Contents

Agreement

Between

UNITED STATES
PATENT & TRADEMARK OFFICE

AND

THE TRADEMARK SOCIETY
National Treasury Employees Union, Local 245

EFFECTIVE DATE:

December 22, 2000

APPROVAL AND IMPLEMENTATION OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE UNITED STATES PATENT AND TRADEMARK OFFICE AND THE TRADEMARK SOCIETY, NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 245

We are pleased to announce the implementation of the Collective Bargaining Agreement between the United States Patent and Trademark Office (USPTO) and the Trademark Society, National Treasury Employees Union, Chapter 245. We believe this agreement will benefit greatly the covered employees and the Agency.

We would also like to thank the negotiating team members who worked tirelessly to bring it about. This effort produced the first agreement between the USPTO and NTEU, Chapter 245, reached through an interest-based approach to bargaining. Hopefully, the cooperation exhibited in concluding this agreement will be a building block for the relationship of these parties for many years to come.

1/19/01
Anne H. Chasser Date
Commissioner for Trademarks
United States Patent and Trademark Office

1/19/01
Colleen M. Kelley Date
National President
National Treasury Employees Union

01/19/01
Howard Friedman Date
President
NTEU, Chapter 245

In accordance with 5 U.S.C. Section 7114 (c), I approve the Collective Bargaining Agreement between the United States Patent and Trademark Office and the Trademark Society, National Treasury Employees Union, Chapter 245.

1/19/01
Q. Todd Dickinson Date
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

TABLE OF CONTENTS

Contents

Article 1
Preamble

WHEREAS the Congress has found that experience in both private and public employment indicates that the statutory protection of the rights of employees to organize, bargain collectively, and to participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

WHEREAS 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; and

WHEREAS the well-being of employees and efficient administration of the Patent and Trademark Office are benefited by providing employees an opportunity to participate in the implementation of personnel policies and practices affecting the conditions of their employment through the labor organization of their choice; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of all parties:

THEREFORE, labor organizations and collective bargaining in the Civil Service are in the public interest.

The following articles and such supplemental agreements as may be made shall constitute the Collective Bargaining Agreement by and between the U.S. Patent and Trademark Office and the Trademark Society. It represents an attempt to state clearly the respective rights and obligations of the parties. This is necessary if the parties are to deal with each other effectively.

Contents

Article 2
Recognition and Representation

Section 1

In accordance with exclusive recognition first granted under Executive Order 10988 on October 25, 1963, and continued under Title VII of the Civil Service Reform Act of 1987, 5 U.S.C. 7101, et seq., and as amended, the Office hereby reaffirms the recognition of the Union as the exclusive representative of the employees in the bargaining unit as follows:

All professional Trademark Attorneys and Examiners within the framework of the Trademark Examining Operation of the Patent and Trademark Office and Interlocutory Attorneys within the Trademark Trial and Appeal Board.

Not included are the following:
(1) Management officials or supervisors; (2) confidential employees; (3) employees engaged in personnel work in other than a purely clerical capacity; (4) employees engaged in administering the provisions of Title VII of the Civil Service Reform Act of 1978; (5) members of the Trademark Trial and Appeal Board.

Section 2

The parties agree that the terms and conditions of this Agreement apply only to employees and positions within the bargaining unit.

Section 3

Upon a showing of need by either party and at the request of either party, an amendment of the bargaining unit shall be considered. Nothing in this section shall preclude either party from seeking a clarification of unit from the Federal Labor Relations Authority.

Article 3
Precedence of Laws, Regulations, Past Practices and Past Agreements

Section 1

In the administration of all matters covered by this Agreement, the Union and the Office are governed by the following:

A. Existing and future laws;

B. Government-wide rules and regulations in effect upon the effective date of this Agreement;

C. DOC rules and regulations in effect upon the effective date of this Agreement and not in conflict with this Agreement;

D. Government-wide rules and regulations and DOC rules and regulations issued after the effective date of this Agreement that do not conflict with this Agreement.

Section 2

This Agreement supersedes all previous agreements and past practices in conflict with this Agreement. Past practices not in conflict with this Agreement shall continue, absent written notification by either party of their intent to discontinue or modify a particular practice. Upon the request of either party, the parties shall bargain over the change as required by law or this Agreement.

Section 3

To the extent that provisions of the Patent and Trademark Office published regulations and policies are in conflict with this Agreement, the provisions of the Agreement will govern. Otherwise, published regulations and policies of the Office will govern.

Section 4

Copies of any such laws, regulations or policies referred to above in the possession of the Office shall be available for inspection and study by the Union upon request.

Article 4
Definitions

In the interpretation and application of this Agreement, the following words or terms shall have the following definitions:

1. "The Office" shall mean the U.S. Patent and Trademark Office.

2. "Department" shall mean the U.S. Department of Commerce.

3. "The Union" shall mean the Trademark Society, NTEU Chapter 245, or any of its officers, executive committee members or representatives, when acting in their official capacities.

4. "Negotiations" shall mean the process by which the Office and the Union present and consider proposals and counterproposals in good faith and as equals, under an obligation to attempt to reach an agreement.

5. "Consultations" shall mean the process whereby one party solicits and/or receives the timely submitted views of the other party and gives these views fair and serious consideration prior to making a final decision.

6. "The CSRA" shall mean Title VII of the Civil Service Reform Act of 1978 (Public Law 95-454).

7. "Computation of time": In computing any period of time prescribed or allowed in the Agreement, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. When the last day of any time period for taking action falls on a Saturday, Sunday, or holiday, or when the Office is closed for business for all or part of the day, the action may be taken on the next succeeding workday. "Day" means calendar day unless otherwise specified.

8. "Alternative Work Schedule" shall mean any working arrangement which enables a full-time employee to fulfill the basic work requirement of 80 hours per pay period in less than ten full work days; or the work requirement of 40 hours per week in less than five work days.

9. "Non-work day" shall mean any scheduled day off, which will normally be Friday, Saturday, Sunday, Monday or Wednesday.

10. "Flexitime" shall mean the opportunity for employees to report to work each work day at any time during the morning flexible band, be present during core hours, and leave any time after they accumulated eight hours of work, plus one half hour for lunch.

11. "Restricted flexitime" shall mean a limited form of flexitime which occurs when certain employees are not permitted to report at a time of their own choosing during the

morning flexible band, but they may be required to report no earlier than a specified time during the morning flexible band.

Contents

Article 5
Management Rights

Section 1

The Office has the right, subject to 5 U.S.C. Section 7106(a) and (b)(2) and (3):

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 Office, 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 the Office operations shall be conducted; (3) with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate sources; and (4) to take whatever actions may be necessary to carry out the Office mission during emergencies.

Section 2

The Office specifically retains the right to make decisions concerning 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. However, nothing in this section shall preclude the Office, at its election, from negotiating with the Union over the foregoing.

Section 3

Subject only to the limitations and conditions of this Agreement, it is agreed that the rights and authority of the Office are vested in officials of the Office. Included in this authority is the right, in accordance with applicable laws and regulations, to direct the workforce; to hire, to promote, to retain, to transfer, and to assign employees to positions within the Office; and to suspend, to discharge, to demote, or to take other disciplinary action against employees.

Section 4

The right to make rules and regulations shall be considered an acknowledged function of management officials. In making rules and regulations relating to personnel policies, practices and matters affecting working conditions, such officials shall abide by obligations to negotiate or consult imposed by law or this Agreement.

Contents

Article 6
Management Obligations

Section 1

The Office shall have due regard for the rights of employees and of the Union under appropriate statutes (including the CSRA), rules, regulations and this Agreement.

Section 2

The Office will consult or negotiate with the Union as required by law or this Agreement.

Section 3

The Office shall consult the Union concerning any significant reorganization which would substantially affect employees of the Unit and which would involve changes in grade, duties, responsibilities, or reduction-in-force actions.

Section 4

The Office shall furnish to the Union a list of newly hired known unit personnel and their locations during their initial two weeks of employment.

Section 5

The Office agrees that it will not retaliate by exercise of disciplinary or other discriminatory action against employees of the unit because they have filed a complaint or given testimony under an Act, statutory appeal, and grievance procedure or negotiated procedure.

Section 6

A. In order that members of the bargaining unit and the officers of the Union may be better informed as to their rights, obligations and responsibilities, management will supply to the Union a listing of all duly published Office policies, PTO administrative instructions and Department of Commerce Administrative Orders relevant to the Trademark Office and will upon request provide copies of all such documents to the Union. It is agreed and understood that every effort will be made by the Office to comply with this section, but that failure to list or provide a copy of any particular document does not relieve any employee of the obligation and responsibility to comply with previously issued instructions, orders or policies.

B. Each affected employee shall be given a copy of newly published Office policies.

Section 7

The Office agrees to list the name and office telephone number of the local chapter president in the Trademark Examining Organization telephone directory.

Article 7
Employee Rights

Section 1

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 the CSRA, such right includes the right:

A. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the CSRA.

Section 2

An employee has the right to bring matters of personal concern to the attention of appropriate management officials. Nothing in this Agreement shall preclude the exercise of this right. Exercise of this right does not limit the right of the employees or the Union to bring timely grievances under the negotiated grievance procedure.

Section 3

Employees will be treated with dignity and respect by supervisory personnel.

Section 4

A. When an individual from outside the PTO makes a complaint to the Office regarding a unit employee, the Office agrees whenever possible to follow the following procedures, subject to the limitations set forth in section (B) below:

1. The complaint will be reduced to writing, either by the complainant or by a representative of the Office, which writing shall include the date(s) of the complaint.

2. The employee shall be given a copy of the complaint and the opportunity to make a written response; such written response shall be attached to the complaint and filed by the Office along with the complaint.

B. The procedures set forth in section (A) above shall be subject to the following restrictions and limitations:

1. These procedures shall not apply to communications made to the Office of Trademark Quality Review or to any communications which relate to alleged violations of criminal law.

2. These procedures shall not be interpreted or applied to affect or jeopardize management's compliance with any legal or regulatory prohibitions against the release of information. Specifically, the Office shall not be required to release any information where the release of such information is inconsistent with law, rule or regulation.

3. These procedures shall not be interpreted or applied to affect, jeopardize or infringe upon management's right to protect its internal security or to determine its internal security practices pursuant to 5 U.S.C. §7106.

4. These procedures shall not be interpreted or applied to limit management's right to take disciplinary or other appropriate action.

C. * [A letter of reprimand will be removed from the employee's record no later than 12 months from the date of issuance. Oral admonishments confirmed in writing will be removed after 3 months.]

D. If a written communication compliments the employee, a copy shall be given to the employee.

E. This section does not abrogate employee rights to information under FOIA or other sections of this Agreement.

Section 5

Unit employees will not be coerced or unduly pressured by supervisory personnel to contribute to fund raising drives.

Section 6

A. Employees shall have the right to inspect their Official Personnel Folders in accordance with reasonable Office policy.

B. All employees in the Unit shall be furnished a copy of any paper added to their Official Personnel Folder which relates to their performance, conduct, or promotion potential. Employees shall have an opportunity to submit a written statement of rebuttal to be placed in the Official Personnel Folder. A copy of the rebuttal shall be furnished to the employee's immediate supervisor.

Section 7

When a representative of management wishes to meet with an employee for the purpose of obtaining information for determining whether disciplinary action shall be taken against the employee, it shall be required that:

A. The management representative notify the employee of the general nature of the meeting and of the right to have a union representative present.

B. In addition to the provisions of 5 USC 7114(a)(2)(b), which allows an employee to have a Union representative present at a meeting when the employee reasonably believes that an investigation, as part of the meeting, could lead to disciplinary action, the management representative conducting the meeting shall notify the employee of the right to Union representation, if the management representative reasonably recognizes that a disciplinary action may result.

C. If the employee requests a Union representative, management shall be obligated to wait a reasonable time to allow the employee the opportunity to secure representation, before proceeding with the meeting.

D. None of the preceding subparagraphs shall apply to inquiries or counseling sessions which apply solely to performance-based actions

Section 8

A. The Office shall notify the Union and the affected employee(s) of a proposed substantial change in a bargaining unit employee position description, such as a significant addition or reduction of duties or a change in grade level. The employee(s) and the Union will have a reasonable period, not to exceed two weeks, to comment on the proposed language which will not unduly delay issuance of the position description.

B. The Office shall provide the employees and the Union with the final amended position description upon its issuance.

C. When an employee requests a desk audit, the Office shall conduct the audit within a reasonable time under the circumstances.

Section 9

A. The Office will not deny access to information solely on the basis of the method or manner of storage. The parties acknowledge that the Office is not obligated to write new programs in order to retrieve data and that the Office is obligated to provide reports which are generated in the normal course of business.

B. In the event of alternative means of providing information, the Office may choose the least costly or time consuming alternative provided it does not unduly prejudice the employees' rights to prompt and meaningful information.

Section 10

A. An employee may resign at any time and will normally give two weeks notice of resignation.

B. Normally, resignations should be in writing. Requests to withdraw resignations may be declined by the Office consistent with the provisions of 5 CFR, Subpart b, section 715.

C. When an employee resigns after receiving written notice of proposed disciplinary or adverse action, the proposed action is to be included in the employee's records, unless the Office and employee agree otherwise. When an employee resigns before receiving written notice of proposed disciplinary or adverse action, no record will be maintained in the Official Personnel Folder regarding the possibility of such action. All recorded information within the control of the Office shall be specifically retained in a confidential file maintained by the properly designated official in the Office of Personnel.

D. The Office shall not secure any employee's resignation by unlawful means.

D. An employee may withdraw his or her resignation up to the effective date of the resignation or the time his or her position is legally committed, whichever occurs first.

Section 11

Any inquiry and investigation into allegations of off-duty misconduct must be based on activity which, if verified, would have some nexus (i.e., some relationship) to the employee's position. The parties agree that the conduct of employees while off duty shall result in action only when there is a nexus between that conduct and the employee's official position. Employees will not be subject to harassment or frivolous inquiries.

Section 12

When an employee is the subject of an investigation and the employee reasonably believes that his/her answer may incriminate himself/herself of criminal misconduct, the employee may assert his/her 5th Amendment right to remain silent, unless the employee is given assurances that his/her answer may only be used for administrative purposes. If an employee receives such assurances, any refusal to answer may be the basis for disciplinary action.

Section 13

All employees may participate in the political process as permitted by law.

Article 8
Employee Obligations

Section 1

All employees are presumed to know and expected to comply with all laws and duly published regulations and policies which relate to their employment and conduct. The fact that a particular law, regulation, or policy may not be called to their attention by the Office will not excuse any violation on their part.

Section 2

All employees are expected to observe Office hours and refrain from unauthorized absences and leave abuse.

Section 3

A. Employees will make a good faith effort to return telephone messages when received the same work day or, if received after 2:00 p.m., not later than the next work morning.

B. Bargaining unit members are responsible for setting up their outgoing voice mail messages properly.

Section 4

Unit employees shall provide a current mailing address and home phone number to their immediate supervisor.

Section 5

Each employee shall attempt to perform to the best of his or her capability.

Section 6

Employees are to maintain a neat, clean, business-like appearance during working hours. Clothing and behavior must be appropriate to the conduct of government business and shall not be of a kind that would reasonably bring criticism to the Office.

Section 7

In all contacts with the public and with other government employees, employees will be responsive, courteous and considerate.

Section 8

Employees shall not intentionally falsify Office records. Falsification of any Office records may be the basis for disciplinary action.

Section 9

The employer is entitled to require truthful answers from employees in response to questions in matters of official interest. An employee who fails to provide such answers is subject to disciplinary action, including removal. An employee need not answer a question from a manager or management representative if it does not pertain to official business.

Section 10

Bargaining unit members will utilize electronic mail for the purpose of both receiving work related messages or information and for responding to work related inquiries made by electronic mail. Electronic messages will generally be reviewed at least once a day. An employee may consult with his/her manager to determine how to appropriately respond to an external customers email.

Section 11

The parties acknowledge that from time to time the Office issues electronic versions of Office policies and procedures that typically contain the most up-to-date and accurate data available and that such versions are the preferred source of guidance and should be utilized.

Contents

Article 9
Union Rights

Section 1

As exclusive representatives of employees in the unit, the Union is entitled to represent all employees in the unit.

Section 2

The Union shall have the right to bargain concerning any changes in the conditions of employment of unit members, for which there is a bargaining obligation, in accordance with Article 33, Impact and Implementation Bargaining.

Section 3

The Union has the right to consult with the Office concerning any matter affecting the employees' working conditions, upon the request of an employee.

Section 4

In order to implement the Union's rights under 5 USC 7114 (a)(2)(A) to participate in formal meetings, the Office shall make every effort to provide the Union a minimum of five (5) hours advance notice for such meetings. In any event such advance notice shall be reasonable under the circumstances and sufficient to allow the Union time to arrange for representation at the formal meeting. The Union shall have the right to one (1) representative at such formal discussions.

Section 5

Advance notice under Section 4 above shall include the time, place and topic of discussion.

Section 6

The Union shall have the right to speak to all new unit employees at an orientation session. The Union will be given adequate notice of the schedule for its presentation. The Union's presentation will not exceed fifteen (15) minutes and shall not include any direct solicitation for membership. The Union may provide and distribute copies of the Agreement, newsletter and other materials at its presentation. The Union will be allowed one (1) representative, on official time, at such orientation sessions. Nothing in the Union's presentation, either oral or written or in the materials distributed, shall bring the agency or any agency official into contempt or disrepute.

Section 7

The Union shall be entitled to all other rights provided for in other articles of this Agreement or otherwise provided for by law, notwithstanding that they are not set forth in this article.

Contents

Article 10
Union Obligations

Section 1

The Union, as the exclusive representative of all employees in the unit, has the responsibility to represent the interest of all such employees without discrimination and without regard to employee membership in the Union.

Section 2

The Union shall abide by the standards of conduct for labor organizations required by the CSRA and regulations.

Section 3

The Union and Management agree to give reasonable advance notice of no less than 10 days, of the intent to file an unfair labor practice charge with the Federal Labor Relations Authority (FLRA) so as to allow an opportunity for an informal disposition of the matter.

Section 4

The Union in discharging its duties, agrees to encourage its members to comply with applicable regulations, the Agreement and Office policy.

Section 5

Pursuant to Section 7116(b) of the Civil Service Reform Act, the Union shall not:

A. Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the Act or this Agreement;

B. Cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this Agreement or the Act;

C. Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

D. Discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non preferential civil service status, political affiliation, marital status, or handicapping condition;

E. Refuse to consult or negotiate in good faith with the Office as required by the Act;

E. Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the Act and the Agreement;

F. Call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or condone any such activity by failing to take action to prevent or stop such activity. Nothing in this Article shall prohibit lawful informational picketing which does not interfere with the Office's operations.

Section 6

The Union will not engage in unlawful coercion or intimidation against management.

Section 7

The Union supports maintenance of service-oriented and businesslike attitude and behavior, particularly in dealing with the public, supervisors, management officials and co-workers.

Section 8

Personal information about an employee received by the Union shall be safeguarded and treated as confidential by the Union in order to protect employee privacy.

Contents

Article 11
Grievance Procedure

Section 1

The Office and the Union recognize and endorse the importance of considering employee complaints and grievances promptly and, whenever possible, informally. The parties agree that this grievance procedure will provide a mutually acceptable means of resolving complaints and grievances at the lowest level possible, and the Office and Union agree to work toward this end.

Section 2

A. The procedure described in these sections shall constitute the sole and exclusive procedure available to bargaining unit members for resolving grievances under this or any other negotiated agreement between the parties, e.g. flexitime.

B. This procedure is available to any member of the unit, to the Union on its behalf or on behalf of member(s) of the bargaining unit, and to the Office. Any of the aforementioned parties making use of this procedure shall be referred to, for the purpose of this article, as the Grievant.

Section 3: Definition and Scope

A grievance is any complaint:

1. by a member of the bargaining unit concerning any matter relating to the employment of that member; or

2. by the Union of the Office concerning any matter that relates to the employment of any bargaining unit member or group of members or that relates to the rights of the Union or the Office; or

3. by any bargaining unit matter that affects the member personally, or by the Union or by the Office concerning:

    (a) the effect or interpretation, or a claim of breach of this Agreement;
    (b) any claimed violation, misinterpretation, or misapplication of any law, regulation, or established personnel policy or practice affecting conditions of employment;
    (c) any claimed discriminatory or inequitable treatment; any violation of the Merit System principles of 5 USC § 2301; or any prohibited personnel practice of 5 USC § 2302.

Section 4

The following matters are considered not grievable under the provisions of this procedure: Those matters excluded from coverage under 5 U.S.C. §7121(c) relating to:

A. any claimed violation of prohibited political activities;

B. retirement, life insurance, or health insurance;

C. suspension of removal in the interest of national security;

D. any examination, certification or appointment;

E. the classification of any position which does not result in the reduction in grade or pay of an employee;

Section 5

The Office may cease to process and terminate a grievance upon:

A. the Union's written request, when the Union is the Grievant;

B. the voluntary termination of the Grievant's employment except where pay relief is involved;

C. the death of a Grievant , except where pay relief is involved;

D. failure of the Grievant or the Union to meet any of the time limits herein; or

E. failure of the Grievant to properly set forth the substance of this grievance as required by section 11(A) of this article. However, if the Grievant has substantially complied with the provisions of section 11(A) but has omitted some material, the Office shall notify the Grievant at the first level of the grievance procedure and the Grievant shall have five (5) working days to provide the omitted material to avoid termination. The Office's period for response to the grievance shall be reset to start from the time the omission is corrected; or

F. the request of the grievant

Section 6

In the event the Office fails to meet the requirements of these sections, the Union or the grievant is permitted to proceed to the next step of the grievance procedure. However, if

a decision is rendered after the time limit, that decision shall become a part of the record.

Section 7

In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. The earlier this declaration is made, the better. However, in no event can such declaration be made after the issuance of the second step answer. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold in connection with the related grievance.

Section 8

When the Office and the Union agree that grievances should be combined, the Union will select one case for processing under the grievance procedure. The employees will be advised that in processing one grievance for the group, the decision of the case selected will be binding on all other cases. Names of all employees involved in this procedure will be made a part of the record of the case selected for processing, and when a decision is made on the grievance, each employee will be individually notified.

Section 9

A matter of concern or dissatisfaction orally expressed by an employee to his or her supervisor is not a grievance provided for by this section and is not subject to them.

Section 10

A Grievant shall have the right to represent herself/himself.

Section 11

The following steps constitute the required steps for processing grievances:

A. First Step

1. The grievance must be reduced to writing. The written grievance shall be submitted within (30) calendar days after the event or action prompting the grievance, or the date the Grievant became aware of, or should have become aware of, the event or action. If the grievant files a FOIA or information request simultaneously with the grievance and the information is received before a hearing occurs or a decision is rendered, the grievanct, at his or her request, will be granted a five (5) working day extension to amend the grievance. However, such amendment must be within the scope of the original grievance and must be based upon the information received. The deciding official will be allowed five (5) additional working days to render a decision.

