotate appointments to this committee amongst as many bargaining unit members as possible.

Time and Leave

Section 1

Employees will accrue leave in accordance with government-wide rules and regulations. Employees should apply in advance for approval of all anticipated leave. All leave requests will be responded to by the approving official in a timely manner. Leave will not be denied as a disciplinary measure but may be denied based on the needs of the organization. Management will not force employees to use personal leave against their will in a manner inconsistent with government-wide regulations.

Section 2

The use of accrued annual leave is a benefit of the employee and will not be denied for frivolous reasons on in an inequitable manner. Employees should apply in advance for approval of all anticipated annual leave to permit orderly scheduling. Leave may also be granted when it is not scheduled in advance and operations allow. Leave for personal emergencies will be granted unless there is an operational exigency that requires the employee presence. Management shall notify employees when there is potential "use or lose" leave, and employees shall take appropriate action to ensure that they use this leave prior to the end of the leave year.

Any employee denied leave will receive a brief written explanation by the approving official on the leave request form. When scheduling conflicts arise, managers should attempt to allow employees to resolve the conflict themselves. Unresolved conflicts will be settled on a fair basis.

Section 3

The use of sick leave is an employee benefit. Management will grant sick leave to an employee for personal medical needs, care of a family member and adoption related purposes as specified by the U. S. Office of Personnel Management. Employees will not be required to substantiate a request for sick leave unless the sick leave exceeds three days or Management has a credible reason to suspect that the leave request is not valid.

An employee with a chronic medical condition that results in periodic absences from work of more than three days will not have to substantiate individual absences if the employee provides every six months an updated medical certificate that clearly states the continuing need for periodic absences, unless Management has a credible reason to suspect that the leave request is not valid.

Sick leave of up to 30 days may be advanced in cases of serious disability or ailment when required by the exigencies of the situation as determined by the approving official. The employee must request advanced sick leave in writing. Sick leave cannot be advanced when it is likely that the employee will be separated from government employment before the advanced leave will be earned.

Section 4

Employees are entitled to leave without pay under situations covered by the Family and Medical Leave Act of 1993 and situations covered under other applicable laws and government regulations.

At the discretion of Management, leave without pay may be granted for other reasons. Employees should consider consequences to retirement and other benefits before requesting such leave.

Section 5

Administrative leave may be granted for activities that are in the government interest. These include, but are not limited to, blood, organ or tissue donation, military leave and jury duty. Employees must give to the government any compensation earned for jury duty but may retain reimbursement for expenses accrued.

Section 6

A) Employees, as specified below, may utilize any flexible or compressed works schedules as authorized by the Federal Employees Flexible and Compressed Work Schedules Act (FEFCWA) and defined in 5 U.S.C. 6122 and 5 U.S.C. 6121 (5). Participation in an alternative work schedule by any employee is voluntary, however, employee participation is not a right..

B) Employees enrolled in any alternative work schedule plan will follow the guidelines specified in the NOS Alternative Work Schedule Plan of January 24, 2004.

- C) i. Not more than 20% of collective bargaining unit personnel may use a compressed work schedule, known as “four tens”, at any one time during the term of this agreement.
- ii. Personnel interested in working such a schedule will submit a request to their supervisor to be placed on the program when an opening(s) is(are) available. Employees eligible for placement on these schedules will be determined by management based upon the guidelines specified in the NOS Alternative Work Schedule Plan of January 24, 2004. Management will determine the eligibility of an employee and inform said employee within 10 business days of receipt of a request. Employees have the right to grieve any eligibility rejection within 30 days pursuant to the Grievances Article.
- iii. Should there be more eligible employees than openings, a lottery system will determine the employees selected for usage of the four ten schedule.
- iv. Placement in the four ten schedule will be for the term of this agreement. Should an employee selected for the four ten schedule choose to change or alter their schedule or if management exerts any option to alter the employee’s schedule otherwise, the employee’s subsequent placement on the four ten schedule will revert to the process described in C.ii above.

D) Employees may be removed from an alternative work schedule if they abuse the schedule or perform at less than fully successful. Employees have the right to grieve any removal.