2. The written grievance shall be submitted to the lowest level supervisor with authority to resolve the grievance (usually the employee's immediate supervisor), who shall render a written decision within five (5) working days. If the management official to whom the grievance is submitted feels that he or she does not have the authority to resolve the grievance, he or she will direct the grievance to the proper official within three (3) working days. If, because of the nature of the grievance, either the Union or the Office feels that immediate supervisor is not the appropriate Step One official, that party may contact the Labor Management Relations (LMR) Office to discuss whether such supervisor should hear the grievance. LMR will consult with the appropriate official(s) and shall designate the Step One official. If an employee is grieving a performance rating and has already requested reconsideration by the approving official, the grievance will begin at Step Two. The proper official shall render a written decision within five (5) working days of receiving a grievance from the management official. If the proper official is the Commissioner for Trademarks, second step procedures will be used.

3. In the case of an Office grievance, the designee of subparagraph A.4(f) of this section should be the employee who will handle the grievance for the Office and the Union President shall be the person to receive the written grievance.

4. The written grievance must contain the following information:

a) name, grade, title, and work unit of the Grievant, name of the person representing the Grievant, or name of the person representing the Union if it is a Union grievance;
b) the name and title of the official to whom the grievance is submitted and the date submitted;
c) a detailed statement describing the facts involved, the date the incident occurred which gave rise to the grievance, or the date the Grievant became aware of the incident;
d) the Agreement article(s) and section(s), law(s), regulation(s), rule(s) and/or other item(s) violated, misinterpreted or misapplied;
e) the remedy desired;
f) a statement that the Union, or its designee, is representing the Grievant, or that the grievant chooses self representation; and
g) the Grievant's signature

B. If the first step fails to produce a satisfactory resolution, the Grievant may proceed to the second step.

C. Second Step

1. Within five (5) working days of the decision at the first step, the grievant must

present in writing a request to proceed with the grievance to the Commissioner for Trademarks or a designated representative, who may not be the step one decision maker.

2. The written request shall include a copy of the original grievance, the step one decision and preferably should specify that portion of the step one decision to which Grievant has objection.

3. The Commissioner for Trademarks or designated representative shall conduct an investigation which may include a conference with the Grievant, the Grievant's representative, the Union, and/or witnesses, if requested and shall render a written decision. However, the Grievant may waive his or her right to have a conference at any time after the decision at the first step. If a conference is requested and later waived, the deciding official will have ten (10) working days from the waiver date to render a decision.

4. The Commissioner for Trademarks or designated representative shall render a written decision within ten (10) working days if no conference is held, or within ten (10) working days after any conference is held.

5. If the Grievant represents himself/herself, the Union shall have the right to have an observer at the conference.

D. Referral to Arbitration

In the event that step one in the case of an Office grievance, or step two in the case in the individual or a Union grievance, fails to produce a satisfactory result, either the Office or the Union may proceed to arbitration as provided in Section 14.

Section 12: Institutional Grievances

For institutional grievances, in lieu of step-by-step procedures outlined above, the Union may submit a written grievance to the Commissioner for Trademarks, or designated representative. Upon request of the Union, the Office and the Union shall meet within ten (10) working days to discuss the grievance. A written decision shall be rendered within ten (10) working days after the meeting or within ten (10) working days of the filing of the grievance if no meeting is requested. If the Union is not satisfied with the decision, the Union may proceed to arbitration as specified in Section 14

Section 13: Rights of Parties

A. An employee is entitled to representation at any of the steps of the grievance procedure. However, nothing in this Agreement shall require the Union to represent an employee if the Union considers the grievance to be invalid, without sufficient merit, or for other good reasons (e.g., financial)

B. A copy of any document becoming part of the grievance record under this article shall be furnished to the Grievant, Union, Offices, and parties (if combined grievance under Section 8) by the person presenting the document.

C. The Office shall provide requested information, records and evidence under its control or in its possession in a timely and accurate manner accordance with applicable law. Such requests should be reasonable. If a dispute arises over access to information in connection with a grievance, it will be joined to the grievance unless the Union decides to pursue an Unfair Labor Practice (ULP) with the Federal Labor Relations Authority (FLRA)

D. Since dissatisfactions and disagreements may occasionally arise among people in any work situation, the Office agrees that no reprisal will be taken against any employee for initiating a grievance.

E. The Union has the right to advance notice of and to be present at any Office initiated meeting with the Grievant or any meeting with the Grievant after the step one decision is rendered.

F. If the Union is not the designated representative of the Grievant, the Union shall have the right to file an "amicus-type" statement for informational purposes. This statement shall become part of the grievance record.

Section 14: Arbitration

A. The Union and the Office shall have the right to have a grievance submitted to binding arbitration. The Union or the Office shall initiate arbitration by filing written notice with the Chief of the Employee/Labor Relations Division or with the President of the Union, as applicable, of its desire to arbitrate within twenty (20) calendar days after the final Office or Union decision has been rendered. Arbitration may be invoked only by the Union or by the Office. An employee does not have the right to invoke arbitration.

B. The parties shall attempt to select a mutually acceptable Arbitrator within ten (10) calendar days from the date of receipt of the notice in Section 14(A) by the other party.

C. If the parties fail to agree on an Arbitrator within this time period, the parties shall request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service. Within fourteen (14) days of receipt of the list, the parties shall meet to choose an Arbitrator. The party to make the first strike shall be determined by a coin toss. Each party shall alternate in striking through the name of an Arbitrator until one Arbitrator remains. That arbitrator shall be deemed selected and shall specify the

procedures to be followed during the arbitration proceedings as long as such procedures are in accordance with the provisions of this Article.

D. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an Arbitrator or allow one party to specify an Arbitrator to hear the case in the event;

1. Either party refuses to participate in the selection of an Arbitrator; or
2. There is inaction or undue delay on the part of either party.

E. Arbitration is provided in this grievance procedure as a means of obtaining the services of a third party, when necessary, to assist in the resolution of grievances. The arbitration procedure set forth herein shall not be extended to include matters related to changes or proposed changes in this Agreement, such changes being subject to negotiation under the terms of this Agreement, nor shall it be extended to disputes over any matter excluded from the grievance procedure by this Agreement.

F. The Arbitrator shall have the authority to interpret this Agreement as necessary to render a decision consistent with the provisions of this Article. The decision of the Arbitrator shall in no way change or amend this or any supplemental agreements or regulations which take precedence over this agreement.

G. The Office and the Union shall attempt to agree in writing upon the precise issue(s) to be decided, and shall submit a joint statement to that effect in advance of any arbitration proceedings. If the parties are unable to concur, each party shall specify the issue in writing with copies to each other and to the Arbitrator. The moving party shall include with its statement of issues the redress it expects from the arbitration.

H. The arbitration proceeding shall be held on premises provided by the Office.

I. The Arbitrator shall be requested to render a decision to the Office and the Union no later than forty-five (45) days after the conclusion of the hearing or the Arbitrator's receipt of post-hearing briefs, if they are submitted. The hearing will only be conducted if the parties are unable to stipulate as to the facts of the case.

J. The prevailing party shall be entitled to all relief or remedies provided for under the law.

K. Either party may file exceptions to the Arbitrator's award with the Federal Labor Relations Authority under the regulations prescribed by the Authority.

L. Each party shall pay the expenses of its own witnesses, its own travel expenses and for any transcript or other record of the proceedings desired by the party.

M. The Union and the Office shall share equally in the cost of arbitration.

Section 15

Absence of either party from the Office on approved leave for eight (8) consecutive hours or continuous eight (8) hour increment shall constitute an automatic extension of the time limit set forth herein for an equal period of time for the party who is absent. For the purpose of this Section, when the Union is the Grievant, the President of the Union is the party whose approved leave may extend the time limits. Automatic extension under this Section will be limited to fourteen (14) days.

Section 16

The Union and the Office agree it is mutually desireable to handle disputes amicably and in a fair and expeditious manner. To this end, this Article may be re-opened by either party, but not later than one year from the effective date of this agreement, to discuss an Alternate Dispute Resolution (ADR) procedure as an alternate resolution for grievances and EEO complaints. If one party requests the inclusion of ULP procedures in the discussion it will be included if both parties agree. If neither party re-opens within one year, then the re-opener option, as it pertains to this section, expires.

Contents

Article 12
Promotion and Reassignment

Section 1

All vacancies described in this article shall be filled on the basis of merit, fitness and qualifications and without regard to race, color, religion, national origin, personal favoritism, age, marital status, sex, physical handicap, political or employee organizational affiliation, except as may be authorized or required by law. The Office will select individuals for promotion and reassignment to positions in the bargaining unit in accordance with applicable laws and regulations so as to develop employee confidence.

Section 2

It is the right of the Office to promote and reassign employees consistent with the appropriate laws, regulations, policies and practices and the provisions of this Agreement.

Section 3

Sections 3-5 cover the following competitive actions or bargaining unit employees to classified bargaining unit positions:

A. Competitive promotions;

B. A temporary promotion over 90 days. All prior service at the higher grade level during the preceding 12 months including details to higher grade positions or temporary promotions must be counted as part of the 90 days.

   A temporary promotion may only be made permanent without further competition if the fact that it might lead to a permanent position was originally made known to all potential candidates and the temporary promotion results from a competitive process;

C. Reassignments to positions with known promotion potential to higher than the employee's current position.

Section 4

A. The Office will send a vacancy announcement via electronic mail to each bargaining unit member to cover all vacancies that must be filled in accordance with the procedures of this Article. The announcement will be sent via electronic mail within a minimum of ten (10) days prior to the closing date.

B. When announcements are issued they will contain:

1. Announcement number;

2. Opening and closing date;
3. Position title, series and grade;
4. Organization location and duty station;
5. Known promotion potential/career ladder status where appropriate;
6. Principal duties;
7. Minimum qualifications required;
8. Evaluations methods;
9. Statement of equal employment opportunity;
10. Selective placement factors, if any; and
11. Number of positions to be filled.

C. Applicants must meet all qualification requirements by the closing date of the vacancy announcement.

D. Ranking factors must be job related and will not be tailored to fit the qualifications of a particular individual.

E. Notice of all vacancy announcements subsequently cancelled will be sent to each bargaining unit member, via electronic mail.

F. The Office shall individually notify all candidates as to whether they were selected or not. In addition, the Office will notify all applicants who have applied for a position which was announced and open but subsequently withdrawn.

G. If there are more than 8 candidates subject to panel evaluation, all eligible candidates will be evaluated and ranked in a fair and objective fashion.

H. In order to provide a fair ranking of more than eight candidates subject to panel evaluation an evaluation panel will be utilized. The panel will be constituted in the following manner:

A panel for a particular position will consist of at least three members, selected by the Office of Personnel, one of whom shall be from an office or unit other than the one in which the vacancy is located. At least one of these members must be familiar with the work where the vacancy is located. When advice and guidance on the interpretation of qualifications is considered essential, the selecting official may advise the panel but has no vote. Such advice should normally be provided before the panel receives the names and applications of the candidates.

I. Within thirty days after the vacancy announcement has closed, the panel shall evaluate and rank the candidates as "Qualified" and "Best Qualified." All eligible candidates will be evaluated on the basis of valid job-related criteria which measure

the knowledge, skills, abilities and personal characteristics essential to successful performance in the position to be filled. The panel shall maintain a record of what points are credited to each candidate. Upon the filing of a grievance or formal

complaint regarding the selection, records of the panel shall be available to the Union and the grievant in accordance with applicable law and regulation. These records shall be retained for two (2) years or until any grievance or formal complaint regarding the selection is finally resolved, whichever, is longer.

J. Apart from documented cases of leave abuse, an employee's accumulation or balance of annual or sick leave may be considered by the ranking panel or ranking official, selecting official or supervisor as a basis for selection for promotion.

K. When all eligible candidates have been evaluated and ranked, the Office will promptly issue form CD-262, "Merit Assignment Program Certificate," listing the names of the best qualified candidates in alphabetical order, to be considered by the selecting official.

1. A Certificate will usually include the names of three to five best-qualified candidates for the vacancy to be filled. Additional candidates maybe certified where meaningful distinctions cannot be made. Ten the maximum number of best qualified candidates that may be referred to the selecting official, except as stated in subsection 3, but the number of candidates may be increased to the extent necessary to include all of the candidates available from other appropriate sources as "other appropriate sources" is used in 5 USC 7106 (a)(2)C(ii).

2. In cases where meaningful distinctions of qualifications cannot be made through the application of quality ranking factors and an excessive number of candidates are considered equally qualified, up to 10 candidates may be listed on a certificate based on seniority with the Office.

3. When there is more than one vacancy to be filled from a certificate, one additional candidate may be added to the certificate for each additional vacancy. In the event additional vacancy(is) occur within one month after an announcement has closed, the old announcement maybe used to fill the vacant position.

4. After all eligible candidates subject to panel evaluation are ranked, PTO employees will be considered for vacancies under the procedures of this article before any other candidates are considered.

5. Once non-PTO employees are considered, PTO employees will be simultaneously considered.

6. When a PTO employee is passed over for selection in favor of a non-PTO applicant, the former will be given a written explanation of all the reasons for

non-selection.

7. A Merit Assignment Program Certificate is valid for (30) calendar days from the date of the issuance. The certificates may be extended for 30 additional days upon a valid request by the selecting official.

8. Interviews, with the selecting official are optional. If one member of the best-qualified group is interviewed, all must be interviewed.

9. If the candidate selected is a unit employee, he/she shall be promoted at the beginning of the next pay period following completion of all necessary approvals and processing requirements. Under unusual circumstances, (e.g. permit arrangements to be made for the completion of essential assignments), this time period for promotions may be extended.

L. When requested by a competing bargaining unit applicant, the Office shall furnish the following information after the action has been completed:

1. The name(s) of the individual(s) selected;

2. Whether the applicant was found to be qualified;

3. Whether the applicant was referred to the selecting official;

4. Any other relevant and necessary information which is permitted by law, which the applicant may require to prosecute a grievance or other challenge; and

5. In what area, if any, a bargaining unit employee may improve his or her qualifications to enhance chances for future selection. (This information normally will be furnished by means of a counseling discussion with either a representative of the Office of Personnel or a knowledgeable supervisor.)

M. Upon request at completion of the selection process, a copy of the completed ranking and selection report shall be made available to the Union. The ranking and selection report will contain, at a minimum the following;

1. Announcement;

2. Date of Report;

3. Number of vacancies;

4. Sanitized summary of the panel scores;

5. The series, grade of the employee referred, if the candidates were within the bargaining unit;

6. If candidates were not bargaining unit employees, this will be so designated;

7. Selection action (i.e. clear indication of which candidates were selected);

8. Date of selection action; and

9. Date eligible for promotion.

N. Grievances arising out of the application of the promotion plan shall be processed under the negotiated grievance procedure. It is understood that non-selection for promotion from a group of properly ranked and certified candidates is not grievable.

O. Due consideration will be given to requests for voluntary downgrades.

Section 5

No member of the unit shall be placed in a disadvantageous position with regard to promotions by virtue of officially initiated service on a detail or work project.

Section 6

A. This section covers temporary promotion actions to bargaining unit positions of 90 days or less.

B. When an employee in the bargaining unit is temporarily assigned to another position in the bargaining unit classified at a higher level for more than thirty (30) days, a temporary promotion will be made under applicable rules and regulations.

Section 7

A. This section covers career ladder promotions to positions through the GS -13 level. Employees in identified career ladder positions working below the GS-13 level will be eligible for promotion provided that the employees meet the requirements of the position including satisfactory demonstration of ability to perform at the next higher grade and have a current Fully Successful performance rating, and there are sufficient funds and higher level work to be performed.

The effective date will be the beginning of the first pay period after all applicable regulations and approval requirements are met. Employees who meet the requirements for promotion and who are not promoted after meeting all applicable regulations and approval requirements and in accordance with the Back Pay Act, 5 USC 5596, 5 USC 550 subpart H, and relevant Computer General decisions, shall be entitled to back pay from the first pay period after meeting such regulations and approval requirements.

Bargaining unit employees who are not promoted after completion of the minimum time in grade shall have the right to request and receive a written statement from their

supervisor after face-to-face discussion between them. The supervisor's statement shall list the reasons for withholding the promotion and explain how the employee's performance can be improved to qualify for promotion.

Section 8

Approved leave, whether sick leave or annual leave or leave without pay shall not be used as a basis for determining ability to perform the job under the terms of this article unless the leave in of such duration that the employee has not adequately progressed in job knowledge or performance or unless there have been frequent instances of sick leave or tardiness which, though approved, have been the subject of counseling between the employee and supervisor. Five Hundred twenty-two (522) hours of leave in one year shall be considered prima facie proof of inadequate progress in job knowledge or performance for purposes of promotion.

Section 9

The Office shall consult semi-annually with the Union upon request regarding professional staffing goals and hiring plans.

Section 10

The Office hereby expresses willingness to consider promptly written requests made to designated Office officials for transfers or reassignments from all members of the unit. Requests for reassignment within one's series and grade will be honored subject to the needs of the Office. If a request is denied, it must be denied in writing. Thereafter, management will consider the denied request to be ongoing and will approve the request as soon as practicable, subject to the needs of the Office. In any event, the Office will provide the status of an ongoing request to an employee once every six months or earlier upon employee request. Nothing derogatory shall be connoted in any request for transfer or reassignment and the individual so requesting shall be free from discrimination or reprisal therefore.

Section 11

Request for personnel action will be processed promptly.

Section 12

The Office agrees that the promotion of an employee shall not be delayed only because the employee's supervisor has been newly appointed to that position and is unfamiliar with the employee's work.

Section 13

When it is necessary to reassign employees due to staffing imbalance, the Office will first ask for volunteers from among the qualified employees at the affected office. If there are too many volunteers, the employees with the oldest PTO service computation date shall be given first consideration for the reassignment, absent operational needs. If there are too few volunteers, employees with the most recent PTO service computation date will be given first consideration for the reassignment, absent operational needs.

Article 13
Performance Appraisal

Section 1

Employee performance evaluations will be conducted pursuant to the General Workforce Performance Appraisal Systems (GWPAS), attached as Appendix ___. GWPAS is attached for reference. In the event of a conflict between GWPAS and the terms of this Article, the terms of this Article shall prevail.

A. There will be appraisals for details after 90 days

B. There will be a 45 day notice of a change in plans and a 15 day comment period.

C. The Union will be notified of a change in plans before employees are notified.

D. If the Office intends to change performance plans after performance plans for the rating year are in effect and the change is a temporary modification of the plan for one month or less, and is caused by an extraordinary business emergency, then the change may be implemented after a fifteen (15) day notice period. In such cases the impact and implementation bargaining, if requested, shall begin during the notice period.

E. The Union will be the exclusive employee representative to consult with the Office in the development of the performance plans. Individual employees will retain the right to dispute the application of the plan to their individual circumstances. This does not prejudice the Union's right to represent employees in grievances concerning performance appraisal.

F. If a rating official and an employee disagree over the application of any performance plan items, the rating official and the employee should attempt to resolve the disagreement through discussion. If discussion fails to resolve the dispute, either party may ask for a review of the dispute by the approving official. If the dispute remains unresolved, the approving official shall make the final decision regarding the content of the plan.

G. Normally, employees will get their plan at the beginning of the rating period.

H. In the event that application of this rating system leads to an unfair or unreasonable overall performance rating, the rating official shall have the ability to assign a performance rating that is fair and reasonable under the circumstances.

I. All appraisals of performance will be made in a fair, reasonable and accurate manner, based upon the employee's performance during the appraisal period, using verifiable data.

J. All ratings must also be based on adequate observation and knowledge by the rating official of all factors affecting the employee's performance. If the rating official feels that he/she is not able to properly evaluate an employee's performance because of lack of opportunity to observe performance, the rating official may request an extension of the due date of an official rating for a period up to but not to exceed three (3) months. Adverse comments relating to an unsatisfactory rating made by the supervisor must be supported by appropriate and actual examples.

K. Management has determined that it will continue to apply supplemental standards.

Section 2

A. An employee paid at less than step 10 of the grade of his or her position, shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

1. The employee's performance of the duties and responsibilities of his or her assigned position, must be at an acceptable level of competence.

2. The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

3. The employee must not have received an equivalent increase during the waiting period.

B. At least ninety (90) days prior to the date that an employee is eligible to receive a within-grade increase, the employee's supervisor will notify the employee as to his or her performance. If the Office, through administrative oversight, fails to give this warning notice 90 calendar days in advance of the within grade increase due date, the within grade determination shall still occur on time and the Office shall still provide a 90 calendar day improvement period. If after the improvement period, the employee improves to an acceptable level of competence, the within grade increase may be granted at the beginning of the next pay period.

C. If the supervisor believes that the employee's work is not at an acceptable level of competence, the 90 day notice must outline all the reasons for the supervisor's belief, along with citations to relevant examples of poor performance.

D. If the final decision is to deny the increase, this must be stated in writing along with the reasons relied upon in making the final decision. The employee's right to appeal and the procedures for such will be outlined in the letter.

E. At any time after the increase has been denied, the employee has the right to the increase, when the Office determines that he/she has demonstrated sustained performance at the acceptable level of competence.

Section 3 : Action Based on Unacceptable Performance

A. If an employee's performance is at an unacceptable level, a reduction in grade or removal may be initiated. The procedures set forth in 5 USC Chapter 43 and GWPAS or 5 USC Chapter 75 may be followed, if appropriate, at the election of the office.

B. If the rating official believes that the employee could benefit from participation in the Office Employee Assistance Program, the rating official shall fully consider the program's provisions prior to taking action against the employee. However, employee participation in this program is strictly voluntary.

C. An employee can request any other action to assist the employee in raising his/her performance level from his/her supervisor, Employee Relations, Office of Civil Rights, or other appropriate management official.

D. If the employee's performance continues to be unacceptable, formal personnel action, in the form of reduction in grade or removal may be initiated. If this action is undertaken, the procedure set forth in 5 CFR 432 will be followed, if legally appropriate.

E. The actions covered by this section are reductions in grade and removals for unacceptable performance taken under 5 USC Chapter 43. All provisions of the Civil Service Due Process Amendments (Public Law 101-376), attached as Appendix D, apply, except as modified below.

1. A non-preference eligible (non-veteran) employee who has completed two years of current continuous employment in the same or similar positions against whom an action based on unacceptable performance has been taken may appeal the decision to the Merit Systems Protection Board, or with the consent of the Union, to arbitration under the terms of this agreement, but not both.

2. A preference eligible (veteran) employee who has completed one year of current continuous employment in the same or similar positions, and against whom an action based on unacceptable performance has been taken may appeal the decision to the Merit Systems Protection Board, or with the consent of the Union, to arbitration under the terms of this agreement, but not both.

F. Prior to proposing any action under 5 USC Chapter 43, the Office will provide a performance improvement period in accordance with Article 13, Section 3. If during the performance improvement period (PIP), the employee has demonstrated definite improvement, but not quite enough to meet the marginal level of performance, then

management may extend the PIP for a reasonable time or propose a reduction in grade or removal as appropriate.

G. A meeting between an employee and his/her supervisor and/or other officials of the Office during which the principal topic of discussion is an action or potential action for unacceptable performance (i.e., a reduction-in-grade or removal for unacceptable performance) will entitle the employee involved to be accompanied by a Union representative during such meeting. If such a request is made, the supervisor or other line management official will honor the request. If after the proposal notice has been delivered and the employee has designated the Union as his/her representative, the employee shall have the right to have the Union represented at any discussion between the Office and an employee. The Union reserves its rights under Article 9, Section 4 and statute.

H. An employee whose reduction in grade or removal is proposed under this article shall be provided with at least thirty (30) days advance written notice of the proposed action that identifies:

1. the specific instances of unacceptable performance by the employee on which the proposed action is based;

2. the critical element(s) and standards of the employee's position involved in each instance of unacceptable performance.

3. the employee's right to reasonable time to answer the agency's notice of proposed action orally and/or in writing. Reasonable time shall normally be considered to be 14 calendar days from receipt of the proposal. Reasonable extensions of time will be granted if requested and for good cause shown;

4. the employee's right to representation by the Union, an attorney or other representative of his/her own choosing.

I. The employee will be provided copies of all documents, which contain evidence, relied upon by the Office in proposing the action. If any portion of an investigative report is to be used as evidence, that portion will be included, i.e., the employee will be presented with a proposal and supporting evidence that is identical to that transmitted to the deciding official. Nothing in this section is to be construed as a waiver of the employee's or the Union's right to request additional information under other authorization, such as the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act.

J. The employee shall have the right to be represented by the Union or by an attorney or other representative of his/her own choosing in connection with the oral and/or written reply.

K. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed action.

L. A proposed action may be based on instances of unacceptable performance which occur within a 1-year period ending on the date of the proposed action. The employee shall receive a written decision specifying the reasons for the action taken and addressing employee allegations of pertinent factual discrepancies. The decision will have the concurrence of an official at a higher level in the organization than the one who proposed the action. Copies of the decision will be served on the employee and the designated representative. The decision shall not be effective before the end of the 30 calendar day period.

M. Whenever management has decided to effect a reduction in grade or removal, the employee will be offered an opportunity to resign before the written decision is issued.

N. If because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advanced written notice provided for in Section 3H of this article, any entry or other notation of the unacceptable performance shall be removed from any Office record relating to the employee.

O. The Office shall provide a sanitized copy of all performance based proposals and decision letters to the Union simultaneous to their issuance to employees. Sanitized decision letters are not required when the Union has been served under Section 3L above.

Section 4

All scores given to employees other than fully successful, will be supported by written narrative justifications citing specific examples.

Section 5

Arbitrators will be free to change an employee's appraisal score in accordance with existing case law.

Article 14
Physical Facilities

Section 1

The Office and the Union agree that a healthful environment is desirable. Therefore, the Office and employees will observe all applicable rules and regulations relating to safety and health in the work place.

Section 2

A. The goal of the Office shall be to provide a private, wall enclosed (full ceiling height) Office to all employees. Toward that end, the Office agrees to provide the following or to make a good faith effort to secure space so as to provide the following:

   1. a private office of at least 120 square feet to all GS-13 employees or above employees except that employees who work at home or who work part-time may be required to double or share office space;

   2. a work area of at least 65 square feet per person for all employees doubled in offices. When doubling is necessary, it shall be done by seniority among employees on each floor. Except that where two employees within the same Law Office request to share an office, their request will be honored, if practicable.

B. Should existing space prove inadequate to satisfy subparagraphs A1 and 2 above, the Office agrees to give good faith consideration to the reallocation of existing space and to the acquisition of additional space.

C. The Office agrees to consult in good faith with the Union about any problems with respect to achieving subparagraphs A1 and 2. Further, the Office will keep the Union apprised of its efforts to gain additional space. The Office will bargain in good faith to the extent required by law with the Union with regard to any move to additional or new space.

D. When doubling is necessary, it shall be structured as follows:

   1. it shall be done by seniority among employees on each floor, except that part-time and Trademark Work at Home (TWAH)employees will be doubled before full-time employees working at the office;
   2. before two full-time employees are doubled on a floor, the Office will double one full-time employee with one part-time or TWAH employee or have them share an office, when practicable;

   3. where two employees within the same law office request to be doubled in an office, their request will be honored, if practicable;

4. employees occupying interior offices will not be required to double in an office unless and until all exterior offices have two attorneys doubled in the space; more senior attorney with exterior offices on that floor will be given the option of either doubling in an exterior office or taking an interior office alone;
5. employees shall be given two weeks notice that they are to be doubled. However, if 2 weeks notice is not practicable, then employees will be notified as soon as feasible. Employees will be notified as soon as practicable of the names of other employees who are to be doubled;
6. the Office may provide telephone headsets to doubled employees, upon their request, and if the Office determines that the costs are reasonable;
7. the Office shall collect and share with the Union within forty-five (45) days after the relevant period, data comparing the performance of employees who are doubled against employees who are not doubled as soon as ten (10) employees are doubled (e.g. five (5) doubled offices), excluding part-time or TWAH employees; production data will be collected quarterly and quality, phone percentage and docket management data will be collected semi-annually; the Office shall collect data by grade-level and will share sanitized reports and progress reviews with the Union; the Office shall consult quarterly with the Union concerning these activities, upon Union request; nothing herein prevents the Union from collecting its own data as it sees fit;
8. the President and Vice-President of NTEU, Chapter 245 will not be doubled-up in their offices.

E. The Office shall allow for intra-law office moves to occur as follows:

1. employees may voluntarily move to an available office once per quarter, except that moves between window offices may not be made more than once every six (6) months; moving from an interior office to an exterior window office shall not be counted as a move;

   For example:
   If an employee is hired on Jan.1, the employee may move from interior to exterior window office on Apr 1 and may move to another window office on Jul 1.

2. the Office shall generally schedule set quarterly moving dates; however, if the Office decides to schedule moves prior to the normal quarterly date, any employee who would be eligible to move on the accelerated date; in all cases, the Office shall notify employees in advance of upcoming move dates;

3. employees may not "bump" other employees out of their offices except if a vacancy occurs in a window office between regular move dates and a newer employee is placed is such office temporarily;

4. an employee who voluntarily transfers into a law office loses his or her seniority for choosing an office for their initial office placement only; they subsequently

regain their seniority, and the initial office placement is not considered a voluntary move for the purpose of subsection E1 above.

F. Management will provide a secured work space.

G. Management will provide a Health Unit in the North Tower building which will offer services available to bargaining unit members, including screening and education programs, comparable to those offered at the Health Unit in Crystal Plaza Three.

H. This Section shall be applicable except when doing so would preclude the Office's implementation of the applicable Government-wide space utilization regulations.

Section 3

The Office agrees to continue to furnish the work areas in a manner appropriate to the legal profession. The Office agrees to provide adequate storage space for the performance of job responsibilities. The Union agrees that employees will maintain and decorate their work areas in a manner appropriate to the legal profession and consistent with the lease and GSA regulations**.**

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Section 4

Smoking is prohibited by bargaining unit members in all buildings occupied by bargaining unit members.

Section 5

The Office agrees to allow access to the Trademark Law Library during non-operational hours.

Section 6

The Office and the Union agree that clean, well maintained areas in which members of the unit work are desirable. In this regard, the Office agrees to make reasonable efforts to enforce the lease requirements regarding the painting and cleaning of such areas.

Section 7

The Office shall have an annual health and safety inspection in each building that is occupied with bargaining unit employees. Such inspections shall be conducted by an Office designated official who shall be accompanied by a designated representative of the Union. Where this designated Union representative is an employee, the representative shall be on official time.

Section 8

When an employee becomes ill or is injured in the performance of his/her duty, the employee will be promptly referred to the Health Unit. Agency designated personnel will provide initial necessary OWCP claim forms. Employees must contact agency designated personnel to secure information concerning necessary claim forms and guidance on other filing requirements. Employees are responsible for providing timely and complete claim forms, and keeping agency designated personnel apprised of their status and estimated time for return to work.

Section 9

An employee will be permitted to review documents relating to his/her claim for compensation which the Office of Workers' Compensation Programs has authorized the Personnel Office to make available. The employee may be accompanied by his/her designated representative if so desired.

Section 10

Normally, no professional will be assigned or reassigned to office space until such time as the office space is substantially ready for occupation except that the installation of phones may not be completed in the new offices at the time of the move.

Section 11

A. The Office agrees that inadequate ventilation, heating, cooling, and lighting in areas of the office in which members of the unit work, contribute to inefficiency and further agrees to seek and request installation of adequate facilities to provide such ventilation, heating, cooling and lighting where it does not exist. In the event of failure of the air conditioning system, heating or lighting facilities, the Office agrees that those employees present may be excused from duty with no loss of leave or salary, except that the Office may relocate employees if alternative work stations are available. (Failure of the air conditioning system will be defined as any continuous period greater than four hours in which the employee's office temperature is greater than 87 degrees F. Failure of the heating facilities will be defined as any continuous four hour period in which the employee's office temperature is below 60 degrees F).

B. Each office will contain adequate controlled lighting, ventilation with proper dust filtration system, and heating, cooling and electrical outlets.

Section 12

Upon receiving new equipment which may impact on the work environment, the Office will make available to the Union, upon request, any data received from the manufacturer that shows environmental effects on both employees and the work area..

Section 13

A Safety and Health Committee is established for the purpose of advising the Office concerning work-related safety and health matters. Two members will be appointed by the Union and two members will be appointed by management. The committee will meet quarterly and at such other times it determines necessary.

Article 15
Overtime

Section 1

The Office may authorize paid overtime when it deems there is a specific need for overtime. After deciding that paid overtime is to be authorized, the Office shall announce to the employees the type of work to be performed and the criteria and the specific qualifications for the overtime.

Section 2

Employees who intentionally falsify overtime records may be denied future opportunities to work overtime and may be subject to disciplinary action.

Section 3

Complaints or disagreements concerning overtime shall be processed in accordance with the negotiated grievance procedure.

Section 4

Within the above criteria, all qualified employees will be given equal opportunity to participate in authorized overtime.

Section 5

The Office has determined that it will schedule overtime as far in advance as possible and notify employees promptly.

Contents

Article 16
Union Representation and Official Time

Section 1

Union representatives shall be authorized a reasonable amount of official time not to exceed the amount calculated in section 2, with a maximum rollover of 250 hours per year, effective as of the effective date of this agreement, to conduct the following activities:

A. to prepare, investigate, and represent employees in grievances, discrimination complaints, and to counsel employees;

B. to prepare for consultations and/or meetings with the Office. However, in the interest of encouraging open and honest communication between the Union and the Office, and in the interest of avoiding conflicts, informal, mutually agreed upon meetings between Union representatives and designated Trademark management officials are excluded from this Section. For these informal meetings, the Office shall authorize non-official, actual time for both the meeting and for the preparation for the meeting, if appropriate. The appropriateness of the amount of preparation time will be determined by the Office and will be pre-approved upon request;

C. review of and response to memoranda, letters, and requests from the Office, as well as proposed new instructions, manuals, notices, etc., which affect personnel policies, practices or working conditions**,** except, as provided in Section 2A;

D. to attend hearings or meetings in the capacity of an observer where an employee has elected to pursue a grievance without Union representation;

E. consideration of all matters concerning the interpretation and/or application of this Agreement and/or the CSRA; and

F. attendance by one (1) representative, as a member of the public**,** at Trademark Advisory Committee

G. Use of official time will be measured on a fiscal year basis, and, for FY 1993, will be pro rated from the effective date of the Agreement.

Section 2

The maximum amount of time authorized in Section 1 shall be calculated as follows:

1500 hours + 1.5 times the number of bargaining unit employees.

The amount will be calculated at the start of the fiscal year (October 1). An adjustment will be made semi-annually on March 30, using the above formula. The average between the October 1 calculation and the March 30 calculation will be the actual number of bank hours for that fiscal year.

Section 3

Union representatives shall be authorized actual time for Office initiated meetings.

Section 4

All employees in the unit shall be granted one (1) hour of official time per year to attend Union meetings to discuss working conditions and/or other problems but not internal affairs.

Section 5

Time spent conducting internal Union affairs such as solicitation of dues or members shall not be conducted on official time.

Section 6

Management shall authorize a total of 144 hours of official time per year to the 4 Union officers or the designees for the purpose of attending Union sponsored training, providing the training is of concern to the employee in his/her capacity as a Union representative.

Section 7

During the first month of the contract, the Union may hold a one hour meeting on non-bank official time at which all employees may attend to discuss the terms of the contract.

Section 8

A. The Union President or his/her designee will approve all time charged to Union activities by initialing the employee's bi-weekly work sheet. The approval will be given to each employee, who will submit the work sheet in accordance with established procedures.
B. The Office will provide to the Union quarterly accounting of official time used by union representatives, broken down into bank and non-bank official time.

Section 9

It is agreed and understood that when Union representatives intend to conduct official union business, they will notify their supervisor by leaving a note on their desk indicating where they are and approximately how long they will be gone. If the presence of the

representative would cause substantial disruption at that time, the supervisor may authorize an alternate time.

Section 10

A grievant shall be granted a reasonable amount of official time up to 6 hours for preparation of the grievance and/or to prepare for arbitration.

Section 11

The grievant, the Union representative and all relevant employee witnesses shall be on official time for the presentation of any grievance matter or at any arbitration hearing.

Section 12

Employees will be granted actual official time for any adverse action hearings or management investigations in which they are involved which may lead to disciplinary action being taken against them.

Article 17
Union Facilities

Section 1

The Union shall be granted use of Office designated bulletin boards for notifications and communications unless such use is prohibited by applicable laws, rules or regulations or space is not available.

Section 2

The Union agrees that no libelous material directed toward any management official will be posted on bulletin boards. All material posted on the bulletin boards shall have the prior approval of the Union President.

Section 3

The Office will provide meeting space, when available, to the Union upon reasonable advance request. If not available, or if business exigencies require the use of the space already promised to the Union, the Office agrees to offer space at other reasonable times.

Section 4

The Office will provide the Union with a personal computer and printer of the same general type and capability as currently used by bargaining unit members, for us in fulfilling its representational duties. The Office will provide the Union locked storage space of approximately 50 square feet.

Section 5

The Office agrees to allow the Union officers, Executive Committee and designated Union representatives the use of a designated photocopy machine to make copies of material directly related to their representational duties when the photocopier is not being used for normal business. The Union will be given a designated code to be entered into the photocopy machine whenever it used by the Union. Use of the photocopy machine does not extend to any material relating to the Union's internal affairs. If the copy machine designated for the Union's use is not available for an extended period of time, the Union will be permitted to use an alternative machine as designated by the Office.

Section 6

Union representatives, in connection with matters covered by this agreement, may use one designated facsimile machine for the transmittal of written materials. Use of the facsimile machine is limited and does not extend to any matter relating to the Union's internal affairs. Further, transmissions from the facsimile machine are limited to the

Washington D.C. area. The Union will be given a designated code to be entered into the facsimile machine whenever it is used by the Union. If the facsimile machine designated for the Union's use is not available for an extended period of time, the Union will be permitted to use an alternate machine as designated by the Office.

Article 18
Leave

Section 1: Sick Leave

A. Requests for and approval of sick leave shall be made as far in advance as practicable and shall be made directly to the employee's immediate supervisor or supervisor's designee(s) in the absence of the supervisor.

B. When it is necessary to request emergency sick leave, i.e., the need is not known in advance, the request to the supervisor or designee is to be made by the employee by 9:30 a.m., the first day of absence. Unless prior approval is obtained for absences of several days duration, sick leave must be requested by 9:30 a.m. each succeeding morning the employee is absent.

C. Sick leave requests shall be granted for purposes approved by law and government-wide regulations.

D. All requests for sick leave are to be made in writing, using a Standard Form 71, Request for Leave.

E. Sick leave must be used when unit employees go to the Health Unit for one hour or longer.

F. A person shall be placed on sick leave restriction only if there is evidence of sick leave abuse and the restriction is justified in writing. The mere amount of leave used for illness does not constitute abuse.

G. Where the Office has reasonable ground to believe that an employee has abused sick leave, a written warning may be issued informing the employee that if the described abuse continues, sick leave restriction may be imposed. If subsequently imposed, another written notice will be provided explaining that, for a stated period, but not to exceed 6 months, request for approval of sick leave must be accompanied by a medical certificate. At the end of the stated period, the Office shall review the employee's situation and shall give the employee notice of recession or renewal of the restriction due to continued abuse.

H. Requests for advanced sick leave will normally be granted in accordance with governing regulations when all of the following conditions are met:

1. the employee is eligible to earn sick leave;

2. the employee's request does not exceed 240 hours, or for temporary employees only the amount to be earned during the period of temporary employment if appropriate;

3. there is no reason to believe the employee will not return to work after having used the leave, and the employee has sufficient funds in his or her retirement account or

any other source of monies owed to the employee by the Government to reimburse the Employer for the advance, should the employee not return to work;

4. the employee has provided acceptable medical documentation of the need for advanced sick leave; and

5. the employee is not subject to leave restriction.

I. 1. Employees shall not be required to furnish a medical certificate to substantiate requests for approval of sick leave unless:

(a) the leave exceeds 5 consecutive work days; or

(b) the employee has been placed on leave restriction.

2. However, the supervisor has the discretion to require medical certificates for sick leave of 4 or 5 consecutive days if he/she has reason to believe the employee is abusing the use of sick leave.

J. An acceptable medical certificate is a written statement signed by a registered practicing physician or appropriate medical practitioner certifying to the incapacitation, examination treatment, or the period of disability of an employee while he/she was undergoing professional treatment.

Section 2: Annual Leave

A. Employees are entitled to take annual leave subject to the operating needs of the Office.

B. Requests for and approval of annual leave shall be made as far in advance as practicable and shall be made directly to the employee's immediate supervisor or supervisor's designees(s) in the absence of the supervisor.

C. Employees, may be given advanced annual leave when:

1. they are eligible to earn annual leave;

2. they have served more than ninety (90) days in their current appointment; and

3. their request does not exceed the amount of annual leave they would earn during the remainder of the year.

D. When it is necessary to request emergency annual leave, i.e., the need is not known in advance, the request to the supervisor or designee is to be made by the employee by 9:30 a.m., the first day of absence.

E. All requests for annual leave are to be made in writing, using a Standard Form 71, Request for Leave.

Section 3: Maternity/Paternity Leave

A. In accordance with Government Wide Regulations, a female employee may be absent on leave for maternity purposes. The length of such absence shall be determined by the employee, her physician and her supervisor. She may use sick leave, annual leave, or leave without pay to the extent that she has available annual and sick leave, provided however, that requests for advanced sick leave shall be treated by the Office the same as any other available annual leave time. Any absence in excess of available annual, or sick leave time will be recorded and treated as leave without pay.

B. The female employee, her physician and her supervisor, shall decide when the absence will begin. On the employee's request and upon furnishing a medical certificate, absence will be charged to sick leave to the extent available. The employee should make known her intent to request leave for maternity reasons indicating the type of leave, approximate dates and anticipated duration, at least 30 calendar days in advance to allow the Office to prepare for any staffing adjustments which may be necessary.

C. No arbitrary date requiring a pregnant employee to cease work or to prevent her from returning to work after childbirth will be established. Normally these decisions will be made by the employee upon consultation with her physician. The Office may request the affected employee to provide medical certification to support her decision

D. A male employee who has provided the Office with 30 calendar days advance written notice may, absent an overriding need in his unit, be absent on annual leave or leave without pay up to (14) days for purposes of aiding, assisting or caring for the mother of his child or minor children while the mother is incapacitated for maternity reasons. This period of leave shall not be more than 30 days prior to the expected delivery date. A male employee may also request additional annual leave or leave without pay. Said request shall be considered under the same standards as any other requests for annual leave or leave without pay.

E. When a pregnant employee, after consultation with her physician, requests a temporary modification for her job duties, or a temporary assignment to other available work for which she is qualified, the Office shall make a reasonable, good faith effort to accommodate her request. The employee must present an acceptable medical certificate which supports her request.

Section 4: Compensatory Time

A. This section is for the purpose of setting forth the rules under which attorneys may work compensatory time in lieu of payment for overtime for purposes other than religious compensatory time and/or maternity/paternity policy on compensatory time.

B. Compensatory time will be available for employees whether or not paid overtime is available to those in their employment position.

C. The requirements and standards for customer service and the returning of phone calls are the same whether or not an employee earns/uses compensatory time.

D. Since compensatory time is an alternative form of compensation to paid overtime, overtime policies in effect at any given time apply to compensatory time.

E. An employee must be at least fully successful to be eligible to earn compensatory time.

F. An employee must complete at least 6 months of employment to be eligible to earn compensatory time.

G. There will be two categories of compensatory time: regular and special.

1) Regular compensatory time: The following rules apply to regular compensatory time:
   (a) An employee may use up to 80 hours consecutively
   (b) An employee may use up to 80 hours in a quarter (i.e. 320 hours in a fiscal year). There is no carryover limit during the fiscal year.
   (c) An employee cannot carry forward more than a cumulative of 80 hours of compensatory time, including all types, except religious compensatory time and special compensatory time, as discussed below, from one fiscal year to the next.
   (d) The effect of the foregoing is that no more than 400 hours can be earned during a fiscal year (assumes the maximum 320 hours are used, an additional 80 hours are earned, and no hours were carried over from the prior fiscal year). The 400 hours does not include those hours earned in the maternity/paternity, religious and special compensatory time programs.
2) Special compensatory time. Special compensatory time is compensatory time which can be used on for maternity/paternity, FMLA, and adoption. The following rules apply to special compensatory time.
   (a) An employee may carry over up to 320 hours from one fiscal year to the next.
   (b) An employee may use up to 320 hours in any 12 month period.
3) There is no conversion of hours between regular compensatory hours and special compensatory hours.

H. The compensatory time program covers full-time and part-time employees in the bargaining unit. Compensatory time may be carried in accordance with the regulations governing the earning of overtime. Part-time employees may earn compensatory time only for hours of work in excess of scheduled 8, 9, 10 hours a day, or 40 hours in a week. Further, a part-time employee cannot carry forward more than a pro-rata share of 80 hours of compensatory time and a pro-rata share 320 hours of special compensatory time, from one fiscal year to the next. Religious compensatory time is excluded from carry over limitations. Part-time employees will be limited to earning a pro-rata share of 400 hours of regular compensatory time and a pro-rata share of 640 hours special compensatory time per fiscal year, excluding those hours earned under the maternity-

paternity policy and the religious compensatory time regulation. The pro-rata share will be determined by dividing the number of part-time employee's regularly scheduled hours of work by forty hours.

I. The use of compensatory time will follow the same guidelines as annual leave in that the use of compensatory time must be approved in advance except when the government is on unscheduled leave.

J. The Office shall consider requests to earn compensatory time and may grant such requests in accordance with law and regulation.

K. Compensatory time off will be deducted from a bargaining unit member's production time for the bi-weekly period in which the time off was taken. The compensatory time worked will be added to the member's production time for the bi-weekly period in which the time was worked. Compensatory time must be earned in advance of being used.