E) Management may refuse or cancel any particular flexible or compressed alternative work schedule for all or some employees provided it can show that such a schedule will have or has an adverse effect as specified in 5 U.S.C. Section 6131 (b) and may re-open for negotiation this agreement with regard to flexible or compressed work schedule only as specified in 5 U.S.C. 6131 (c) (3).

F) While temporarily detailed or deployed to a response or another program, office, or project, the needs of the other mission will dictate the employee’s schedule, notwithstanding the employee’s approved schedule while at ERD.

Dependent Care

Section 1

Management recognizes that employees may have childcare, dependent-care or other family-care needs during normal working hours. The parties also recognize the need for such employees to secure adequate child, dependent and family care arrangements. Management agrees to reasonably accommodate the child-care and dependent-care needs of employees in accordance with applicable laws, rules and regulations in effect at that time (e.g. leave, hours of work, overtime, part-time employment, and alternative workplace arrangements).

Section 2

Management agrees to consider initiatives by Federal government agencies to establish or improve availability of childcare to bargaining unit members. The Union is responsible for bringing such initiatives to the attention of Management.

Management agrees to promote the mutual interests of bargaining unit members and Management to the appropriate Federal contract officer(s) or management contact when aware of bargaining unit issues with childcare providers. For issues outside of Management's purview, Management agrees to convey the Union's interests to the parties mentioned in this Section.

Outside Activities and Employment

Section 1

Employees may pursue outside employment or business opportunities except under the following conditions:

- 1) Conflict of interest (as described in 18 U.S.C. §§ 201-203, 205, 207-209)
- 2) Activities inconsistent with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635)
- 3) Adverse effect on performance of an employee's official duties
- 4) Prohibited by Federal statute.

Section 2

Management encourages employees to jointly review proposals for outside activities or employment with the Department of Commerce Ethics Law and Programs Division prior to engaging in such actions.

Employee Assistance Program

Healthy employees and healthy work environments are important to the Department of Commerce. Good relationships at work, and at home, allow employees to focus on the tasks at hand and to accomplish more. If difficulties occur, professional counselors are available through the Employee Assistance Plan (EAP) to provide guidance and support to employees and their families. The Employee Assistance Plan (EAP) is a counseling service offered to Department of Commerce employees. Through this program employees are offered a certain number of free counseling sessions. For more information regarding this program please contact your servicing Human Resources Advisor.

Parking and Transportation

Section 1

Commuter parking will be provided to Seattle-based employees according to WRC regulations. Commuter parking for field personnel may be provided on a case-by-case basis, subject to available facilities, leases and/or other allowable resources (e.g. subsidies) specific to each location.

Section 2

Both the Management and the Union agree to promote alternative commuting options. These may include, advertising ridesharing opportunities, telecommuting when appropriate, and taking advantage of any NOAA transportation subsidies available to employees.

Health and Safety

Section 1

Management and the Union agree to work together to provide a work environment free of recognized hazards and to prevent and eliminate accidents and injuries. It is both the Union's and Management's goal to comply with applicable federal, state, and local laws and regulations protecting the working environment, health, and safety of the employees covered by this Agreement.

Section 2

Employees will report unsafe and/or unhealthy conditions or incidents to their supervisor or other appropriate authority. If requested, the anonymity of the employee will be protected to the extent possible. No reprisal will be taken against the employee for reporting suspected health and safety violations

Section 3

Employees will be provided at no cost to them the necessary safety equipment and clothing to perform their assigned duties. Requests for safety equipment may be made by bargaining unit members to their supervisor. This may be done in consultation with the OR&R Health and Safety Officer. The bargaining units member's supervisor will then determine the best way to meet the request.

Section 4

When confronted with unsafe working conditions, an employee should let his or her supervisor know about the problem and discuss solutions before refusing to work. The employee has the right to decline to perform assigned tasks because of a reasonable belief that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

Section 5

The policy and procedures established in NOAA Aviation Safety Policy, NAO 209-124 will be followed. Requests for aviation safety equipment beyond that required by the NOAA Aviation Safety Policy may be made by bargaining unit members to their supervisor. This may be done in consultation with the OR&R Safety Officer. The bargaining unit member's supervisor will then determine the best way to meet the request. Upon request, supervisors will help employees overcome administrative issues related to certifications, to the extent possible

Section 6

Medical monitoring within ERD will be done in accordance with the Medical Surveillance Section of OSHA's HAZWOPER regulations. 29 CFR 1910.120(f).