L. The same pay cap limitations that apply to paid overtime apply also to compensatory time. Compensatory time by regulation cannot be earned for the hours when holiday premium pay is authorized. This program authorizes compensatory time as an alternate to regular overtime, but does not authorize compensatory time as an alternate to holiday premium pay. That is, an employee working compensatory time on a holiday, must do so either before or after the holiday premium pay hours.

M. Compensatory time may not be earned on a day when the employee is incapacitated because of sickness, or uses leave for the entire day.

N. An employee may not earn compensatory time on any normal business day until the employee has completed his/her normal work schedule. An employee may earn compensatory time on his/her alternate day off.

Section 5: Credit Hours

A. This section is for the purpose of setting forth the rules under which attorneys may work credit hours in lieu of payment for overtime for purposes other than religious compensatory time and/or maternity/paternity policy on compensatory time.

B. Credit hours are available to all full time employees, who are limited or barred from earning compensatory time due to the overtime pay cap, subject to the conditions below. Employees covered under this section would be all those who cannot work 32 hours of overtime in a pay period because of pay cap regulations.

C. Credit hours are available to all part-time employees but see section L below for further limitations unique to part-time employees.

D. To be eligible to work credit hours, a full time employee must be on a flexible five day – eight hour per day work week, a Flexible 5/4-9, or a Flexible 4-10 hour schedule. The law only provides for credit hours for those on flexible schedules (5 U.S.C. §§ 6121, 6122).

E. An employee may elect a Flexible 5/4-9 or Flexible 4-10 schedule wherein there will be no core hours on one or two of the workdays in the pay period and wherein a full time employee must work a basic work requirement of 80 hours in the biweekly pay period. An employee electing the Flexible 5/4-9 or 4-10 schedule will only earn 8 hours holiday pay on a holiday. This is set by statute (5 U.S.C. §§ 6124). An employee electing the Flexible 5/4-9 schedule will work eight hours on the last scheduled workday of the pay period.

F. Electing or switching work schedules:

1) An employee may elect to change to a Flexible 5/4-9 or Flexible 4-10 s schedule option within one month after the effective date of this agreement. The schedule change will take effect the first full pay period after the election.

2) After the one month time frame in paragraph F(1) above has passed, an employee will be permitted to request to switch to a Flexible 5/4-9 or Flexible 4-10 schedule option only during the last two weeks of the months of February, May, August, and November. Upon supervisory approval of the request, the employee will begin participating in the selected schedule option beginning the first full pay period in the next quarter of the fiscal year.

3) An employee may switch to the five day – eight hour per day work week at any time by giving the supervisor two weeks advance notification.

4) When circumstances arise which are both unusual and extenuating, an individual employee upon written request may, after obtaining appropriate supervisory approval, be permitted to amend his or her choice of an unscheduled work day to another day in the same pay period, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public, the Office, or other agencies of the Government

G. Electing Unscheduled Days Off

1) An employee, electing the Flexible 5/4-9 option, may elect a Monday, Wednesday or Friday as the unscheduled work day.

2) An employee. Electing the Flexible 4-10 schedule option, may elect to have Mondays, Wednesdays, or Fridays as the unscheduled work days in a pay period. The same day in each week must be elected as the unscheduled work day.

H. Holidays On Unscheduled Work Days

1) When a holiday falls on a Monday unscheduled work day, the employee will be granted Friday as the holiday. When a holiday falls on a Wednesday

unscheduled work day, the employee will be granted Tuesday as the holiday.

2) When a holiday falls on a Friday unscheduled work day, the employee will be granted Thursday as the holiday.

I. Holidays on Scheduled Work Days

When a holiday falls on a scheduled 9 or 10 hour work day for employees on the Flexible 5/4-9 or Flexible 4-10 schedules, as required by the statute (5 U.S.C. §§ 6124), the employee will only earn 8 hours holiday pay. Such employee will either have to take appropriate leave for the 9th and 10th hour of the employee may adjust his/her work schedule for that pay period only to work the additional hour(s). Such additional hour(s) must be completed during the regular or credit tour of duty hours that pay period (see paragraph J below). Any additional hour(s) worked under this situation will not be considered for purposes of the yearly cap.

J. Tour of Duty

1) Credit hours cannot be earned on scheduled work days until the end of the workday.
2) Employees on the Flexible 5/4-9 or 4-10 schedules can earn credit hours on an unscheduled workday.
3) Credit hours may be worked on a holiday for work in excess of the basic work requirement of 8 hours on a holiday. Since, under the law, holiday pay is limited to eight hours for those on a flexible schedule, a maximum of four (4) credit hours may be earned on any holiday, after the 8 hours of holiday pay is earned.

K. Credit Hour Limitations

1) Limitations on credit hours earned and used are subject to the same provisions as apply to compensatory time and special compensatory time as set forth in Section 4 above.
2) Credit hours must be earned before they are used except as provided for in paragraph I above.
3) The performance eligibility standards for working credit hours will be the same as for compensatory time
4) The number of credit hours carried forward may not exceed 24. The limit of 24 credit hours carryover is set by statute. (5 U.S.C. 6126a)

L. Credit Hours for Part-time employees

Part-time employees can earn credit hours as follows:

1) Part-time employees yearly allotment of credit hours is prorated the same as for compensatory time.
2) For carry-over purposes, a part-time employee may carry over credit hours from one biweekly pay period to a subsequent biweekly pay period, an amount equal to one-fourth of his/her biweekly work requirement. This is set

by statute (5 U.S.C. § 6126(a)). For example, a part-time employee whose tour of duty is 60 hours in a pay period may not carry over more than 15 credit hours.

3) Part-time employees may earn credit hours after their scheduled work day until 8:00 p.m. or from 6:30 a.m. - 8:00 p.m. on their Monday - Friday unscheduled work days. A part-time employee's unscheduled Monday to Friday work days are part of the part-time employee's tour of duty for the purpose of earning credit hours. Part-time employees may not earn credit hours on the weekends or on holidays.

M. Credit Hours Rules - - Miscellaneous

The rules applying to the accrual and use of credit hours are the otherwise the same for compensatory time as set forth in Section 4 above unless this Credit Hour section states to the contrary; these rules include:

1) The use of credit hours will follow the same guidelines as annual leave in that the use of these hours must be approved in advance except when the Government is on unscheduled leave.
2) Credit hours may ordinarily not be earned on a day when the employee is incapacitated because of illness or uses leave for the entire day.
3) All credit hours must be used before starting a compressed schedule or before starting a fixed five day-eight hour per day work week.

Section 6: Leave for Religious Observances

A) Consistent with the needs of the Office and in accordance with relevant law and regulations, an employee will be advanced compensatory time when his/her personal religious beliefs require abstention from work for certain period of the workday or work week.
B) An employee must eliminate an advanced religious leave balance within three months or such an employee shall not be authorized to work any non-religious compensatory time, overtime or credit hours, until the advanced leave balance is worked off.

Section 7: Leave for Bereavement

In accordance with this Agreement and applicable regulations, and subject to workload consideration and staffing needs, an employee will be granted any combination of annual, sick, LWOP, or religious compensatory leave for up to five workdays where there has been a death in the employee's immediate family. The definition of the immediate family shall include the following: Mother, Father, Stepmother, Stepfather, Mother-in-law, Father-in-law, Spouse, Brother, Sister, Brother-in-law, Sister-in-law, Child, Grandparents, and Grandparent-in-law.

Section 8: Miscellaneous

A. Leave records are of a personal nature and will not be publicized by the Office in any way. However, supervisors, managers and other officials with a need to know may be advised as to the contents of these records.

B. Infrequent tardiness of less than 1 hour may be excused by the supervisor if the reasons given are acceptable. An employee will not be denied any promotion or award due to such excused tardiness. If the decision is to charge the tardiness to leave or as absence without leave (AWOL), the employee shall not work the additional period covered by the leave charge and shall be required to leave the work area and report to work at the end of the period covered by the leave charge. Supervisors shall apply these rules in a consistent manner to encourage good working conditions for both the Office and the employees.

C. Any employee who is a member of the National Guard or other reserve unit of the Armed Forces may accrue up to a maximum of 15 days military leave for the fiscal year. The employee may carry over up to 15 days military leave into the next fiscal year.

D. When it is necessary to close the Office because of inclement weather or an emergency situation (e.g., heavy snow, severe icing conditions, flood, earthquake, hurricane, major fire, bomb threats, or massive power failures), employees, except for essential employees or employees in leave status, will be granted administrative leave.

Contents

Article 19
Career Development Details

Section 1

The Office shall designate certain recurring details as "career development details." Career development details are temporary assignments of at least 90 days to a different position, with the primary purpose of providing training directly related to development of an employee's career as an Attorney Advisor. It will also provide employees an opportunity to develop their skills and interests, and to improve efficiency in administrative and technical fields so that a reservoir of developed employees will be in existence for possible selection to higher level vacancies.

Section 2

A. The Office and the Union encourage highly qualified individuals to participate in career development details. Three weeks advance notification of a career development detail shall be made by means of an announcement to all unit employees.

B. The Office may announce multiple details simultaneously and establish a roster of eligibles from the response to that announcement. All details must commence within 12 months of the announcement of the original detail. Announcements shall include the location of the detail(s), the duration, the nature of the work, the required application procedures, the minimum qualifications and requirements of an applicant and the selection criteria.

Section 3

A. Selection preference shall be given to those qualified applicants who have the least amount of service on career development details. Preference shall be given first to those persons who have never served on detail. A career development detail which terminated more than 4 years prior to the announcement of a new detail will be ignored in assigning selection preference.

B. Before selection, the skill and ability of the employee and the specific needs of the Office will be considered. When applicable the office shall consider the following selection factors: previous relevant experience, writing samples, and the most recent summary rating; and shall select from among the top five rated applicants. Ties in applicant qualifications shall be broken by Office seniority. The Office may expand this list of the five applicants by one applicant for each additional detail, in the event of multiple details.

Section 4

Upon request, the Office shall provide the Union with the name of the applicant or applicants selected to fill the detail(s).

Section 5

When requested by a competing applicant, the Office shall furnish the following information after the action has been completed:

A. The name of the individual(s) selected;

B. Whether the applicant was found to be qualified; and

C. Whether the applicant was referred to the selecting official.

Section 6

The Office may assign employees to work projects which do not fall within the definition of career development details. These work projects will normally be announced one week in advance and selections will be made in a fair, equitable and impartial manner.

Section 7

The Office may assign employees to work projects of 90 days or more, doing work which is normally described as a career development detail, without regard to other sections of this article, when time constraints or workload requirements exist so as to make alternate assignments to details necessary to carry out the agency mission. These work projects will normally be announced one week in advance and selections will be made in a fair, equitable, and impartial manner. The Office shall consider, when applicable, the following selection factors: previous relevant experience, writing samples, and most recent summary rating.

Contents

Article 20
Reproduction and Distribution

Section 1

The Office will arrange to make the text of this Agreement available electronically, accessible through the unit members' personal computers and designated by an icon on the appropriate menu of the Office's computer network.

Section 2

The Office shall furnish the Union (25) hard copies of the contract.

Article 21
Duration

Section 1

This Agreement shall be approved by the head of the agency within 30 days after it is executed by the parties. It shall be effective on the date it is approved by the head of the agency or, absent approval or disapproval, on the 31st day after execution. It shall remain in full force and effect for three (3) years after the effective date. Thereafter, the Agreement shall be automatically renewed annually unless either party gives written notice of intent to terminate to the other.

Such notice of intent to terminate shall be given not sooner than 180 days before the termination date and not less than 120 days before the termination date. Once such notice is given, the moving party must submit its proposal(s) to the other party not less than 120 calendar days before the termination date. The party receiving the proposals may submit counterproposals and/or proposals to the other party during the next 45 day period. The parties shall begin negotiations no later than 30 days prior to the termination date. This Agreement will remain in effect for four months after expiration to permit conclusion of negotiations.

Article 22
Professionalism

Section 1

The Office recognizes that attendance at certain conferences, seminars and meetings outside the Office is both desirable and in the best interest of the mission of the Office**.** Therefore the Office shall annually post electronically a list of such outside conferences, seminars and meetings at which attendance was approved in the previous calendar year.

Section 2

A. The Office will announce opportunities to attend conferences, seminars or meetings to employees whose job performance may be enhanced by attendance. Selection for attendance among eligible employees shall normally be made on a rotational basis except when the benefits derived by the Office would outweigh this consideration.

B. Employees may also ask to attend conferences, seminars and meetings which tend to improve their performance in the work they now perform or could reasonably be expected to perform in the future.

C. Upon approval of a request made under Section 2B, the Office will announce any additional opportunities to attend the same conference, seminar or meeting in accordance with Section 2A.

Section 3

A. The Office may grant up to forty (40) hours per year of training time for employees to attend functions that directly enhance their ability to perform their current duties.

B. Upon approval, any time in excess of forty (40) hours per year shall be compensatory time when an employee attends functions other than those described in Section 3A.

Section 4

It is agreed and understood that the Office may restrict the amounts of time approved for training under Sections 2 and 3 above because of limited funds or conflicts with operational needs.

Section 5

A. The Office shall annually post electronically a list of outside courses which have been approved for reimbursement within the last calendar year.

B. Upon request, employees may be reimbursed for tuition fees for CLE courses which are job related and for which funds are available.

C. The Office will process completed forms provided by employees who are seeking accreditation for training sponsored by the Office.

Section 6

The Office recognizes that the reading of technical and legal publications is necessary to keep professionals abreast of recent developments related to their work assignments. The Office will within resources available continue to supply professionals with articles, magazines and books dealing with pertinent subject matter.

Section 7

Due consideration will be given to requests for non-production time for unusual circumstances regarding applicant initiated interviews.

Article 23
Part-time Employment

Section 1

The Office and the Union recognize the principles of Public Law 95-437, which provides for the expansion of part-time employment opportunities in the Federal service. This article is for the purpose of setting forth the rules under which attorneys may work on a part-time basis.

Section 2

Any attorney desiring to work part-time should submit a request for part-time status to the Director or designee. Whenever feasible, requests should be made in writing thirty (30) days in advance of the date upon which the attorney wishes the part-time status to begin. The Agency will respond to the request in writing within fourteen days of receipt. If a request is denied, the reason for the denial will be given. The Union shall be simultaneously served with a copy of all responses.

Section 3

An attorney may request to work between 16 to 32 hours per week. The attorney should indicate the number of hours per week requested and set forth a schedule of hours to be worked consisting of an equal or varied number of hours per day and including when the hours will be worked on the specified days. Part-time employees must be regularly scheduled to work at least eight hours between 8:30 a.m. and 5:00 p.m. and sixteen hours between 6:30 a.m. and 8:00 p.m., Monday through Friday, each week.

Section 4

The attorney should state whether he/she desires part-time status on a temporary or a permanent basis.

A. Requests for temporary part-time status must be for a maximum of six months. The request should indicate the general reason for the request, e.g. family responsibilities, education, retirement transition, handicap, etc. All requests to work part-time on a temporary basis will be given serious consideration and will be honored where consistent with operational needs. Temporary part-time status will be granted only once in a two year period. Temporary part-time status for attorneys will not be basis for change in employee's work location. Attorneys selecting to work on a temporary part-time basis may set their own schedule so long as it is not inconsistent with any other provisions of this article. A temporary part time employee may not convert to a permanent part time basis under this provision unless a request is made to do so within the first 3 months. Requests to have permanent status within the first 3 months will be handled in the same

manner as other requests to work on permanent part time basis.

B. Requests for permanent part-time status will be granted subject to the attorney accepting a work schedule and law office which will permit Office space to be efficiently used. Permanent part-time attorneys may be required to share office space. A joint labor management working group will be established. It will consist of no fewer than two union representatives and one management representative. The working group will be responsible for formulating recommendations for matching permanent part-time attorneys so that Office space is efficiently utilized. When the number of part time employees is odd, the working group may allow one employee to be unmatched (i.e. not share office space with another part time employee).

Section 5

Rules regarding permanent part-time attorney placement and determination of schedules are as follows.

A. The working group will consider the following primary criteria, in order, in making recommendations for matching employees:

1. First come, first served basis
2. Seniority

The working group will also consider the following additional secondary criteria, in no particular order, in making recommendations for matching employees: Maintaining current manager; maintaining current classes of goods to be examined; maintain present office; choice of schedule; personal needs; burden on management.

B. The working group may engage in dialogue with part-time employee applicant and others in formulating their recommendations.

C. No full time person will be doubled or displaced from their Law Office to accommodate a part-time employee.

D. A full time employee may be required, as a last resort, to move to another office, including an interior office, within the same Law Office to accommodate a part time employee.

E. If there is more than one vacancy in the Law Offices in the South Tower, the full-time employee who will be required to move will be determined by reverse seniority among those Law Offices where there is a vacancy.

F. If only one vacancy, movement is still determined by reverse seniority in that one Law Office.

G. Reverse seniority for (E.) and (F.) above means "a junior employee sitting in a windowed office which may be doubled.

H. An employee cannot begin permanent or temporary part time (except FMLA) during their first year of employment.

I. A request for returning to work on a full-time schedule will be honored to the extent that there is a vacancy. There are no additional criteria for returning to a full-time schedule.

J. The Office has determined that if an employee moves in order to participate in the part-time program, the part-time employee is in the Law Office to which moved and the move is considered to be voluntary.

K. There will be at least two waiting lists

1. A list of employees who want to go back to the Law Office from which they were moved.
2. A list of desired schedules

L. The working group will recommend schedules that the employees can agree to, taking into account employee preferences where feasible, but if the employees cannot come to an agreement, management will set the schedules for the employees.

M. The working group may recommend pairing up unmatched part-time employees to lessen need to double full time employees. The only time there would be expected to be more than one unmatched part-time employee would be when there is a part time employee attrition.

Section 6

A. Employees working on a part-time basis at the time this article becomes effective may choose between:

1. Reversion to full-time status

2. Participation in the new part-time program under the rules of this article, be given priority on a first come first-served basis and be guaranteed at least one of the following at the employee's choice:
   a. Choice of schedule
   b. Current floor and maintain current manager

B. Effort will be made to satisfy both (a) and (b) above, and to have the attorney remain in their current Law Office, subject to the other criteria of this article. It is recognized that not all employees in this group may necessarily be accommodated.

Contents

Article 24
Child Care

The Office and the Union agree that adequate childcare facilities for the children of all employees are very desirable. To that end, while recognizing the difficulties involved in establishing and maintaining such facilities, the parties agree to encourage, within resources available, the establishment and maintenance of such facilities.

Article 25
Outside Employment

Section 1

Employees shall not engage in any outside employment or similar type of outside activity, with or without compensation, which:

A. Interferes with efficient performance of their official duties;

B. might reasonably result in a conflict of interest, the appearance thereof, or apparent conflict of interest, with official duties and responsibilities; or

C. violates any applicable law, rule, or regulation.

Section 2

A. Prior to engaging in outside employment, an employee must request Office approval in writing under the following circumstances:

1. for the private practice of law; or

2. for other outside employment which gives rise to a question of compatibility under Section 1 of this article.

B. When the circumstances for which approval was originally granted change, the employee must submit a written statement informing the Office of the change in circumstances and requesting another approval of the outside employment or private practice of law.

Section 3

A. Requests for approval of the private practice of law shall include the following:

1. a brief description of the employee's official title and nature of work;

2. a statement whether the employee holds himself/herself out to the public as a practitioner of law by maintaining a publicly listed place of business or a mail or answering service for such purposes, or by affiliating himself/herself with others engaged in private practice of law;

3. a statement whether he/she has regular part-time employment as an attorney for any business or other organization; and

4. a description of the nature and extent of the private practice or legal work to be performed.

B. Requests for approval of any outside employment must contain sufficient details of the nature and extent of the outside employment for an informed decision to be made.

C. The Office will issue a written decision to the employee within ten (10) work days after receipt of the request.

Section 4

Failure to request approval for outside employment or the private practice of law in accordance with the provisions of this article may subject the employee to disciplinary action.

Section 5

Employees are reminded of the prohibitions against engaging in the outside employment or the private practice of law during office hours or using government premises or equipment.

Article 26
Work Schedules

Flexitime Work Schedules

Section 1 Time Accountability

A. The two daily signatures constitute certification that the employee arrived no later than and left no earlier than the time indicated.

Section 2 Criteria for Restriction or Denial of Flexitime

A. Consistent with the provisions set forth below, all employees shall be authorized the free use of flexitime each day during the course of the flexitime program.

B. Restrictions or denials on the use of flexitime by employees shall be based on one of the following:

1. operational considerations, related to the work situation only (not related to job performance);

2. abuse of flexitime, meaning misconduct of a serious nature during the flexible bands that would be alleviated by the presence of a supervisor;

3. participation during the hours required in a formal training program;

4. requirement for close supervision for the initial training required to understand and perform the duties of the position; or

5. the requirement for close supervision for employees with serious deficiencies in the performance of their primary tasks over a period of at least one quarter to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating. The intent here is that employees operating at this level would have the attention, to the extent practical, of their regular or acting supervisors during times that would not be available if the employee were participating in the flexitime program.

C. Justification for restricting or denying flexitime must be neither punitive in nature nor otherwise related to conduct or job performance except as discussed in Section 2B of this article.

D. All disapprovals or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the flexitime program. Copies of the justification shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect unless the denial or restriction is caused by an emergency situation, affects a new employee, or

when the nature of an office's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification.

E. Justification for restriction or denials shall be reviewed at the request of the employee upon a change in conditions. The appropriate supervisory official shall review the request and issue a written decision thereon within three (3) working days. A favorable decision shall entitle the employee to begin participation in flexitime the following work day.

F. Those members who are not authorized or who elect not to work flexitime or restricted flexitime shall work their normal tours of duty.

Section 3 Operational, Flexible And Core Hours

A. Operational, flexible, and core hours from Monday through Friday will be;

Operational Hours	6:30 a.m. -- 8:00 p.m.
Morning Flexible Band	6:30 a.m. -- 9:30 a.m.
Afternoon Flexible Band	3:00 p.m. -- 8:00 p.m.
Core Hours	9:30 a.m. -- 3:00 p.m.

Appendix E-2 graphically illustrates the operational hours, public hours, flexible bands, and core hours. All employees must be present during core hours unless they are in an approved leave status.

B. Employees on flexitime may report at any time during the morning flexible band. From the time of reporting, they must remain at work for 8 1/2 hours in order to be credited with 8 hours of work and to cover their 1/2 hour for lunch.

C. With proper justification and in conformance with Section 2, some employees' participation in the flexitime program will be restricted. Instead of being able to report at any time during the morning flexible band, employees whose participation has been restricted may be required to report no earlier than a specified time during the morning flexible band.

Alternative Work Schedules

Section 4: Alternative Work Schedule Options And Scheduling Requirements

A. Four Day Week (4/10 Plan) - Under the four day week schedule, an employee will work four days each week, ten hours daily, thus satisfying the requirement for forty hours per week.