According to these regulations, employees should be enrolled in a medical surveillance program if they meet the criteria specified in 29 CFR 1910.120(f)(2),

(i) All employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(ii) All employees who wear a respirator for 30 days or more a year or as required by 1910.134;

(iii) All employees who are injured, become ill, or develop symptoms due to possible overexposure involving hazardous substances or health hazards from an emergency response or hazardous waste operation; and

(iv) Members of HAZMAT teams.

Position Classification

Section 1

When Management is anticipating any changes to Position Descriptions (which are more than *de minimis*) for bargaining unit employees, Management will notify the Union. Management will provide affected employees and the Union with copies of their modified Position Description a minimum of 30 days in advance of implementation. The Union may bargain the impact of a substantial change that affects working conditions by a Position Description revision of all positions within a series group within the bargaining unit.

Section 2

Any bargaining unit employee, who believes that his/her position is inaccurately described, may request, through their Rating Official, that a job audit be conducted. If the Rating Official concurs with the employee, the Rating Official may request a job audit of that position. If the Rating Official does not concur, the employee may officially submit a classification appeal to the Department's Office of Human Resources Management or to the Office of Personnel Management (OPM) in accordance with Department Administrative Order 202-511 (Position Classification). The employee may seek the assistance of the Union in formulating this appeal.

Section 3

When a job audit is conducted for any reason, the affected bargaining unit employee may request Union assistance. Any written evaluation statement prepared by Work Force Management following a job audit shall be furnished to the employee prior to the resolution of the classification appeal. The employee shall have the right to make written comments within ten (10) workdays after receipt of the evaluation statement, and those comments shall be attached and forwarded with the written evaluation statement.

Contracting out and outsourcing

Section 1

Management shall ensure that contracting out civil service work does not contradict employee rights and protections under this Agreement or the law. Management, prior to contracting out any work which is normally or historically performed by members of the bargaining unit, will consult with the Union regarding impact and implementation. In the event of exigent circumstances in an emergency response, Management may contract any service necessary that pertains to the response event, and will, as soon as is practicable, conduct impact and implementation negotiations with the Union concurrently or following the actual event.

Section 2

If it becomes necessary to contract out bargaining unit work, Management will make every reasonable effort to minimize impacts to bargaining unit employees. Management will adhere to all government wide regulations regarding placement of affected employees as specified in Federal statute and regulations (including OMB Circular A-76 and Federal Acquisition Regulations).

Section 3

Management agrees to review and respond to concerns that the Union may wish to raise with regard to the utilization of contractor personnel on-site work similar to, or formerly performed by, bargaining unit employees.

The Union recognizes management's right to assign work. Management will not direct contractors to perform inherently governmental work. Management will direct contractors to perform work only within the scope of their contracts.

In the event that employees witness defective, deficient or unethical work being performed by a contractor working within the Division they are encouraged to report it to ERD management. If employees disagree with the technical decision of a contractor, employees may express their concern either orally or in writing to ERD Management. Within 10 working days ERD management will follow-up with the concerned employee.

Section 4

Upon request, Management shall provide the Union with a sanitized, i.e. no Privacy Act Information, copy of the FAIR Act Inventory for bargaining unit employees. The Union copy shall include the position, series, and status of bargaining unit employees (inherently Government or Contract position).

Reduction-in-Force and Transfer of Function

Section 1

Management will give the Union at the earliest possible date written notice of its intention to submit a reduction in force (RIF) request to NOAA or conduct a transfer of function that involves geographical relocation of employees (TOF). The notice will include the reason for the RIF or TOF, the approximate number of employees who may be affected by the action, and anticipated effective date that the action will be taken.

After the notice has been given, but before Management has submitted its input to a NOAA request to DOC for a RIF, Management and the Union agree to consult. This is not a bargaining session, but rather an exchange of ideas on how to avoid or minimize the RIF and method for implementation of any RIF. Following the consultation, Management agrees to provide to the Union a copy of that portion of its input to the NOAA request for a RIF that pertains to the ERD bargaining unit. Thereafter, Management will provide to the Union a copy of the DOC approval of the request.

Section 2

Whenever possible and to the extent practicable, and before conducting a budget-driven RIF, Management will attempt to avoid the use of a RIF by considering other cost-saving methods, including attrition. At the request of the union, management will provide a cost study of savings methods considered in order to avoid a RIF. A cost study, for the purposes of this section, may be comprised of a summary of cost saving methods management may have developed, used, or considered in arriving at its decision.

Management will provide the Union, at the earliest possible date, with the notice list containing the names of bargaining unit members who are affected by the RIF and will be receiving RIF notices and, if applicable, a list of any bargaining unit employees who received Certificates of Expected Separation.

Section 3

Before the issuance of specific RIF notices, the Union will be provided a copy of the annotated retention register(s) to be used to issue any notices that could go to members of the bargaining unit. Amended registers will be provided to the Union as soon as they are prepared. The retention register will include: the employee's tenure group, competitive level, and service computation date; and the adjusted service computation date.

Employees and/or their designated representative(s) will be permitted to review the applicable retention register so that the employee may consider how the retention register competitive level was constructed and how the relative standing of the employee was determined.

Section 4

Management will give a specific notice in writing to employees who will be affected by a RIF, with a copy to the Union. This notice period will be no less than 90 calendar days prior to the implementation date except, when a RIF is caused by circumstances that are not reasonably foreseeable, the Office of Personnel Management (OPM) at the request of the Department of Commerce may authorize a notice period of less than 60 days but at

least 30 full calendar days before the effective date of release. The parties agree to be bound by the OPM decision.

Section 5

Management will consider using vacancies, to the maximum extent possible and practicable, to avoid or lessen the impact of the RIF within the affected competitive area at the onset of and during the RIF, by making job offers to an individual within the competitive area who is affected by position abolishment, and who meets WFMO qualifications for the position. Management will make a reasonable effort to train an employee affected by a RIF, where necessary upon reassignment in lieu of separation. Costs of relocation will be paid under applicable government regulations.

A bargaining unit employee offered a vacant position may decline the offer without any prejudice, except as specified by law or by government-wide regulations, to the employee's other RIF rights and options. An offer of a vacant position shall be held open for seven (7) business days to allow the offeree time to evaluate the offer and accept or reject.

Section 6

Eligible employees separated by a RIF may apply for placement on a reemployment priority list (RPL). Former bargaining unit employees on an RPL will receive first consideration for ERD vacancies for up to two (2) years.

Section 7

Management will make a good faith effort to provide outplacement assistance to employees adversely affected by RIFs. This includes employees who are unable to accept assignment to another commuting area. Management also encourages employees subject to a RIF to apply to employee placement programs such as ICTAP, CTAP and RPL.

Employees may use additional assistance provided by Department of Commerce to the RIF/TOF affected individual. This may include information on the placement assistance programs available through OPM; individual job counseling and referral; stress and mental health counseling through the Employee Assistance Program; job testing, assessment, and evaluation; training on self-directed job search, resume preparation, and interviewing; and financial planning.

Section 8

The Union reserves its statutory rights to negotiate on the impact or implementation of any individual RIF with respect to matters not specifically covered by this Agreement.

Furloughs*Section 1*

A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons. Furloughed employees are not, however, separated from Federal employment. When requested by the Union, Management will provide the bargaining unit written explanation if some, but not all, employees in a competitive area were selected for furlough.

Section 2

If necessary to qualify for unemployment compensation, employees will have the option to choose continuous furlough rather than a series of discontinuous furloughs, unless Management reasonably determines that doing so would seriously impact the Division's ability to manage its workload with a reduced workforce thus causing a detrimental impact on the achievement of effective and efficient government operations. In the case of a furlough, reasonable administrative leave may be granted by Management to employees seeking to apply for unemployment benefits and to contact job placement and/or employment agencies.

Section 3

Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated when appropriations are approved to the extent permitted by law and regulation.

EEO

Section 1

Management and Union agree that there shall be no discrimination against any employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities, or religion. Toward this end, Management will administer an EEO program in accordance with applicable laws and regulations.