B. 5-4/9 Plan - This plan permits an employee to have one "extra" day off each pay period. To satisfy the 80 hour per pay period work requirement, the employee will work 8-nine hours days and 1-eight hour day. To simplify implementation and Time and Attendance record keeping for the 5-4/9 Plan, employees will be required to work the eight hour day on the last scheduled work day of each pay period. Therefore, the eight hour work day will always be the last Friday of the pay period unless the last Friday is a scheduled non-work day in which case the last Thursday will be an eight hour day.

C. Each employee will arrange his or her work schedule with the supervisor in advance for a period of one quarter of the fiscal year, identifying the day of the week which will be the employee's non-work day in the case of the 4/10 plan and the day of the bi-week which will be the non-work day in the case of the 5-4/9 plan. Employees are required to elect a single day which will be the non-work day for the entire quarter. Subject to supervisory approval, the employee may select any day as a non-work day, except for Tuesday and Thursday, which, during all work weeks, will be considered "core" work days. However, when a holiday falls on an employee's scheduled non-work day, Tuesdays or Thursdays may be used "in lieu of" holidays if required by the chart in Section 5B.

D. All full-time unit employees will be required to elect, by use of the "Statement of Election" of Appendix E-3, one of the three options listed below:

1. Non-Participation (five day-8 hours per day week);
2. Four Day-10 Hour Day Alternate Work Week; or
3. 5-4/9 Alternate Work Week.

If either option (2) or (3) is selected, an election must also be made of a specific work schedule.

E. Employee participation in the Alternative Work Week Program is subject to supervisory approval. Restriction or denial of the program to employees is set forth in Section 6.

F. Employees who elect to participate in the Alternative Work Schedule program may withdraw from the program at any time, by giving the supervisor two weeks' advance notification. Employees who withdraw from the Alternate Work Schedule program will revert to a five day, eight hour per day work week. After withdrawal, employees will be permitted to rejoin the program only in accordance with Section 4I below.

G. New employees may begin participation in the Alternative Work Schedule program at the beginning of any pay period, subject to supervisory approval.

H. Employees transferring from one organization to another will be required to obtain approval from the new supervisor of their previous election or make a new election at the time of transfer. Upon supervisory approval, the employee can begin

participation in the Alternative Work Schedule Program at the beginning of the next pay period. It is recognized that it is possible that the new position may be such that the employee must be denied the opportunity to participate or have his or her participation restricted.

I. Employees who wish to join the program, change options, or who wish to change their non-work day selection will be permitted to submit such a request only during the last two weeks of the months of February, May, August and November. Upon supervisory approval of the request the employee will begin participation in the compressed work schedule program or effect the desired change at the beginning of the first full pay period in the following quarter of the fiscal year.

J. Only full-time employees will be eligible for participation in the Alternative Work Week program.

K. An employee participating in a Alternative Work Schedule program and in a travel status or on Office business outside the Crystal City area will revert back to a non-participating status for the period involved unless an alternative arrangement can be agreed upon between the employee and appropriate supervisory authority, which alternative arrangement does not increase the cost of the travel, training or other Office business to the Office or violate any rule, regulation or statute.

When an employee is on Office business away from the Office but in the Crystal City area and the duration of the business is less than the duration of the employee's normally scheduled work day, the employee must report to the Office and work for a period of time equal to the difference less reasonable travel time from the place of the other Office business to the Office.

L. An employee's elected schedule will remain in effect until the participant withdraws under Section 4F., or until the opportunity to change the program occurs as set forth in Section 4I.

When circumstances arise which are both unusual and extenuating an individual employee upon written request may, after obtaining appropriate supervisory approval, be permitted to amend his or her choice of a non-work day to another day in the same bi-week, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public, the Office and other agencies of the Government. Under no circumstances will such an amendment be permitted in two consecutive pay periods.

Section 5 Leave And Overtime

A. General leave - When an employee is absent from the job other than for a holiday, he or she will be charged with leave equal in hours to the scheduled length of the work day. Employees working a four day week will, therefore, be charged with 10 hours of leave (Annual, Sick, LWOP, AWOL, Administrative, etc.) whenever absent during a

regularly scheduled work day. Employees working under the 5-4/9 Plan will be charged with nine or eight hours, depending upon the employee's schedule.

B. Holiday Leave - A full time employee who is relieved or prevented from working on a day designated as a holiday is entitled to pay with respect to that day for the number of work hours scheduled. The following rules apply when a holiday falls on a scheduled non-work day:

"When the holiday falls on the employee's first or second consecutive scheduled non-work day, the preceding work day shall be designated as the day off in lieu of holiday in accordance with the following chart."

"When the holiday falls on the third consecutive scheduled non-work day, the next work day shall be designated as the day off in lieu of the holiday in accordance with the following chart."

Employees' Non-Work Days	Holiday falls on	Holiday or Day Off in Lieu of Day Off
Fri, Sat, Sun.	Friday	Thursday
Sat, Sun, Mon.	Monday	Tuesday
Sat, Sun, Wed.	Wednesday	Tuesday

C. Overtime Work - Authorized work performed outside an employee's alternative work schedule; i.e., in excess of 10 hours, 9 hours or 8 hours, depending upon the schedule; or in excess of 80 hours per pay period, or on any non-work day is overtime work. Employees are entitled to overtime compensation or compensatory leave as appropriate for overtime work in accordance with applicable provisions of law.

Section 6: Criteria For Restrictions Or Denial Of Alternative Work Schedule

A. Restrictions or denials on the use of Alternate Work Schedules by employees shall be based on one of the following:

1. operational considerations, related to the work situation only (non-related to job performance);

2. abuse of a alternate work schedule, meaning misconduct of a serious nature during the scheduled work days that would be alleviated by the presence of a supervisor;

3. supervisors may temporarily suspend employee participation in the Alternate Work Schedule Program for formal training;

4. requirement for close supervision for the initial training required to understand and perform the duties of the position;

5. the requirement for close supervision for employees with serious deficiencies in the performance of their primary tasks over a period of at least one quarter to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating. The intent here is that employees operating at this level would have the attention, to the extent practical, of their regular or acting supervisors during times that would not be available if the employee were participating in the Alternative Work Schedule program.

B. Justification for restricting or denying a alternate work schedule must be neither punitive in nature nor otherwise related to conduct or job performance except as discussed in Section 6A, of this article.

C. All disapprovals or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the Alternate Work Schedule program. Copies of the justification shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect unless the denial or restriction is caused by an emergency situation, affects a new employee, or when the nature of an office's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification. In such emergency cases, supervisors may reschedule day(s) off.

D. Justifications for restrictions or denials shall be reviewed at the request of the employee upon a change in conditions. Any changes will be effected as described in Section 4I.

E. Those employees who are not authorized or who elect not to work a Alternative work schedule shall work their normal tours of duty, but may participate in the Flexitime Program, in accordance with the terms of that program.

Section 7 Operational, Flexible, Core Hours And Core Days

A. Operational, flexible, core hours, core days and public hours from Monday through Friday will be:

Operational Hours	6:30 a.m. -- 8:00 p.m.
Morning Flexible Band	6:30 a.m. -- 9:30 a.m.
Afternoon Flexible Band	3:00 p.m. -- 8:00 p.m.
Core Hours	9:30 a.m. -- 3:00 p.m.
Core Days	Tuesday and Thursday
Public Hours	8:30 a.m. -- 5:00 p.m.

B. Employees on a alternative work schedule may report at any time during the morning flexible band consistent with being able to work the approved 8, 9 or 10 hour day within operational hours. From the time of reporting, they must remain at work for 8 1/2, 9 1/2 or 10 1/2 hours in order to be credited with the respective hours of work and to cover a 1/2 hour period for lunch.

Section 8 Time Accountability

A. The two daily signatures constitute certifications that the employee arrived no later than and left no earlier than the times indicated.

B. All full time Office employees must complete and turn in to their supervisors the statement of election shown as Appendix E-3.

Article 27
Receipt of Pay

Section 1 Emergency Salary Payments

When an employee's regular salary check or direct deposit is not issued due to administrative error or delay in processing or is issued in an amount that is less than 90% of regular net pay due, the employee shall be authorized to receive an emergency payment in cash from the imprest fund in an amount equal to the employee's net salary or $500, whichever is less, normally within one (1) day following notification to the Office of the error. The employee may request that the $500 limit be waived in accordance with I TFM 4-3040.20. Any such request will be promptly forwarded to the Department of Commerce.

Section 2 Replacement of Salary Checks

If an employee's salary check was issued, but is not received or is lost, stolen or mutilated, the Office will follow applicable Treasury Department regulations and NFC procedures for recertification of a replacement check.

Section 3

Processing errors will be corrected as soon as practicable after notification.

Section 4 Electronic Funds Transfer

A. Employees' participation in the Direct Deposit Electronic Funds Transfer program will be mandatory as of January 1, 1999, due to changes in the regulations per P.L. 104-134.

B. Salary payments of employees electing to participate in the program will be deposited in a financial institution chosen by the employee in accordance with established procedures.

C. Until January 1, 1999, salary payments of employees electing not to participate in the program will be mailed to their mailing address, as listed in the records of the Personnel Office. The parties recognize that the Office has no control over deliveries by the U.S. Postal Service.

Article 28
Automation

Section 1

A. The Office will furnish the Union with information regarding the development and implementation of new automated equipment.

B. The Office will provide the Union with data indicating average search times on the automated search system on a monthly basis.

C. The Office shall provide the Union with the results of system evaluations performed by the Office to determine whether functional requirements are being met.

Section 2

The Office will provide employees with a work environment that is based upon reasonable standards of health, safety and ergonomics.

Section 3

The Office will inspect each machine in use on a regular basis and will maintain all equipment in proper repair.

Section 4

Whenever downtime is expected to or actually exceeds four (4) hours in duration, the Office will notify all affected employees as far in advance as practicable concerning the situation, indicating how long downtime is expected to continue.

Section 5

Training may be provided by the Office when the Office determines that such training is required. Requests for additional training made by the Union or individual employees will be given due consideration.

Section 6

Nothing in this article shall preclude the parties' obligations under Article 33 of this Agreement.

Contents

Article 29
Equal Employment Opportunity

Section 1

The Office and the Union agree to fully support the concept of Equal Employment Opportunity, the Federal Equal Employment Opportunity Program and the terms of this article.

Section 2

The Office shall not discriminate against any employee on the bases of race, color, religion, age, national origin, sex, sexual orientation, or handicap condition

Section 3

The Office shall provide the Union with a copy of the current Office Affirmative Action Plan (AAP) and a copy of the Equal Employment Opportunity (EEO) complaint procedure.

Section 4

The Office shall annually provide the Union with the following information regarding unit members:

A. work force composition by race, sex, and grade level; and

B. numbers and types of discrimination complaints filed.

Section 5

The Office will continue its EEO counselor system which provides counseling to any aggrieved person who believes that he/she has been discriminated against because of race, color, religion, sex, national origin, age or handicap condition. The EEO counselor system is not available to an aggrieved person who believes that he/she has been discriminated against for other reasons.

Section 6

In an attempt to resolve discrimination charges as early as possible, EEO counseling will be provided to an aggrieved employee on an informal basis, before a formal EEO complaint is filed.

Section 7

The name, current telephone number, and current work site location of each EEO Counselor will be posted electronically.

Article 30
Reduction-In-Force

Section 1

The Office affirms its desire to avoid Reduction-In-Force (RIF) actions by utilizing attrition and/or other means that will not interfere with the accomplishment of the Office's mission.

Section 2

The Office agrees to notify the Union as soon as possible after a determination has been made to undergo a RIF. The information to be furnished to the Union would include the competitive level initially affected, the number of employees involved, the proposed effective date, and the reasons for the action.

Section 3

Upon notification, the parties will promptly meet and conduct impact and implementation bargaining on the proposed RIF in accordance with the procedures in Article 33 unless otherwise mutually agreed. Article 33, Section 2A, shall not be applicable to bargaining over RIF's.

Article 31
Performance Based Awards

Section 1

There is no entitlement to a performance award or other type of incentive award. All awards are subject to budgetary limitations and are paid at the discretion of the Office. The award plan will be in effect for the latter half of FY 01 and for all of FY 02 and years forward.

Section 2

The following are criteria for eligibility after a determination is made to provide performance awards:

A. No award shall be given under this article unless the Trademark Examining Attorney is fully successful in all critical elements of the performance appraisal plan.

B. The employee must be employed by the Office on the last day of the performance appraisal cycle or productivity award cycle as applicable.

C. Approved overtime and compensatory time hours will be applied towards examination hours for the purpose of determining eligibility for awards.

Section 3: Productivity Awards

A. Any Trademark Examining Attorney receiving a rating of "5" in the Critical Element of Production and at least a rating of "3" in every other Critical Element, or any Trademark Examining Attorney working at the outstanding level of performance in Production as of mid-year and at least working at the fully successful level of performance in every other critical element as of mid-year, will be recommended for an award amount based on the productivity awards scale in Appendix X.

B. Two productivity awards may be paid each year; after the first six months of the fiscal year and at the end of the fiscal year.

C. Any Trademark Examining Attorney who receives a rating of "4" in the Critical Element of Production and at least a rating of "3" in every other Critical Element shall be recommended for an award if he/she attains a 105% - 109% quantity of production. Any Trademark Examining Attorney who is working at the Commendable level of performance in production and who is working at the fully successful level of performance or better in every other critical element as of mid year shall be recommended for an award if he/she attains a 105% - 109% quantity of production. If the examining attorney examines over 625 examining hours in the six month award period, the recommendation will be for one half the amount shown on the productivity awards scale in Appendix X. If the Trademark Examining Attorney

examines between 300 and 625 hours during the six month award period, the examining attorney will be recommended for ½% of salary prorated as follows:

$$\frac{\text{Number of Hours on Primary Duties}}{625} \times \text{Award: ½\% of salary} = \text{Reduced Award}$$

A Trademark examining attorney must examine at least 300 hours during the six-month award period to be eligible for an award under this paragraph.

D. No employee receiving an outstanding in production who examines at least 300 examining hours during a six-month award period will be recommended for an award lower than he/she would have been recommended for had the employee been merely commendable in production.

Section 4: Quality Awards

A. Any Trademark Examining Attorney who receives an average of "5" on the two Critical Elements of Quality and at least a rating of "3" on every other Critical Element shall be recommended for an award of 3% of salary.

B. No award shall be given under this section unless the Trademark Examining Attorney has examined at least 600 hours during the rating year. If an Examining Attorney examines more than 600 hours but less than 1250 hours in the rating year, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of Hours on Primary Duties}}{1250} \times \text{Award} = \text{Reduced Award}$$

C. Quality performance awards will be only be paid after the end of a full annual performance appraisal cycle.

Section 5: Mentoring Award

A. Any Trademark Examining Attorney who receives an average of "5" in mentoring and at least a rating of "3" on every other Critical Element shall be recommended for an award of 1/4% of salary for every month an employee mentors another employee without partial signatory authority and/or 1/10% salary for every month an employee mentors another employee with partial signatory authority. The award amount is calculated by multiplying the % of salary times the number of employees mentored.

B. Mentoring awards will be only be paid after the end of a full annual performance appraisal cycle.

Section 6

A. All awards recommended under this program are subject to review and approval in accordance with 5 CFR 451. Such approval shall not be withheld unless the decision is based on criteria that are uniformly applied to all employees. Notices of disapproval must be in writing and explain the reason(s) for the disapproval.

If, due to a shortage of funds for awards, employees do not receive the full award for which they may be eligible, they will receive a pro rata share of the awards pool.

Section 7

Should the Office decide to change any portion of the performance appraisal plan which could result in a modification of the awards set forth in this article, the parties agree to reopen negotiations over the portion of the article affected by the change.

Section 8: Quality Step Increases

A. Criteria:

To qualify an employee must:

1. have a current summary rating of outstanding for the current appraisal cycle;

2. have occupied the same grade and type of position for at least six consecutive months before the end of the appraisal cycle and be expected to continue at this high level of performance in the same grade and type of position for at least 60 days after the effective date of the increase;

3. not be in the top step of his or her pay range;

4. not have a promotion in progress or anticipated within 60 days after the effective date of the increase; and

5. not have received a QSI within 52 consecutive calendar weeks preceding the effective date of the increase.

B. If the employee satisfies the criteria outlined in A, the employee may receive the QSI; however, if the Office decides to grant the employee the QSI, the employee will have the option of electing between the QSI and the applicable cash award (SSP). The election need not be made until the amount of the cash award has been determined.

Contents

Article 32
Dues Withholding

Section 1

This article is for the purpose of permitting eligible employees who are members of the Union to pay dues through the authorization of voluntary allotments from their compensations. Any employee officially assigned to the Office may authorize an allotment of pay for the payment of his/her dues for such membership, provided:

A. the employee is included in the unit;

B. the employee is a member in good standing of the Union;

C. the employee has voluntarily completed Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues; and

D. the employee receives compensation sufficient to cover the total amount of the allotment.

Section 2

The procedures and effective date of authorization shall be as follows:

A. The Union agrees to acquire existing authorization form SF-1187, distribute the form to its members, ask its members to read the form and to receive completed forms from members who request allotment. The Office agrees to direct employees who have questions concerning the form to the Union.

B. The Union's national president or any Chapter 245 officer is designated to process completed authorization forms by completing Section A thereof. Such Union official will timely submit the completed authorization form to the Office of Personnel, Labor Relations Branch, when the SF-1187 is submitted. When SF-1187 is submitted, the Union will be promptly notified of any employee's ineligibility for dues deduction. Incomplete forms will be returned to the Union.

C. The Office shall request issuance and mailing of remittance check(s) as follows, unless notified in writing by the Union of a change in payee or address:

1. Payee: National Treasury Employees Union
2. Address: Administrative Comptroller
National Treasury Employees Union
901 E Street, N.W.
Suite 600
Washington, DC 20004

D. Upon receipt of a properly certified standard form 1187, the Office of Human Resources will stamp the date it was received on the back of the form. The deduction will normally begin with the next pay period after the properly completed authorization form is received by the Labor Relations Division. Deductions based on authorization forms received less than one week prior to the next pay period shall become effective the next pay period if practicable. Otherwise such deductions shall begin with the second pay period after receipt.

E. Allotted dues will be withheld each pay period. The amount to be withheld shall be the amount of the regular bi-weekly dues of the member in accordance with 5 USC 7115 and NFC procedures. The Office will request that NFC provide to the Union breakdowns of deductions if no additional charges or fees are necessitated by the provision of such.

F. If the amount of regular dues is changed by the Union, the Office of Personnel, Labor Relations Division, will be notified in writing by the Union. This notice will certify that the dues structure of the organization has been changed in accordance with the Constitution and By-laws of the Union, and will give the effective date of the change. The notice must be forwarded to the Office of Personnel, Labor Relations Division, three (3) pay periods before the effective date to allow time for the Office to arrange with NFC to change the dues table. Only one such change in the dues table may be made in any period of twelve (12) consecutive months.

Section 3

A. Employees who wish to revoke dues allotments must deliver a written request for revocation of an allotment, SF-1188, Revocation of Voluntary Authorization of Allotment of Compensation for Payment of Employee Organization Dues, to the Office of Personnel, Labor Relations Division.
Revocations may only be effected by submission of a completed SF-1188 that has been initialed or signed by the Chapter president or a designee. If the SF-1188 is not initialed or signed, the Office will return it to the employee for resubmission.

C. However, as provided in 5 USC 7115(a), an initial allotment may not be revoked for a period of one year. A revocation received on or before the first anniversary of the date the employee authorized withholding will be effective the first pay period which begins on or after the anniversary date. Thereafter, a revocation will be effective the first pay period which begins on or after September 1st, if the revocation is received on or before September 1st.

Section 4

The allotment will be terminated by the Office of Personnel, Labor Relations Division, at the end of the pay period in which loss of eligibility occurs under any of the following conditions:

A. when the Union is finally adjudicated as having lost its recognition;

B. when a unit employee dies, retires, is separated from the Office, or is promoted or reassigned to a non-unit position; or

C. upon receipt of notice from the Union that the employee is no longer a member.

Section 5

The Union and the Office agree to the following procedures concerning revocations and underpayments:

A. The Office will send a copy of any written revocation of allotment received by the Office to the Union within 10 work days.

B. When the Union receives a remittance check which is less than that due to the Union, the Union will notify the Office of Personnel, Labor Relations Branch. After such notice, the appropriate adjustment shall be processed within two (2) pay periods.

Section 6

The Union and the Office agree to the following procedures concerning overpayments:

When the Union has notice of receipt of an overpayment, such notice gives rise to an affirmative duty on the part of the Union to remit that amount by check to the Office. Such repayment shall occur within two (2) pay periods of notice of overpayment.

Section 7

When an adjustment is made to an employee's salary to recoup dues withholding, the employee will be given a written explanation of the adjustment. This explanation shall notify the employee that he/she has a right to request a waiver of overpayment of $500 or less in accordance with applicable laws, rules and regulations. Denials of such waiver requests shall not be subject to arbitration.

Section 8

The Office will request that NFC send a copy of its magnetic dues withholding tapes to NTEU on a bi-weekly basis. The Office will request that NFC add sufficient characters for use by employees wishing to participate in NTEU-sponsored financial programs (e.g., IRA's).

Section 9

The Union shall pay no fees for these services except as stipulated otherwise.

Article 33
Impact and Implementation Bargaining

Section 1

Impact and Implementation bargaining shall be conducted within the terms of this article. The Office and the Union shall follow the below listed procedures prior to implementing any changes in conditions of employment, for which there is a bargaining obligation. The Office shall make its proposal(s) in writing, include the reasons for the action and copies of relevant statutes, regulations and other relevant supporting materials. In the event of an emergency or overriding exigency, the Office reserves the right to make changes in the conditions of employment without regard to the provisions of this article. The provisions of this article will not apply to requests for or the conduct of joint labor term negotiations.

Section 2

A. The Office shall notify the Union in writing of any changes in conditions of employment, for which there is a bargaining obligation, on the following dates of each year: February 15, May 15, August 15, and November 15. Changes regarding performance appraisal may be proposed at any time.

B. Within one week thereafter, the parties shall meet to explain and clarify the Office's proposal(s) and answer questions regarding the proposal(s).

C. The Union shall submit its counter proposal(s) within 2 weeks of the clarification meeting in Section 2B above.

D. Negotiations shall commence as soon as practical (normally within one week).

Section 3

Unless the parties agree otherwise, the ground rules for Impact and Implementation negotiations shall be as follows:

A. The Union shall have the right to the same number of representatives as the Office, but not less than two representatives.

B. Negotiations shall take place Tuesday through Thursday during the hours of 9:30 a.m. to 4:00 p.m. For comprehensive changes involving performance appraisals, signatory authority or automation, negotiations shall be extended to four (4) days a week. Negotiations (including caucuses) of at least two hours are counted as one-half day and negotiations (including caucuses) of at least four hours are counted as one full day for purposes of constructive impasse.

C. The parties shall negotiate up to one (1) week or three (3) days if negotiating a RIF, up to four (4) weeks or twelve (12) days if negotiating changes in working conditions and four (4) weeks or sixteen (16) days if negotiating comprehensive changes in working conditions involving performance appraisal, signatory authority or automation. For every change in working conditions over three (3) the parties shall negotiate one (1) additional week, not to exceed four (4) additional weeks. Constructive impasse will be deemed to have occurred at the end of such time periods. However, either party or both parties may declare an impasse prior to conclusion of the negotiation periods specified in this section. The parties may also agree to extend negotiations.

D. If impasse occurs, either constructively or in fact, the parties shall request the assistance of the Federal Mediation and Conciliation Service and shall meet with a mediator within one week of reaching impasse.

E. If mediation fails to resolve the impasse between the parties, the parties will seek the services of the Federal Services Impasses Panel and agree to follow the procedures of the FSIP.

Section 4

Any negotiated agreements will take the form of a Memorandum of Understanding (MOU). The Office shall reproduce all MOU's and distribute to all current employees along with any Office memoranda that pertain to the MOU. Such documents shall be distributed to all new employees along with copies of the basic Agreement in accordance with Article 20, Reproduction and Distribution.

Section 5

Subjects covered by the collective bargaining Agreement shall not be the subject of proposals under this article.

Section 6

Pursuant to 5 USC 7114(c) all agreements shall be subject to agency head review.

Section 7

In the event the Employer disapproves an executed impact and implementation agreement reached between the parties, the Union shall have the option of renegotiating such agreement.

Contents

Article 34
Trial Period Employees

Section 1

The Office agrees to advise trial period employees of their performance prior to the end of the 11th month of the trial period. This will be accomplished by providing employees a copy of Form CD-35 during the 11th month of the trial period.

Section 2

Trial period employees may choose, up to their termination date, voluntary resignation

Section 3

Nothing in this Agreement shall limit the Office's right to terminate trial period employees prior to the end of the trial period.

Contents

Article 35
Disciplinary Actions

Section 1

A. The disciplinary actions covered by the article are written reprimands and suspensions of 14 days or less. All disciplinary actions shall be carried out in a timely manner and shall only be imposed for such cause as will promote the efficiency of the service.

B. Counseling or warnings, whether they are oral or written, are not disciplinary actions and shall not be considered as an "offense" in the event of future discipline or adverse action. Counseling or warnings, whether they are oral or written, may be grieved in accordance with Article 11.

Section 2

* Disciplinary action shall fairly relate to the offense.

Section 3

The Office recognizes the concept of progressive discipline to correct behavior. However, nothing in this section would preclude the Office from imposing the maximum penalty for a first offense in appropriate cases.

In deciding what discipline is appropriate, the Office will give due consideration to the relevance of mitigating and/or aggravating circumstances. The following factors, not intended to be exhaustive or applied mechanically, outline the tolerable limits of reasonableness which will be applied to the circumstances of each case.

A. The nature or seriousness of the offense and its relation to the employee's duties;
B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
C. The employee's past disciplinary record;
D. The employee's past work record, including length of service, performance, ability to relate to other employees, and dependability;
E. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee;
F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
G. The notoriety of the offense and its impact upon the reputation of the Office;
H. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
I. Potential for the employee's rehabilitation;

* Also see Appendix B

J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice or provocation on the part of others;
K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 4

A. An employee whose suspension is proposed shall receive a written notice of proposed action. Included with the proposal will be all the material relied upon to support the reasons/charges in the proposal. In either a proposed suspension or a written reprimand, the employee shall receive copies of all documents which contain evidence relied upon to support the charges. If an investigation report or portion thereof is used as evidence then the portion used as evidence shall be provided.

Nothing in this section is to be construed as a waiver of the employee's or the Union's right to request additional information under other authorization, such as the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act.

B. All proposed suspensions shall inform employees of their right under statute and government-wide regulation to be represented by the Union or an attorney or other representative of their own choosing in connection with oral and/or written replies.

Section 5

A. Any proposed suspension shall state the reasons for the proposal. The proposal shall also provide the employee with reasonable time (normally 14 days) from receipt of the proposal to answer the specification orally and/or in writing. The reply shall be submitted by the end of the reply period. The reply period may be extended upon mutual agreement of the parties upon written request by the employee and/or his/her designated representative. Information requests that are not relevant to the stated offense will not serve as a reason to extend the reply period. Normally, requests for information will be limited to a period of three (3) years prior to the request.

B. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed disciplinary action.

C. The Office's final decision must address each charge in detail and support the reasons for the decision. Pertinent factual discrepancies concerning the incident shall also be addressed. Copies of the decision shall be served simultaneously on the employee and his/her designated representative.

Section 6

Written reprimands and decisions on suspensions of 14 days or less are subject to the grievance procedure (Step 1) or appropriate administrative challenges, but not both.

Section 7

The Office shall provide a sanitized copy of all disciplinary action proposals and decision letters to the Union simultaneous to their issuance to employees. Sanitized copies of decision letters are not required when the Union has been served under Section 5C above.

Section 8

Whenever the employee has designated the Union as his/her representative, the employee shall have the right to have the Union present at any discussion regarding a disciplinary action and to receive advance notice of the discussion.

Union reserves its right under Article 9, Section 4 and the statute.

Section 9

In cases where discipline is proposed for reasons of off-duty misconduct, the Office's written notification shall contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. If the deciding official decides to substantively change the nexus statement in the proposal with adverse affect on the employee, notice of such change will be provided with the summary of the oral reply. Three work days will normally be provide for the employee and/or representative to supplement the record on this subject.

Contents

Article 36
Adverse Actions

Section 1

The actions covered by this article are removals, suspensions for more than fourteen (14) days, reductions in pay, and furloughs of thirty (30) days or less. All adverse actions shall be carried out in a timely manner and shall only be imposed for such cause as will promote the efficiency of the service.

Section 2

*Adverse actions shall fairly relate to the offense.

Section 3

The Office recognizes the concept of progressive discipline to correct behavior. However, nothing in this section would preclude the Office from imposing the maximum penalty, up to removal, for a first offense, in appropriate cases.

In deciding what discipline is appropriate, the Office will give due consideration to the relevance of mitigating and/or aggravating circumstances. The following factors, not intended to be exhaustive or applied mechanically, outline the tolerable limits of reasonableness which will be applied to the circumstances of each case.

A. The nature or seriousness of the offense and its relation to the employee's duties;

B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

C. The employee's past disciplinary record;

D. The employee's past work record, including length of service, performance, ability to relate to other employees, and dependability;

E. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee;

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

G. The notoriety of the offense and its impact upon the reputation of the Office;

H. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

* Also see Appendix B

I. Potential for the employee's rehabilitation;

J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice or provocation on the part of others;

K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Section 4

A. An employee against whom adverse action is proposed shall receive a written notice of proposed action. Included with the proposal will be all the material relied upon to support the reasons/charges in the proposal. The employee shall receive copies of all documents which contain evidence relied upon to support the charges. If an investigation report or portion thereof is used as evidence then the portion used as evidence shall be provided.

Nothing in this section is to be construed as a waiver of the employee's or the Union's right to request additional information under other authorization, such as the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act.

B. All proposed adverse actions shall inform employees of their right under statute and government-wide regulation to be represented by the Union or an attorney or other representative of their own choosing in connection with oral and/or written replies.

Section 5

A. Any proposed adverse action shall state the reasons for the proposal. The employee shall be provided at least thirty (30) days advance written notice from receipt of the proposal except when the Office has reason to believe an employee has committed a crime for which a sentence of imprisonment may be imposed. The proposal shall also provide the employee with reasonable time (normally 14 days except for the crime provision) from receipt of the proposal to answer the specification orally and/or in writing. The reply shall be submitted by the end of the reply period. The reply period may be extended upon mutual agreement of the parties upon written request by the employee and/or his/her designated representative. Information requests that are not relevant to the stated offense will not serve as a reason to extend the reply period. Normally, requests for information will be limited to a period of three (3) years prior to the request.

B. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed adverse action.

C. The Office's final decision must address each charge in detail and support the reasons for the decision. Pertinent factual discrepancies concerning the incident shall also be addressed. Copies of the decision shall be served simultaneously on the employee and his/her designated representative.

Section 6

A. A non-preference eligible (non-veteran) employee who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less against whom an adverse action has been taken may appeal the decision to the Merit System Protection Board, or with the consent of the Union, to arbitration under the terms of the agreement, but not both.

B. A preference eligible (veteran) employee who has completed one year of current continuous employment in the same or similar positions against whom an adverse action has been taken may appeal the decision to the Merit Systems Protection Board, or with the consent of the Union to arbitration under the terms of the agreement, but not both.

Section 7

The Office shall provide a sanitized copy of all adverse action proposals and decision letters to the Union simultaneous to their issuance to employees. Sanitized copies of decision letters are not required when the Union has been served under Section 5C above.

Section 8

Whenever the employee has designated the Union as his/her representative the employee shall have the right to have the Union present at any discussion regarding an adverse action and to receive advance notice of the discussion.

Section 9

In cases where discipline is proposed for reasons of off-duty misconduct, the Office's written notification shall contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. If the deciding official decides to substantively change the nexus statement in the proposal with adverse affect on the employee, notice of such change will be provided with the summary of the oral reply. Three work days will normally be provided for the employee and/or representative to supplement the record or this subject.

Contents

Article 37
Partnership

The parties both desire a good Labor Management (L/M) relationship and recognize that Partnership may be al effective means of establishing and furthering such a relationship. To promote L/M partnership, the principles embodied in Executive Order (E.O.) 12871, the parties have formed a L/M Partnership Council. Partnership recommendations developed under the Council's auspices may be submitted for acceptance by management. Neither party waives its rights under any recommendation accepted by management. In any event the parties by mutual agreement may meet in partnership to discuss issues of mutual concern.

For the Office:

Meryl Herskowitz
Chief Negotiator

Jerry Price
Negotiator

Michael Levy
Negotiator

Portia Robinson
Negotiator

Tomas Vleek
Negotiator

Leslie Bishop
Negotiator

Thomas Lamone
Negotiator

12/22/00
Date

For the Union:

Suzanne Brennan
Chief Negotiator

Howard Friedman
Negotiator

Gary Thayer
Negotiator

Shana Winters
Negotiator

Susan Dubois
Negotiator

Marc Leipzig
Negotiator

Jennifer Krisp
Negotiator

12/22/00
Date

Contents

APPENDICES

Appendix A: **MOU regarding the Agreement, agency head review, negotiability and appeals.**

Appendix B:

Appendix B-1: List of provisions declared non-negotiable by Agency, if applicable.

Appendix B-2: MOU to revise provisions declared non-negotiable by Agency, if applicable.

Appendix B-3: Agency approval of MOU on revision of non-negotiable language, if applicable.

Appendix C: GWPAS, attached for reference.

Appendix D: Public Law 101-376(Civil Service Due Process Amendments) and legislative history, attached for reference.

Appendix E: Alternate Work Schedule Election Form.

Appendix F: Awards scale, attached for reference.

Appendix G: Appendix K of NTEU 243 Contract – Pilot Transit Subsidy.

Appendix H: MOU regarding Pilot Transit Subsidy Program, Parking Fees, and Alternate Work Schedules.

Appendix I: MOU for transition

APPENDIX A
MEMORANDUM OF UNDERSTANDING
Between the National Treasury Employees Union, Chapter 245 and
The U.S. Patent and Trademark Office

The National Treasury Employees Union, Chapter 245 (Union) and the U.S. Patent and Trademark Office (USPTO) hereby agree that they have negotiated an agreement which shall remain in full force for three (3) years from the date on which it is approved by the Agency under 5 U.S.C. § 7114. The agreement consists of Articles 1 though 37 and Appendices attached hereto.

The entire Agreement, as specified in this Memorandum of Understanding (MOU), including provisions of the 1997 agreement not specifically amended by these revisions, shall be subject to ratification by the union and agency head review under 5 U.S.C. § 7114.

This agreement is subject to ratification by the union in accordance with its constitution and bylaws. A ratification shall occur within four (4) working days from the date of the execution of this MOU. Execution of the Agreement shall occur within one working day of ratification. Should the Agreement not be ratified, bargaining shall resume immediately on a mutually agreeable schedule.

The entire Agreement, including those provisions of the 1997 Agreement which have not been amended by the parties, is subject to review by the Agency under 5 U.S.C. § 7114. Should any portion of the agreement be disapproved by the Agency during the 30 days after execution, the agreed upon and approved portions will be implemented irrespective of any disapproved provisions. The union retains all rights under the law subsequent to agency head disapproval.

Certain provisions of the Agreement may be determined by the Agency to be inconsistent with applicable law and regulations. If this is the case, these provisions will be set forth in Appendix B. However, the parties agree that if, upon the conclusion of the legal appeal process set forth in 5 U.S.C. § 7114 (c)(2) and 5 U.S.C. § 7132, any of these provisions are determined to be within the duty to bargain the provisions so found, except for performance award provisions of Article 31, will be incorporated into the Agreement. If the performance award provision is determined to be within the duty to bargain, the parties will negotiate Article 31 of the Agreement in its entirety. Neither party waives its right to seek judicial review of the negotiability issues.

For the Union

12/16/00
Date

For the Agency

APPENDIX B

Article 35, Disciplinary Actions:

Section 2

The parties recognize the Agency's discretion to determine an appropriate penalty in accordance with Section 3 below. Unless inconsistent with established office policy, disciplinary actions shall generally be progressive in nature and fairly relate to the offense.

Article 36, Adverse Actions:

Section 2

The parties recognize the Agency's discretion to determine an appropriate penalty in accordance with Section 3 below. Unless inconsistent with established office policy, adverse actions shall generally be progressive in nature and fairly relate to the offense.

Appendix C

U.S. Department of Commerce
Performance Appraisal System
For the General Workforce

TABLE OF CONTENTS

January 24, 1995

SECTION 1. LEGAL REQUIREMENTS AND AUTHORITIES

.01 This document implements the provisions of the following authorities:

a. The Civil Service Reform Act of 1978, P.L. 95-454, (5 U.S.C. 4301-4305); 5 CFR Part 430 Subpart B; and DAO 202-430.

b. Official Personnel Folder (5 U.S.C. 2951, 552, 4305, 4315, 1103, 1104, and 1302); 5 CFR, Part 293, Subpart C; and FPM Chapter 293.

.02 The following citations are related to this plan:

a. Administrative Grievance System; 5 U.S.C. 1302, 3301, 3302, And 7301; 5 CFR Part 771; and FPM Chapter 771.

b. Alcohol and Drug Abuse Regulations; 5 CFR Part 792 and FPM Chapter 752.

c. Adverse Actions; 5 U.S.C. Chapter 75; 5 CFR Part 752; and FPM Chapter 752.

d. Incentive Awards Programs; 5 U.S.C. Chapter 45; 5 CFR Part 451; and FPM Chapter 451

e. Pay Rates and Systems (General); Pay under the General Schedule; 5 U.S.C. Chapter 53; 5 CFR Part 531; FPM Chapter 530; FPM Chapter 531; 5 CFR Part 536; FPM Chapter 536; 5 CFR Part 550; And FPM Chapter 550.

f. Grade Reductions or Removals Based on Unacceptable Performance; 5 U.S.C. 4303 and 4305; and 5 CFR Part 432.

SECTION 2. OBJECTIVES

The Department’s General Workforce Performance Appraisal System Serves as the basis for:

.01 Establishing critical elements and related performance standards for each covered position which, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position;

.02 Using performance plans to communicate Department goals and objectives and to identify individual accountability for their accomplishment;

.03 Using performance appraisal results as a basis for providing information to employees on their performance and how it may be improved; and for training, rewarding, reassigning, promoting, reducing in grade, retaining, granting within-grade increases, and removing employees; and

.04 Evaluating and improving individual and organizational accomplishments.

SECTION 3. COVERAGE

.01 The policies contained in this document apply to all Department of Commerce employees except the following:

a. Employees in the Senior Executive Service;

b. Presidential employees;

c. Administrative law judges appointed under 5 U.S.C. 3105;

d. Positions filled by noncareer executive assignments under 5 CFR Part 305;

e. Positions for which employment is not reasonable expected to Exceed 120 calendar days in a consecutive 12-month period;

f. Employees outside the United States who are paid in Accordance with local native prevailing wage rates;

g. Employees covered by the Foreign Service Act of 1980;

h. Individuals occupying positions not in the competitive Service excluded from coverage by the Office of Personnel Management (OPM) under the provisions of 5 U.S.C. 4301 (2)(G); and

i. Expert and consultants

.02 An employee who is serving on a detail continues to occupy the position from which detailed.

.03 General workforce employees whose service is temporarily interrupted by service in any Federally-sponsored program (e.g., Intergovernmental Personnel Act) which calls for the employee's Return to the same or like position continues to be covered by The General Workforce Performance Appraisal System while on the Federally-sponsored assignment.

.04 Schedule C employees, as authorized by 5 CFR Part 213.3301, are covered by this system except that they are not afforded the rights required by 5 U.S.C. 4302 (b)(6) and 4303.

SECTION 4. RESPONSIBILITIES

.01 Heads of Operating Units or Departmental Offices may elect to use three- or five-level rating scales in accordance with Sections 6.03a.4 and 5.

.02 Appointing authorities must:

a. Ensure that their operating unit instructions on the General Workforce Performance Appraisal System are consistent with current laws, applicable Office of Personnel Management rules and regulations, Departmental policies, and valid collective bargaining agreements.

b. Provide managers and supervisors of covered employees with adequate training, supplemented by periodic updates covering their duties and responsibilities under the General Workforce Performance Appraisal System.

c. Ensure that covered employees are informed of their rights and responsibilities under the system;

d. Provide managers and supervisors with clear instructions on procedures for identifying critical elements and related performance standards within their respective organizations;

e. Communicate overall missions, objectives, goals, and long-range plans and activities to all levels within the organization;

f. Assure the opportunity exists for employee participation in the development of performance plans;

g. Maintain appropriate records and submit required data and reports on the operation of the General Workforce Performance appraisal System;

h. Ensure that performance appraisal results are used by Managers and supervisors in making personnel decisions regarding Training, rewarding, reassigning, promoting, reducing in grade, Retaining, and removing employees;

i. Encourage the use of cash awards, honorary awards, and other Official commendations, when appropriate, to reward and motivate Covered employees;

j. Determine the effectiveness of the system by instituting a Formal monitoring and evaluation program, and

k. Promptly initiative corrective actions in the performance Appraisal program when such actions are warranted.

.03 Approving officials must:

a. Review critical (and non-critical) elements and standards in Place in their organizations to ensure that they are integrated Into the total management process and are consistent with overall Organizational objectives;

b. Review, sign and date performance plans when developed to ensure equity and consistency within their organizations;

c. Resolve conflicts between rating officials and employees Over the content of performance plans;

d. Review performance appraisals and proposed ratings to ensure That evaluation criteria are objective and job-related, and that Actual accomplishments support the rating;

e. Respond in writing within 10 working days to employee written Comments on ratings;

f. Assign, sign, and date final performance ratings (including Documenting and reasons for changing ratings); and

g. Approve/recommend performance-related personnel actions, Including awards, when warrented.

04. Rating officials (supervisors) or general workforce Employees must:

a. Inform employees of th eoverall mission, objective, goals, Long-range plans, and activities of the work unit and parent Organization and inform employees of their related duties and Responsibilities;

b. Encourage employee participation in developing performance Plans;

c. Provide employees with written performance plans which Identify the critical (and non-critical) elements and performance Standards related to their specific duties, responsibilities, and Expected levels or performance;

d. Collect data to determine if performance standards are being Met;

e. Conduct and document at lease one formal progress review Around the midpoint of the appraisal period and additional Reviews as necessary;

f. Modify performance plans as necessary;

g. Participate in the pre-appraisal discussion, if one is Requested by the employee;

h. Complete performance appraisals which includes determining, Documenting, and evaluating employees actual accomplishments,

i. Confer with approving officials about their organization’s

performance and about the ratings they plan to assign their employees, and get the approving official's approval before discussing those ratings with employees;

j. Determine preliminary ratings for employees, and discuss the final appraisal with the employees;

k. Sign and date performance plans, performance appraisals, and ratings; and

l. Recommend personnel actions (including awards) and/or training based on the employee's level of performance of work in relation to the performance standards.

.05 General Workforce employees should:

a. Work with their supervisors in developing their performance Plans;

b. Collect data to demonstrate that performance standards are Being met;

c. Compare accomplishments with appropriate performance Standards;

d. Participate in the mid-cycle progress review and request Additional reviews, as necessary;

e. Participate in the performance appraisal process with the Rating official (including scheduling a pre-appraisal meeting if They wish);

f. Sign and date performance plans, performance appraisals an d Ratings, to acknowledge receipt;

g. Prepare written comments when disputing a rating; and

h. Seek development opportunities to enhance performance.

.06 Human Resources Offices must:

a. Communicate the purpose and procedures of the General Workforce Performance Appraisal system and its relationship to The overall personnel management system to supervisors, general Workforce employees, and appropriate exclusive bargaining Representatives;

b. Provide instruction on how to identify critical (and Non-critical) elements and establish performance standards;

c. Provide training and/or orientation on the operation of the

System for employees who are responsible for, or subject to, the System;

d. Coordinate and submit required reports on the operation of The system; and

e. Participate in the development and implementation of a Monitoring and evaluation program of the system.

SECTION 5. TIMETABLE OF PERFORMANCE MANAGEMENT ACTIVITIES.

.01 Employees covered by this system are normally appraised annually under one of the following fixed appraisal periods: October 1 – September 30 or June 1 – May 31. Appendix C of this Document specifies operating unit/Departmental Office appraisal Periods.

.02 The minimum performance appraisal period is 120 days.

.03 Performance plans for all covered employees must be established and approved at the beginning of the appraisal period, normally within 30 days of the beginning of the period.

.04 When an employee enters a covered position or changes positions after the start of the appraisal period, a performance plan must be established and approved within 30 days of the effective date of the appointment to the new position.

.05 When an employee is detailed or temporarily promoted to a covered position within the Department and is expected to serve in the position for 120 days or more, he or she must have an approved performance plan within 30 days of the beginning of the detail or temporary promotion.

.06 Interim summary performance ratings are required when an employee changes positions after serving in a covered position for at least 120 days, or when an employee serves on a detail or temporary promotion within the Department of at least 120 days during the appraisal period. The interim rating must be completed within 30 days of the change of position or end of the detail or temporary promotion.

.07 Appraisals and annual ratings of record must be completed within 30 days of the end of the annual appraisal period, except that (1) employees who are unratable at the end of the appraisal period because they have not served in a covered position for at least 120 days of the appraisal period, must be rated after they have served for the minimum period (120 days); (2) Schedule A employees of the Bureau of Census must receive their ratings within 60 days of the end of the appraisal period; and (3) employees who on the last day of the appraisal period have begun

But have not completed an opportunity period to improve Performance to an acceptable level, as provided in 7.05c.3a, may Have their ratings deferred until the completion of the Opportunity period.

.08 Appointing authorities must complete the Department's annual performance plan completion report and forward it to the Department by November 30 each year. Operating units with June 11 - May 31 appraisal periods must complete this report for General workforce employees and forward it to the Department by July 31 each year.