Section 2

Management agrees to meet at the request of the Union to review and discuss specific issues relating to equal opportunity as they arise. The parties further recognize that EEO plans and reports are developed in accordance with guidelines and instructions promulgated from the EEO commission. Management agrees to provide copies of such plans and reports at the request of the Union.

Section 3

The bargaining unit will have one representative on NOAA's NOS Equal Employment Opportunity and Diversity Advisory Committee contingent upon the continuing approval of the NOS Assistant Administrator. Selection of the representative will be at the discretion of the Union. Management agrees to fund travel costs for one representative for the purposes of training related to committee membership, not to exceed one trip per year.

Section 4

Any meeting requested by or initiated by the Department of Commerce Office of Civil Rights or NOAA Office of Civil Rights is not considered a formal discussion as described in 7114 (a)(2)A of 5 U.S.C Chapter 71. Management is not obligated to notify the Union of such a meeting. However, the employee may elect to be accompanied by a representative, who may be a Union representative.

Section 5

The bargaining unit representative designated in Section 3 above shall provide the names, addresses, and phone numbers of all EEO counselors who are authorized to accept informal EEO complaints from employees and shall ensure that this information is conspicuously posted and updated annually.

Disciplinary or adverse action

Section 1

Discipline or adverse action is intended to correct unacceptable conduct, attitude or work habits. The goal is not to punish the employee, but to encourage acceptable conduct and work habits. Discipline should be fair and reasonable in its degree of severity. Disciplinary or adverse action should be initiated in a timely manner. DAO 202-751 includes a table of offenses and penalties that serves as a guide for determining the appropriate penalties for common offenses. For offenses listed in Appendix B of DAO202-751, penalties should not exceed those recommended except for exceptionally egregious activity.

Section 2

For the purpose of this Agreement, a "disciplinary action" is defined as a written reprimand or a short-term suspension without pay of 14 days or less. An "adverse action" is defined as a removal, suspension of more than 14 days, or a reduction in pay or grade. A written or verbal "admonishment" is a possible precursor to disciplinary or adverse action, but is not considered a disciplinary action in and of itself.

Section 3

Management may take disciplinary or adverse action for just and sufficient cause and may not take disciplinary action against an employee for any reason prohibited by 5 U.S.C. 2302.

Section 4

Disciplinary actions will be taken in such a way as to respect the employee's privacy and to avoid embarrassment to affected employees.

Section 5

Management will generally conduct an investigation to collect evidence relevant to the disciplinary or adverse action under consideration. The deciding official will rely upon all the information collected that is relevant to the disciplinary or adverse action, both favorable and unfavorable to the employee, in making decisions about whether to take action and the severity of any action taken. When requested by the employee or the employee's representative, Management will provide copies of all material collected in the investigation that Management relied upon in deciding whether to take disciplinary or adverse action and/or determining the penalty. Nothing in this Article shall limit the right of the Union to request information in accordance with 5 USC 7114.

Section 6

Written reprimands or admonishments that are maintained by the employee's immediate supervisor or in the employee's Official Personnel File should be purged from the records according to the schedule prescribed in the reprimand or admonishment. Any written reprimand or admonishment persisting in the file past the specified purge date will be considered as purged. Purged records may not be relied upon or referred to in subsequent actions, or transferred to any subsequent supervisor of the employee.

Section 7

Reasonable time will be given to the employee or his/her representative to prepare a defense to any proposed adverse or disciplinary action. The employee or his/her representative and Management may mutually agree to an extension of time frames stated in this Article.

Section 8

Employees are entitled to representation in most phases of a disciplinary or adverse action, as provided by federal law and regulation. Management is not responsible for the cost of such representation except as specified in this Agreement, or as required by policy or statute.

Section 9

Disciplinary action (reprimand and/or a short-term suspension without pay of 14 days or less).

- A. For a written reprimand, the employee has the right to file a grievance after the reprimand is issued, as spelled out in this Agreement except that the grievance will be initially filed with the employee's second level supervisor.
- B. For a short-term suspension, the employee will receive advance notice stating the specific reasons for the proposed action and notice of his/her right to a representative. The employee will be allowed 10 working days to provide either an oral or written defense to the designated deciding official. Once the decision is issued, the employee has the right to file a grievance as spelled out in this Agreement except that the grievance will be initially filed at the next organizational level above the deciding official.