.09 Performance ratings of record for general workforce employees are effective on the last day of the appraisal cycle (September 30 and May 31) each year. For those employees who enter into a covered position with less than 120 days remaining in the appraisal period (see .07 above), the rating of record is effective the first day of the first pay period after the employee completes 120 days in the new position.

.10 When a rating official changes positions or leaves the Department with less than 120 days remaining in the appraisal Period, he/she must complete appraisals and ratings for his/her Subordinate employees before the change of position or transfer To another Department or agency. These ratings will serve as the Employee's rating of record for the appraisal period and the time Remaining in the appraisal period will be included in the Following appraisal period. Such ratings will be effective the Date of the transfer of the supervisor.

SECTION 6. PERFORMANCE APPRAISAL PROCESS.

.01 Performance Planning

a. Approximately four weeks before the start of the appraisal Period, rating officials (supervisors) and employees should Begin developing written performance plans for the next appraisal Period. The process should involve both the supervisor and Employee. Performance plans must be recorded on Form CD-516, "Classification and Performance Management Record." Performance plans must be completed and signed by the rating official, approving official, and employee at the beginning of the appraisal period, normally within 30 days. Performance plans

Must include:

1. Critical (and non-critical) elements which reflect the Employee's major duties and responsibilities and which are Consistent with current job assignments and with the level Of duties described in the employee's position description. (Although the Department discourages inclusion of non-critical elements in performance plans, occasionally a rating official may need to include some. If included, non-critical elements should represent no more than 15 percent of the total plan; additionally, no single non-critical element may be weighted more than 10 percent nor weigh more than any critical element in the plan.) Organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results. Elements may be drawn from the number of sources including: mission and functional statements, position descriptions, management-by-objectives (MBO's) and other planning documents, operating budget justifications, and affirmative action plans. An employee's responsibility for accomplishing part or all of an MBO must be included as a critical element or a major activity of al critical element. If the element relates to a Secretarial level objective, it must be designated on the CD-516 as critical and checked as an MBO. Elements must include Only those aspects of the work over which the employee has Control. An objective, specifying the overall result each Element is expected to accomplish, along with the major Activities the employee must undertake to accomplish each Element, must be communicated in writing in the employee's Performance plan. For any job designated as supervisory, duties Such as recommending or making personnel decisions, developing And appraising subordinates, fulfilling equal opportunity and Affirmative action responsibilities, and other supervisory duties Must be addressed as a critical element (or as major activities Of a critical element). Additionally, supervisors who fail To meet performance appraisal deadlines as specified in This document must have their own appraisals so documented. Developing generic critical (and non-critical) elements is Strongly encouraged.

2. Weights must be assigned to each element on the basis of The amount of time required to accomplish the element and/or its Importance. The total of the weights must be 100%. Assigning Weights to the major activities listed under an element is not Permitted. Non-critical elements may be included in performance Plans, but must be assigned very low weights and represent No more than 15 percent of the total plan. In no case may A non-critical element be assigned a higher weight than any Critical element included in the performance plan.

3. Performance standards must be used to evaluate levels of

Accomplishment for critical (and any non-critical) elements. Standards should define performance in terms of results (what is To be accomplished) and process (how it is to be accomplished). (Note: The results may already be expressed under the major activities listing. In such a case they do not need to be repeated as standards since they are already specified for the employee.) The generic performance standards (GPS) contained in Appendices A and B, for use with five- or three-level rating Scales, respectively, must be used to evaluate the performance of All employees covered by this system. Supplemental standards, as Needed,, should be developed for each critical (and non-critical) Element. Specific quantitative, timeliness, cost effectiveness, And/or qualitative standards, if they apply to a particular Critical element and if they will be used to evaluate an Employee's performance must be included as supplemental Standards. (If these standards are specified in operational Manuals or other documents made available to the employee, those Documents may simply be referenced in the performance plan.) Such standards need be written only at the Fully Successful level And refer generically to different levels of quality, timeliness, Quantity, and cost effectiveness.

b. If a rating official and covered employee disagree on The contents of the performance plan, the rating official and Employee should attempt to resolve the disagreement informally. However, the approving official must make the final decision Regarding the contents of the plan. The contents of performance Plans may not be grieved.

c. When developing performance plans, the following factors Should be considered:

1. Criticality/Relevance. Have appropriate critical elements Been identified? Are the elements derived from the overall Mission of the work unit?

2. Comprehensiveness. Does he plan cover all of the employee's Major duties and responsibilities?

3. Clarity. Are critical elements and performance standards Clearly and fully described?

4. Qualifications. Can achievements be measured with the Standards identified?

5. Consistency. Are performance plans for similar positions Comparable in all important aspects?

d. When an employee enters a covered position or moves from One covered position to another after the start of the appraisal

Period, and when an employee serves on a detail of 120 days or More, a performance plan must be established and approved for the Employee, following the guidelines in .01a-c of this Section.

.02 Progress Reviews

a. At a minimum, rating officials must conduct a formal progress Review with their employees at approximately the midpoint of the Appraisal period. Covered employees may also request (or Supervisors may schedule) additional progress reviews. The Progress review must include discussion of :

1. The employee's progress toward meeting the objectives of the Elements included in his or her performance plan;

2. The identification of any performance deficiencies and Recommendations on how to improve them by the rating official; And

3. The need for changes in the plan based on changes in responsibilities. A rating official must submit any recommended changes in performance plans in writing to the approving official and gain his/her approval of the changes. Those changes must then be signed and dated by both officials and attached to the plan. The employee must be given a copy of the changed plan.

b. There must be a record of the progress review. Both the Supervisor and employee should date and initial the performance plan to indicate the review took place.

c. Progress reviews should also be scheduled and conducted for employees who enter covered positions after the start of the appraisal period. There progress reviews should be completed near the midpoint of the shortened appraisal period.

d. A progress review must also be initiated by the rating official if an employee's performance on one or more critical elements falls below the Fully Successful level. In such a case the rating official must discuss the instances of less than Fully Successful performance and outline in writing what is required by the employee to bring his or her performance up to the Fully Successful level. If rating officials wish this review to serve as the beginning of the formal opportunity period required by 5 U.S.C. 4302(b)(6), please see Section 7.05c.3.

.03 Appraisal

a. Every employee who occupies a covered position on the last day of the appraisal cycle and who has been in a covered position for at least 120 days during the appraisal cycle must receive an Annual performance appraisal rating of record, in accordance with

The following:

1. Rating officials must confer with the approving official about their organization's performance and gain approval of (including the approving official's signature on Form CD 516) the ratings they recommend for their employees before discussing those ratings with employees.

2. The rating official initiates the appraisal by providing advance notice of the employee of the date and time for the formal appraisal meeting.

3. The employee may schedule a pre-appraisal meeting with the rating official to:

a. Present his or her assessment of results achieved against the Standards set in the performance plan;

b. Inform the rating official of aspects of his or her work of which the rating official may not be aware; and

c. Identify objectives he or she would like to include in the Performance plan for the next period.
during this pre-appraisal meeting, the rating official may ask questions to clarify his or her understanding of the employee's Performance.

4. Once the advance notice of the formal appraisal meeting has been given, and after any pre-appraisal meeting, the rating Official (after conferring with the approving official) prepares and discusses with the employee a written performance rating. This rating must be based on an assessment of the employee's Performance against the standards set at the beginning of the period (or as modified and documented during the progress review) in the performance plan and must include a written rating for each individual performance element based on one of the following scales:

(a) Five-level element rating scale:

Outstanding (Level 5) = 5 points
Commendable (Level 4) = 4 points
Fully Successful (Level 3) = 3 points
Marginal (Level 2) = 2 points
Unacceptable (Level 1) = 1 point.

(b) Three-level element rating scale:

Outstanding (Level 5) = 5 points
Meets or Exceeds Expectations (Level 3) = 3 points
Does Not Meet Expectations (Level 1) = 1 point.

Note: The level "Meets or Exceeds Expectations" is equivalent to the level "Fully Successful" as stated in 5 CFR, Part 430. The level "Does Not Meet Expectations" is equivalent to the level "Unacceptable" and subject to the same provisions regarding demotion or removal as stated in 5 U.S.C. Chapter 43.

5. To obtain the overall summary rating, each element rating must be multiplied by the weight assigned to that element (e.g., Element #1 is weighted at 30% and receives a rating of Fully Successful or a 3; 3 x 30% = 90 points). No fractional scores or weights may be used. The points assigned the individual elements are then totaled to determine an overall summary rating based on The following scales:

(a) Five-level summary rating scale (used only with a five-level Element rating scale):

Outstanding (Level 5)	460 – 500 points
Commendable (Level 4)	380 – 459 points
Fully Successful (Level 3)	290 – 379 points
Marginal (Level 2)	200 – 289 points*
Unacceptable (Level 1)	below 200 points*

(b) Three-level summary rating scale (used only with a three-Level element rating scale):

Outstanding (Level 5)	420 – 500 points
Meets or Exceeds Expectations (Level 3)	270 – 419 points
Does Not Meet Expectations (Level 1)	below 270 points*

*If a covered employee receives a less-than-Fully Successful critical element rating in his/her position of record or in an interim rating that becomes a final rating of record (see Sections 6.03a.8. and 6.03b.), the employee's performance Rating must be no higher than the lowest critical element rating Received no matter what point total the employee earns.

6. Summary ratings of Fully Successful in which all individual elements are rated Fully Successful require only a summary notation that the employee's performance meets expectations and that the rating was discussed with the employee. Individual Element justifications must be done for elements rated below Fully Successful. If any elements are rated above Fully Successful, a written summary justification is required. However, for employees required by the Secretary's Diversity Policy Tenets (July 21, 1994) to have a diversity critical Element, a rating above Fully Successful on that element must be justified separately, apart from any summary justification.

Also, a rating official may elect to write justifications for individual element ratings. Furthermore, if the employee requests written justification of any individual element rating, the rating official must provide such justification.

7. Interim ratings for service in other covered positions within the Department during the appraisal period must be considered in determining the employee's final rating of record. Interim ratings are developed during the rating cycle to document the Performance of an employee who changes positions or who is detailed during the year provided the employee has served in the position or on the detail for at least 120 days. Unless the employee has changed positions with less than 120 days remaining in the appraisal cycle, the final rating of record is determined using the procedures in (a) through (d) below. If the employee has changed positions with less than 120 days remaining in the appraisal period, and has ser4ved in another covered position for which an interim rating was done, use the procedures in Section 6.03b. to determine the employee's final rating of record.

a. The rating official for the employee's position of record Appraises the employee on the work done in the position of record if the employee has served in that position for at least 120 days of the appraisal period. (If the employee has not served in the position of record for 120 days, see Section 6.03a.9 or 6.03b as appropriate.)

b. Double the score assigned for the position of record.

c. Add the doubled score to any other interim rating scores received during the appraisal period.

d. Divide the total score from c. above by the number of positions occupied for 120 days or more during the appraisal cycle plus 1, e.g., if the employee occupied two positions for 120 days or more of the appraisal cycle, the total score in c. would be divided by three. This number becomes the final rating score. (Scores with decimals should be rounded to the next highest number).

Example 1:

Interim rating score:	360 x 1 =	360
Position of record rating score:	480 x 2 =	960
		1,320

1,320 ÷ 3 = 440
The recommended rating would be 440.

Example 2:

Interim rating score:	390 x 1 =	390
Interim rating score:	375 x 1 =	375
Position of record rating score:	450 x 2 =	900
		1,665

1,665 ÷ 4 = 417

The recommended rating would be 417.

In computing a final performance rating using this formula, the rating assigned by the supervisor of the position or record (the one that is to be doubled) must be checked carefully to make sure that a non-critical element is not given more weight (because of the doubling) than any critical element in the other interim ratings. (OPM regulations prohibit giving more weight to Non-critical elements than to critical elements in deriving final Ratings.) If, because of the doubling, the non-critical element score exceeds that of any of the critical element scores, the point score of the non-critical element must be reduced to its original total (before the doubling) and the summary point total adjusted appropriately.

e. If an employee receives a rating of Fully Successful or higher in his/her current position or record, then his/her final summary performance rating cannot be less than Fully Successful even if he/she received a less-than-Fully Successful interim rating for work performed on other assignments during the cycle.

8. If an employee has served in a covered position for more than the minimum appraisal period in another Federal agency, that agency is required to provide an interim summary rating of performance and forward it to the Department's employing office with the Employee's Official Personnel Folder. If the employee transfers to the Department of Commerce with less than 120 days remaining in the appraisal period, the employee's interim rating (prepared when he/she transferred) will become his/her rating of record for the appraisal period. The time remaining in the appraisal period will be included in the next appraisal period. Thus, in such cases, the effective date of the transfer to the department will serve as the beginning date of the employee's new Appraisal period. If no interim rating can be obtained from the employee's old agency, the employee's current rating of record will be extended. If the employee transfers before the last 120 days of the appraisal cycle, the rating official must consider the interim rating when determining the employee's rating of record at the end of the appraisal cycle.

If an employee has served on a detail to another Federal agency

for 120 days or more during the appraisal cycle, or an assignment in a Federally-sponsored program such as an IPA or Executive Exchange, the personnel office must make a reasonable effort to obtain an interim summary rating from the other agency on the employees performance on the detail or assignment. If the interim rating is obtained, it must be considered in deriving the employee's rating of record at the end of the appraisal cycle. If the employee has served for the entire rating cycle on detail to another agency and an appraisal of performance cannot be obtained despite reasonable efforts, the employee's current rating of record must be extended. If the employee has no current rating of record, he or she must be considered unratable and treated as though Fully Successful.

9. The employee should sign the rating to indicate that it has been discussed. (If the employee refuses to sign, the rating official should so not). A copy must be given to the employee. If the employee disagrees with the rating, he or she may comment in writing to the approving official within five working days of receipt of the appraisal and rating. The approving official must respond in writing to these comments within 10 working days. If the approving official changes a rating at this point, he/she must document the reasons for the change on Form CD-516A and provide a copy to the employee. (This documentation may also serve as his/her response to the employee's comments.)

10. An employee may request a reconsideration of his/her rating by an official in a position higher than the approving official. Such reconsideration requests must be processed under the appropriate negotiated grievance procedure, if applicable. Otherwise they must be processed under the Department's Administrative grievance procedure.

11. Annual performance ratings of record must be approved by the operating unit official who manages the performance awards budget for the organization.

12. The summary rating given at the end of the annual appraisal period, or at the end of the extended appraisal period, in cases where the employee has not served in a covered position for at least 120 days of the appraisal period becomes the employee's rating of record. (See Section 6.03c)

b. If a covered employee has not served in his/her position of record for 120 days of the appraisal period, but has served in one other covered position (either a permanent position or on detail) for which an interim rating was prepared that interim rating will become the employee's rating of record for the appraisal cycle. If the employee has two interim ratings for the appraisal period, add the two interim scores together and divide by two to obtain the average score. Translate the average score

into the appropriate adjective rating. The time remaining in the appraisal period will be included in the new appraisal period. Thus when an employee changes positions in the last 119 days of the appraisal period, the effective date of the change of position also serves as the beginning date of the employee's new appraisal period.

c. Employees who are serving in covered positions on the last day of the appraisal period, but who are unratable because they have not served for at least 120 days during the appraisal period in a covered position must be given an annual rating of record in accordance with the provisions of paragraph .03a. above as soon as they have served for the minimum period. An employee may be unratable because of entry into a covered position within the last 119 days of the appraisal period; time in a non-pay status; long-term training; service on a Federally-sponsored program such as an Intergovernmental Personnel Act or President's Executive Exchange assignment for which appraisal information is not available; the employee's supervisor leaving the agency where no other higher level supervisor can reasonably appraise the employee's performance; service on detail to another Federal agency for which performance appraisal information is not available; or approved absence creditable under 5 CFR 531.406.

d. The current ratings of record of employees who are unratable on the last day of the appraisal period are extended if they are not then working in a covered position which can provide the basis for appraisal (e.g., they are continuing on long-term training) and are not expected to return to such a position within 120 days. If these employees have no ratings of record, they are treated as though Fully Successful.

e. Interim Summary Ratings.

1. When an employee who has served in a covered position for 120 days or more in the appraisal period changes to another covered position within the Department, an interim rating must be completed by the employee's former supervisor and signed by the appropriate approving official. Interim ratings must also be completed when an employee completes a detail or temporary promotion within the Department of 120 days or more in a covered position. In such cases the rating must be based on the elements and standards established for the position the employee is leaving. Copies of the interim rating must be given to the employee, the gaining supervisor, and the servicing human resources office of the gaining organization.

2. When an employee transfers from Commerce to another Federal agency after serving in a covered position in Commerce for 120 days or more, the employee's supervisor and approving official must complete and interim rating. The interim rating

must be transferred with the employee's OPF to the gaining agency or department for consideration in the employee's next rating of record.

3. Interim ratings are not ratings of record for reduction in force or other purposes, except where indicated in this document.

f. The following summary performance ratings and no other ratings constitute ratings of record:

1. The annual performance appraisal rating provided for in .03a. of this Section;

2. An improved rating given following an opportunity to demonstrate acceptable performance as provided in 5 CFR 351.504(e)(1);

3. A rating given in connection with a within-grade increase determination as to acceptable level of competence that is inconsistent with the employee's current rating of record or when the employee does not have a rating of record as recent as the completion of the latest performance appraisal cycle, as provide for in paragraph 7.02 of this document;

4. A rating based on an appraisal period following the delay of a within-grade increase determination as provided by 5 CFR 531.409(c); and

5. A rating given after the minimum appraisal period when an employee is unratable at the end of the appraisal cycle, as provided for in .03c. of this Section.

No other summary rating given to an employee of the Department constitutes a rating of record.

g. When an employee is rated below the Fully Successful level, the rating official must attempt to help the employee to improve his/her performance. Assistance may include, but is not limited to formal training, on-the-job training, counseling, and closer supervision.

h. As provided in Executive Order 5396, the performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment.

i. The Department does not prescribe a distribution of ratings and does not permit a distribution to be prescribed. The Department assures that only employees whose performance exceeds normal expectations are rated at levels above Fully Successful by the approving officials' review, by sampling of plans and ratings

by the servicing human resources office, by Departmental PME reviews, and by other reviews as required by regulation.

SECTION 7. RELATIONSHIP OF PERFORMANCE APPRAISAL TO OTHER PERSONNEL ACTIONS.

Performance appraisal results must be used as a basis for making personnel decisions on training, rewarding, reassigning, promoting, reducing in grade, retaining and removing employees, and granting within-grade increases.

.01 Awards.

a. Performance awards, when granted, must be based on an employee's performance rating of record for the appraisal period for which the award is granted.

b. A quality step increase (QSI) may be granted only to an employee who receives an Outstanding summary performance rating. As provided by 5 U.S.C. 5336, a QSI may not be granted to an employee who has received one within the preceding 52 calendar weeks. QSI's should be made effective as soon as possible after the annual performance appraisal is finally approved.

c. The Performance Awards component of the Department's Performance Management Plan describes the procedures for making award determinations and for funding awards, and the uses of performance awards.

d. DAO 202-451, "Incentive Awards," and related Personnel Bulletins provide detailed policy guidance for all types of awards.

.02 Within-grade Increases.

a. Federal Wage System. An employee who is otherwise eligible receives a within-grade increase if his or her performance is satisfactory or above, as provided in 5 U.S.C. 5343; i.e., the employee's most recent rating of record is Fully Successful or above.

b. General Schedule. An employee who is otherwise eligible receives a within-grade increase when hi or her performance is at an acceptable level of competence. This means that an employee's most recent performance rating is at least Fully Successful and that during the period of time since that rating the employee has continued to perform his or her responsibilities in a manner warranting an increase in basic pay. When an acceptable level of competence determination is not consistent with the employee's last performance rating of record or when an employee does not have a rating of record as recent as

the completion of the latest performance appraisal cycle (as specified under 5 CFR 531.404), an additional and more current performance rating must be prepared, which becomes the rating of record for purposes of granting or dying the within-grade increase only.

.03 Promotion Actions.

a. Competitive Promotions. Selecting officials must give due weight to the performance appraisals of job applicants in making selection decisions under the Merit Assignment Program.

b. Career Ladder Promotions. To receive a career ladder promotion, an employee's most recent performance rating of record must be Fully Successful or higher.

.04 Probationary Periods.

a. Initial Appointments. Supervisors of probationary employees serving initial appointments must determine if the probationers' performance, conduct, and general traits of character warrant retention in their positions beyond the probationary period. Supervisors must evaluate probationers' performance with reference to the critical elements and standards of their positions.

b. Initial Appointments to Supervisory Positions. Performance requirements for probationary supervisors should be set according to DAO 202-430, "Performance Appraisal," and documented on Form CD-516, "Classification and Performance Management Record." An evaluation of Fully Successful or higher on all critical elements of the performance plan is required for retention in the supervisory position beyond the probationary period. (See also DAO 202-412, "Supervisory and Management Development.")

.05 Actions Based on Unacceptable Performance.

a. An employee whose performance is unacceptable must be reassigned, removed, or changed to a lower grade.

b. An action based on unacceptable performance may be taken at any time, either during or at the end of the appraisal cycle, provided the requirements of paragraph 7.05.c. are met.

c. Except for the exclusions stated in Section 2 of DAO 202-432, "Reduction in Grade and Removal Based on Unacceptable Performance," before an employee may be removed or demoted for unacceptable performance under the provisions of Title 5, Chapter 43, the employee is entitled to:

1. Be informed in writing of the critical element(s) on which

his or her performance is deficient;

2. Be assisted to improve his or her performance to an acceptable level; and

3. Be given the opportunity to demonstrate acceptable performance; as follows:

a. An employee whose performance is unacceptable must be notified in writing that his or her performance is unacceptable, and that the opportunity to improve is being given. The written notice must also inform the employee of the critical elements on which performance is unacceptable and the performance standards required for retention. (This may be done simply by reference to the performance standards in the performance appraisal plan; or by defining a more specific set of tasks to be completed during the opportunity period, with specific standards of timeliness, quantity, or quality, etc. Such standards must be consistent with, i.e., not more stringent than the more generic standards stated in the plan.) This formal notice recorded in writing should be preceded by some informal, oral feedback to the employee about his or her unacceptable performance. However, an oral warning preceding the written one is not required by this Plan.

b. When the employee is notified in writing of his or her unacceptable performance, the clock starts on the reasonable time granted to demonstrate acceptable performance, unless a later date is specified in writing. Neither the law nor regulation specifies what that period of time must be. It depends on the nature of the job, the level of the position, and the consequences of unacceptable performance. In any case, the period of time allowed must be commensurate with the requirements of the position. The notice need not specify an exact period (for example, 60 days). However, it is a good practice to specify a minimum period to display improvement; e.g., not less than 30 days.

c. Although OPM regulations require only that the job element(s) on which performance has been unacceptable and the performance standards for retention in the job be identified at the outset of the opportunity to improve, managers may increase the efficacy of these warnings and meet (at least in part) their obligation to assist the employee to improve, by including the following in their notices:

(1) Specific examples, arranged by performance element, of past incidents (within the last year) of unacceptable performance;

(2) Where relevant, a description of the negative consequences of the performance deficiencies;

(3) A suggestion of steps the employee may take which would be expected to lead to improve performance, e.g., better work organization, time management, more thorough proofreading, more follow-up;

(4) A statement of the steps the agency intends to take (or to offer) to assist the employee to improve, e.g., to sponsor training, offer counseling or personal assistance, or monitor work more closely; and

(5) An explicit statement of the possible consequence of failure to improve within a reasonable period of time, i.e., removal, demotion, or reassignment.

d. Reduction in Grade or Removal Based on Unacceptable Performance. If an employee's performance is unacceptable during the opportunity period, the employee must be reassigned, reduced in grade, or removed. Except for the exclusions stated in Section 2 of DAO 202-432 an employee who is being reduced in grade or removed under the provisions of Title 5, Chapter 43 is entitled to the following before being removed or reduced in grade: (1) a 30-day advance written notice of the proposed action identifying specific instances of unacceptable performance and the critical elements on which performance is unacceptable; (2) at least seven calendar days to respond to the notice orally and/or in writing and to furnish affidavits in support of the reply; (3) to be represented; and (4) to receive a written decision specifying the reasons for the action taken. The decision must have the concurrence of an official at a higher level in the organization than the one who prepared the action.