Section 10

Adverse (i.e., removal, suspension of more than 14 days, or a reduction in pay or grade).

- A. The employee is entitled to a minimum 30-day advance written notice stating the specific reasons for the proposed adverse action and the right to representation. The employee will be allowed 15 working days to provide either an oral or written defense to the designated deciding official. The designated deciding official will be at a higher organizational level than the employee's immediate supervisor. If an adverse final decision is rendered, the employee has the right to file a grievance as spelled out in this Agreement, except the grievance will be initially filed at the next organizational level above the deciding official.
- B. The employee has the right, rather than filing a grievance, to appeal the Management action to the Merit System Protection Board, but may not do both. If the employee's appeal is based, in whole or part, on allegation of discrimination, the employee may file an EEO complaint with the Agency under statutory procedures.

Management Initiatives During the Term of this Agreement

Section 1

A. The union recognizes that Management has the right to exercise its management rights as set forth in the Federal Service Labor-Management Relations Statute, this agreement, and in accordance with applicable law, rule, and regulation to initiate changes in operational and administrative procedures and programs when Management determines it is in the interest of the program to do so. Management recognizes that the union, in accordance with law, has the right to receive timely advance notice and to engage in good faith negotiations, when applicable, with Management on any changes in the conditions of bargaining unit employees' employment.

B. Mandatory amendments may be required after the effective date of this agreement because of new laws or changes to existing laws. In the administration of all matters covered by this agreement, the parties are governed by the following: existing and future laws; government-wide rules and regulations in effect on the effective date of this agreement; NOAA rules and regulations in effect on the effective date of this agreement. Where the terms of this agreement conflict with government-wide rules and regulations issued after the effective date of this agreement, the terms of this agreement shall be controlling unless the parties agree to enter into negotiations following the aforementioned changes and amend this agreement.

Section 2

A. Management agrees not to unilaterally establish or change any personnel policy, practice or condition of employment not specified by this agreement, except as provided by this section or by law. Management shall provide the union with reasonable advance notice (but normally not less than 10 workdays), of intended changes in terms and conditions of bargaining unit member's employment. The notice shall include the following:

1. A description of the desired change;
2. An explanation of how this change shall be implemented;
3. The proposed implementation date, if known; and
4. The identity of Management's representative if someone other than the designated management official.

Section 3

The Union shall have five (5) work days in which to request a Clarifying Discussion with the appropriate management representatives in order to ask questions and request additional information regarding the proposed change(s).

Section 4

A. The union shall have ten (10) work days from the date of notification or the date of Clarifying Discussion (as described in section 3), whichever is later, in which to invoke its right to negotiate over the requested change by submitting written notice of its intent to do so.

B. The written request to negotiate shall include the following:

1. A description of any adverse impact created by the change;
2. A list of negotiable proposals intended to mitigate the adverse impacts;
3. An explanation as to how each proposal mitigates the adverse impacts created by the change.

C. Where negotiating meetings are required, the meeting shall be conducted as follows.

1. The bargaining teams at any meeting shall be limited to more than four (4) members for each Party unless the Parties mutually agree otherwise.
2. Management shall provide the union negotiating team with reasonable services such as office supplies, access to personal computer, printer, e-mail, telephone, FAX, and photocopy equipment.
3. Negotiations shall commence on a mutually agreeable date. Absent such mutual agreement, negotiations shall commence within ten (10) working days after Management received the union request to negotiate.

Section 5

If the Parties fail to reach agreement sixty (60) calendar days after notification of the proposed change, either Party may declare impasse and pursue an appeal with the Federal Service Impasse Panel. If this procedure is invoked, Management shall postpone the implementation of any change until the impasse is resolved, except where the implementation is otherwise permitted by law. Management retains the right to implement its last, best and final offer in the event the union fails to seek timely assistance from the Federal Service Impasses Panel but will give advance notice to the Union of at least ten (10) working days of its intent to do so. The Union may invoke its right to pursue an appeal with the Federal Service Impasse Panel within these ten (10) working days of notification.