.06 Performance at the Marginal Level (Level 2).

a. Continued performance at the Marginal level by an employee jeopardizes the attainment of organizational goals and must be corrected.

b. An employee whose performance is Marginal must be notified in writing that his/her performance is deficient. The employee and his/her supervisor must develop a written plan within 30 days detailing the actions each will take to attempt to bring the employee's performance to the Fully Successful (or above) level. The plan must include bimonthly (one every two months) progress reviews that are fully documented as to the employee's progress. The plan must be continued until the employee's performance improves to Fully Successful (and is documented as such in a formal progress review) or he/she is rated Unacceptable.

c. An employee whose performance is Marginal may be reassigned.

.07 Reduction in Force.

a. For RIF purposes, ratings considered ratings of record are: (1) the rating given at the end of the appraisal period (normally on an annual basis); (2) the rating given at the end of an extended appraisal period (extended because the employee did not serve 120 days in his/her current position); (3) the improved rating following an opportunity to demonstrate acceptable performance as provided in 5 U.S.C. 4302(b)(6).

b. An employee must not be assigned a new rating of record for the sole purpose of affecting his/her RIF retention standing.

SECTION 8. TRAINING AND INFORMATION.

.01 Servicing human resources offices are responsible for communicating the purposes and procedures of the General Workforce Performance Appraisal System by establishing appropriate training and orientation programs. These programs must emphasize performance plan development, supervisory/management responsibility for carrying out the program, and the linkage between performance ratings and employee recognition and other personnel decisions.

.02 Information on changes in the operation of the General Workforce Performance Appraisal System is conveyed to Department management and affected employees through Office of Human Resources Management issuances and newsletters.

SECTION 9. EVALUATION OF THE SYSTEM.

.01 The Office of Human Resources Management assesses the effectiveness of the General Workforce Performance Appraisal System in the Department of Commerce through its ongoing Personnel Management Evaluation Program. Commerce organizations are evaluated on their technical compliance with laws, Office of Personnel Management regulations, and Department policy. Evaluations focus on the adequacy of performance plans and rating as well as on each organization's performance rating distribution as related to its accomplishments as reflected in the Department's Management by Objectives Program.

.02 Operating units and Departmental Offices are encouraged to establish internal evaluation systems to assess how well the General Workforce Performance Appraisal System is working in their organizations.

SECTION 10. RECORD KEEPING.

.01 Performance appraisal records and related documents will be maintained in accordance with the provisions of this document,

the Privacy Act, Freedom of Information Act, other legislative and regulatory requirements, and negotiated agreements.

.02 Performance ratings of record and the performance plans on which those ratings were based must be retained for four years.

.03 Performance records that are superseded, e.g., through an administrative or judicial procedure, must be destroyed.

.04 Except were prohibited by law, automated records may be retained longer than four years for purposes of statistical analysis as long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

.05 When an employee transfers from on operating unit into another also within the Department, or to another Federal agency, the following performance records must be transferred with the employee's OPF: (1) performance ratings of record that are four years old or less; (2) the plan on which the most recent rating of record is bases; and (3) the interim rating prepared when the employee changes positions.

.06 Disclosure of performance-related information must be made only as permitted by the Privacy act.

SECTION 11. DEFINITIONS.

Acceptable Performance is performance that meets an employee's performance standards at the level of performance above Level 1 (Unacceptable or equivalent), i.e., Level 2 in the critical element at issue on a five-level rating scale, Level 3 on a three-level scale.

Agency is the Department of Commerce.

Appointing Authority is a Secretarial Officer or the head of a primary operating unit or an official so designated by the Secretary of Commerce.

Appraisal is the act of process of evaluating the performance of an employee against the prescribed performance standard(s).

Appraisal Period means the period of time established by the Department's General Workforce Performance Appraisal System for which an employee's performance will be reviewed.

Approving Official is normally the supervisor who assigns, controls, and is responsible for the work of the rating official, usually the rating official's immediate supervisor. However, operating units or Departmental offices may designate a higher

level official in the management chain as the approving official provided this designation does not conflict with any other provision of this document. The approving official is responsible for assigning the final performance rating.

Critical Element is a component of an employee's position consisting of one or more duties and responsibilities, which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position

Fully Successful is Level 3 of an element rating scale and reflects good, sound performance, i.e., the expected level of performance.

Generic Performance Elements are performance elements which apply to a group of employees in an organization.

Generic Performance Standards (GPS) are performance standards which define work behaviors or activities which, if engaged in by employees, lead to a certain level of quality in products or services. The GPS are written so that they may apply universally to large groups of employees.

Interim rating is a summary rating developed during a rating cycle to document the performance of an employee who is changing positions (if the employee served in the position for 120 days or more) or completing a detail or temporary promotion of 120 days or more. The interim rating, except where stipulated in this document, is not a rating of record but is factored into the final summary assigned the employee at the end of the rating cycle. The interim rating is completed on Form CD-516, "Classification and Performance Management Record," by the losing supervisor, signed by the losing approving official, and forwarded to the gaining supervisor. A copy is also given to the employee. Form CD-516C, "Final Performance Rating Using Interim Ratings," should be used to assign the final summary rating when interim ratings must be considered.

Major Activity is a task, duty, or project which needs to be accomplished in support of a critical element.

Non-critical Element is a component of an employee's job which does not meet the definition of a critical element, but is sufficiently important to warrant written appraisal.

Opportunity to Demonstrate Acceptable Performance is a reasonable chance for the employee whose performance has been determined to be at Level 1 in one or more critical elements to demonstrate performance at the level above Level 1.

Performance is an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

Performance Award is a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

Performance Management is the systematic process by which the Department integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in accomplishment of Department mission and goals.

Performance Plans are documents that define the critical (and non-critical) elements against which a covered employee's performance will be appraised and establish performance standards for those elements.

Performance Standards are statements of the expectations or requirements established by management for a critical (or non-critical) element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Pre-appraisal Meeting is a meeting with the rating official scheduled at the option of the employee prior to the formal appraisal meeting. At the pre-appraisal meeting the employee can: (1) present an assessment of his or her own performance during the appraisal period; (2) cover aspects of his or her work of which the rating official may not be aware; and (3) identify objectives he or she would like to include in the next cycle's performance plan.

Progress Review is a formal meeting between the rating official and employee at which the employee's progress toward meeting the objectives in his or her performance plan is discussed. The need for any changes to the plan may also be discussed at this meeting as well as any performance deficiencies the supervisor has noted along with recommendations for improving them.

Rating (also referred to as "summary rating") is the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level.

Rating Official is the person responsible for informing the covered employee of the critical elements of his/her position, establishing performance standards for those elements, appraising performance and assigning the recommended performance rating. Normally, this is the employee's immediate supervisor.

Rating of Record is the summary rating, under 5 U.S.C. 4302, required at the time specified in the Department's General Workforce Performance Appraisal System or at other times specified for special circumstances.

Unacceptable is Level 1 of the rating scale. It reflects unacceptable performance in accordance with 5 U.S.C. 4301(3).

APPENDIX A
GENERIC PERFORMANCE STANDARDS

INSTRUCTIONS

The generic performance standards (GPS) are the primary basis for assigning element ratings in the Department of Commerce. The GPS are to be applied to each critical (and non-critical) element in the performance plan (Summary ratings are assigned by using a point scale after each element has been rated).

When evaluating an element the rater should

1 Read carefully each performance standard level beginning with the fully successful one (it is considered the base level standard)
2 Determine which level best describes the employee's performance on the element (Each and every criterion in the standards does not have to be met by the employee in absolute terms for the rater to assign a particular rating level. The sum of the employee's performance of the element must in the rater's judgement, meet the assigned level's criteria)
3 Provide in writing, on the appraisal form, specific examples of accomplishments which support the assigned rating level.

Element ratings of fully successful do not require full written documentation unless the employee requests it. To assign a fully successful element rating, the rating official need only documents in writing that (1) the fully successful standards were met, and (2) that the rating was discussed in detail with the employee

Occasionally, when rating some elements, a rating official may determine that an employee's performance on an element was not consistent. For example, the employee may have performed at the commendable level on several major activities within a critical element and at the marginal level on several others. In such a case, the rating official must consider the overall effect of the employee's work on the element and make a judgement as to the appropriate rating level she/she will assign. The rationale for the decision must be documented on the rating form citing specific accomplishments which support the decision.

Any additional standards that are included in the performance plan must also be considered by the rating official. Such standards are included in performance plans to supplement the GPS, no supplant them. Rating officials should consider such standards within the context of the GPS and rate elements accordingly.

OUTSTANDING

SES

This is a level of rare high quality performance. The employee has performed so well that organzational goals have been achieved that would not have been otherwise. The employee's mastery of technical skills and thorough understanding of the mission have been fundamental to the completion of program objectives.

The employee has exerted a major positive influence on management practices, operating procedures and program implementation which has contributed substantially to organizational growth and recognition. Preparing for the unexpected, the employee has planned and used alternative ways of reaching goals. Difficult assignments have been managed intelligently and effectively. The employee has produced an exceptional quantity of work, often ahead of established schedules and with little supervision.

If writing or speaking, the employee presents complex ideas clearly in a wide range of difficult communications situations. Desired results are attained.

The employee also works well as a team member, supporting the group's efforts and showing an ability to handle a variety of interpersonal situa-

GENERAL WORK FORCE

This is a level of rare, high-quality performance. The quality of quantity of the employee's work substantially exceed fully successful standards and rarely leaves room for improvement. The impact of the employee's work is of such significance that organizational objectives were accomplished that otherwise would not have been. The accuracy and thoroughness of the employee's work on this element are exceptionally reliable. Application of technical knowledge and skills goes beyond that expected for the position. The employee signifcantly improves the work processes and products for which he or she is responsible. Thoughful adherence to procedures and formats as well as suggestions for improvement in these areas increase the employee's usfulness.

This person plans so that work follows the most logical and practical sequence. Inefficient backtracking is avoided. He or she develops contingency plans to handle potential problems and adapts quickly to new priorities and changes in procedures and programs without losing sight of the longer-term purposes of the work. These strengths in planning and adaptability result in early or timely completion of work under all but the most extraordinary circumstances. Exceptions occur only when delays could not have been anticipated. The employee's planning skills result in cost-savings to the government.

In meeting element objectives, the employee handles interpersonal relationships with exceptional sill, anticipating and avoiding potential causes of conflict and actively promoting cooperation with clients, co-workers and he or her supervisor.

The employee seeks additional work or special assignments related to this element at increasing levels of difficulty. The quality of such work is high and is done on time without disrupting regular work. Appropriate problems are brought to the supervisor's attention. Most problems are dealt with routinely and with exceptional skill.

The employee's oral and written expression are exceptionally clear and effective. They improve cooperation among participants in the work and prevent misunderstandings. Complicated or controversial subjects are presented or explained effectively to a variety of audiences so that desired outcomes are achieved.

SUPERVISORY*

The employee is a strong leader who works well with others and handles difficult situations with dignity and effectiveness. The employee encourages independence and risk-taking among subordinates, yet takes responsibility for their actions. Open to the views of others. The employee promotes cooperation among peers and subordinates while guiding, motivating, and stimulating positive responses. The employee's work performance demonstrates a strong commitment to fair treament, equal opportunity, and the affirmative action objectives of the organization.

COMMENDABLE

SES

This is a level of unusually good performance. It has exceeded expectations in critical areas and shows sustained support of organizational goals. The employee has shown a comprehensive understanding of the objectives of the job and the procedures for meeting them.

The effective planning of the employee has improved the quality of management practices op-

erating procedures, task assignments, or program activities. The employee has developed or implemented workable and cost-effective approaches to meeting organizational goals.

The employee has demonstrated an ability to get the job done well inmore than one way while handling difficult and unpredicted problems. The employee produces a high quantity of work often ahead of established schedules with less than normal supervision.

The employee writes and speaks clearly on difficult subjects to a wide range of audiences.

GENERAL WORK FORCE

This is a level of unusually good performance. The quantity and quality of work under this element are consistently above average. Work products rarely require even minor revision. Thoroughness and accuracy of work are reliable. The knowledge and skill the employee applies to this element are clearly above average demonstrating problem-solving skill and insight into work methods and techniques. The employee follows required procedures and supervisory guidance so as to take full advantage of existing systems for accomplishing the organization's objectives.

The employee plans the work under this element so as to proceed in an efficient, orderly sequence that rarely requires backtracking and consequently leads to completion of the work by established deadlines. He or she uses ontingency planning to anticipate and prevent problems and delays. Exceptions occur when delays have auses outside the employee's work planning.

The employee works effectively on this element with co-workers, clients, as appropriate, and his other supervisory, creating a highly successful cooperative effort. He or she seeks out additional work or special assignments that enhance accomplishment of this element and pursues them to successful conclusion without discrupting regular work Problems which surface aredealth with supervisory intervention to correct problems occurs rarely.

The oral and written expression applied to this element are noteworthy for their clarity and effectiveness leading to improved understanding of the work by other employees and clients of the organization. Work products are generally given sympathetic consideration because they are well-presented.

SUPERVISORY*

The employee is a good leader. Establishes sound working relationships and shows goodjudgement in dealing with subordinates considering their views. He/she provides opportunties for staff to have a meaningful role in accomplishing organizational objectives and makes special efforts to improve each subordinate's performance.

FULLY SUCCESSFUL

SES

This is the level of good, sound performance. The employee has contributed positively to organizational goals. All critical element activities that could be completed are. The employee effectively applies technical skills and organization knowledge to get the job done.

The employee successfully carries out regular duties while also handling any difficult special assignments. The employee plans and performswork according to organizational priorities and schedules.

personnel. When needed as input into another work process the work may not be finished with such quality. Quantity and timeliness that other

productivity or morale, or organizational effectiveness. The marginal employee does not provide strong leadership or take the appropriate initiative

tions.

The employee communicates clearly and effectively.

All employees at this level and above have followed a management system by which work is planned, tasks are assigned, and deadlines are met.

GENERAL WORK FORCE

This is the level of good, sound performance. The quality and quantity of the employee's work under this element are those of a fully competent employee. The performance represents a level of accomplishment expected of the great majority of employees. The employee's work products fully meet the requirements of this element. Major revisions are rarely necessary, most work requires only minor revision. Tasks are completed in an accurate, thorough, and timely way. The employee's technical skills and knowledge are applied effectively to specific job tasks in completing work assignments. He or she adheres to procedures and format requirements and follows necessary instructions from supervisors.

The employee's work planning is realistic and results in comp of work by established deadlines. Priorities are duly considered in planning and performing assigned responsibilities. Work reflects a consideration of costs to the government, when possible.

In accomplishing element objectives, the employee's interpersonal behavior toward supervisors, co-workers, and user's promotes attainment of work objectives and poses no significant problems.

The employee completes special assignments so their form and content are acceptable and regular duties are not disrupted. The employee performs additional work as his/hr workload permits. Routine problems associated with completing assignments are resolved with a minimum of supervision.

The employee speaks and writes clearly and effectively.

SUPERVISORY*

The employee is a capable leader who works successfully with others and listens to suggestions.

The employee rewards good performance and corrects poor performance through sound use of performance appraisal systems, performance-based incentives, and when needed, adverse actions and slects and assigns employees in ways that use their skills effectively.

The employee's work performance shows a commitment to fair treatment, equal opportunity, and the affirmative action objectives of the organization.

MARGINAL

SES

This level of performance, while demonstrating some positive contributions to the organization, shows notable deficiencies. It is below the level expected for the position and requires corrective action. The quality, quantity, or timeliness of the employee's work is less than Fully Successful, jeopardizing attainment of the element's objective. The employee's work under this element is at a level which may result in removal from the position.

There is much in the employee's performance that is useful. However, problems with quality, quantity, or timeliness are too frequent or too serious to ignore. Performance is inconsistent and problems caused by deficiencies counterbalance acceptable work. These deficiencies cannot be overlooked since they create adverse consequences for the organization or create burdens for other work can proceed as planned.

Although the work products are generally of useable quality , too often they require additional work by other personnel. The work products do not consistently and/or fully meet the organization's needs. Although mistakes may be without immediate serious consequences, over time they are detrimental to the organization.

A fair amount of work is accomplished, but the quantity does not represent what is expected of Fully Successful employees. Output is not sustained consistently and/or higher levels of output usually result in a decrease in quality. The work generally is finished within expected timeframes but significant deadlines too often are not met.

The employee's written and oral communications usually consider the nature and complexity of the subject and the intended audience. They convey the central points of information important to accomplishing the work. However, too often the communications are not focused, contain too much or too little information, and/or are conveyed in a tone that hinders achievement of the purpose of the communications. The listener or reader must question the employee at times to secure complete information or avoid misunderstandings.

GENERAL WORK FORCE

This level of performance, while demonstrating some positive contributions to the organization, shows notable deficiencies. It is below the level expected for the position, and requires corrective action. The quality, quantity, or timeliness of the employee's work is less than Fully Successful, jeopardizing attainment of the element's objective.

There is much in the employee's performance that is useful. However, problems with quality, quantity, or timeliness are too frequent or too serious to ignore. Performance is inconsistent and problems caused by deficiencies counterbalance acceptable work. These deficiencies cannot be overlooked since they create adverse consequences for the organization or create burdens for other personnel. When needed as input into another work process, the work may not be finished with such quality, quantity, and timeliness that other work can proceed as planned.

Although the work products are generally of useable quality, too often they require additional work by other personnel. The work products do not consistently and/or fully meet the organization's needs. Although mistakes may be without immediate serious consequences, over time, they are detrimental to the organization.

A fair amount of work is accomplished but the quantity does not represent what is expected of Fully Successful. Employee's Output is not sustained consistently, and/or higher levels of output usually result in a decrease of quality. The work generally is finished within expected timeliness but significant deadlines too often are not met.

The employee's written communication usually considers the nature and complexity of the subject and the intended audience. It conveys the central points of information important to accomplishing the work. However, too often the communication is not focused, contains too much or too little information, and/or is conveyed in a tone that hinders achievement of the purposes of the communication In communication to co-workers, the listener must question the employee at times to secure complete information or avoid misunderstandings.

SUPERVISORY*

Inadequacies surface in performing supervisory duties. Deficiencies in areas of supervision over an extended period of time affect adversely employee to improve organizational effectiveness. For example he/she too often fails to make decisions or fulfill supervisory responsibilities in a timely manner to provide sufficient direction to subordinates on how to carry out program, to give clear assignments, and/or performance requirements, and/or to show an understanding of the goal's of the organization or subordinates' roles in meeting those goals.

UNSATISFACTORY

SES

This is the level of unacceptable performance. Work products do not meet the minimum requirements of the critical element.

Most of the following deficiencies are typically, but not always characteristic of the employee's work:

- -Little or no contribution to organizational goals;
- -Failure to meet work objectives;
- -Inattention to organizational priorities and administrative requirements;
- -Poor work habits resulting in missed deadlines, incomplete work products;
- -Strained work relationships;
- -Failure to respond to client needs; and/or
- -Lack of response to supervisor's corrective efforts.

GENERAL WORK FORCE

The quantity and quality of the employee's work under this element are not adequate for the position. The employee's work products fall short of requirements of the element. They arrive late or often require major revision because they are incomplete or inaccurate in content. The employee fails to apply adequate technical knowledge to complete the work of this element. Either the knowledge applied cannot produce the needed products, or it produces technically inadequate products or results. Lack of adherence to required procedures, instructions, and formats contributes to inadequate work products.

Because the employee's work planning lacks logic or realism, critical work remains incomplete or is unacceptably late. Lack of attention to priorities causes delays or inadequacies in essential work, the employee has concentrated on incidental matters.

The employee's behavior obstructs the successful completion of the work by lack of cooperation with clients, supervisor, and/or co-workers or by loss of credibility due to irresponsible speech or work activity.

In dealing with special projects, the employee either sacrifices essential regular work or fails to complete the projects. The employee fails to adapt to changes in priorities, procedures, or program direction and therefore, cannot operate adequately in relation to changing requirements.

The oral and written expression the employee uses in accomplishing the work of this element lacks the necessary clarity for successful completion of required tasks. Communication failures interfere with completion of work.

SUPERVISORY*

Most of the following deficiencies are typically, but not always common characteristics of the employee's work:

- -Inadequate guidance to subordinates;
- -Inattention to work progress; and
- -Failure to stimulate subordinates to meet goals.

* Supervisory standards must be applied to SES and General Work Force supervisors.

APPENDIX C

Operating Unit Appraisal Cycles

Following are the Appraisal cycles of Department of Commerce operating units.

October 1 - September 30:

All operating units except Office of Inspector General.

June 1 - May 31:

Office of Inspector General.

November 1 - October 31:

NOAA Wage Marine Employees.

APPENDIX D

1st DOCUMENT of Level 1 printed in FULL format.

UNITED STATES CODE SERVICE
ADVANCE LEGISLATIVE SERVICE

Public Law 101-376

101st Congress

[H.R. 3086]

101 P.L. 376; 1990 H.R. 3086; 104 Stat. 461

SYNOPSIS:

An Act

To amend title 5, United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel action, and for other purposes.

AUG. 17, 1990 -- PUBLIC LAW 101-376

TEXT:
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

[*1]
SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Service Due Process Amendments".

[*2]
SEC.2. EXCEPTED SERVICE APPEAL RIGHTS.

(a) IN GENERAL. -- Section 7511 of title 5, United States Code, is amended to read as follows:
"@ 7511. Definitions; application
"(a) For the purpose of this subchapter --
"(1) 'employee' means --
"(A) an individual in the competitive service --
"(i) who is not serving a probationary or trail period under an initial appointment; or
"(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
"(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions --
"(i) in an Executive agency; or
"(ii) in the United States Postal Service or Postal Rate Commission; and
"(C) an individual in the excepted service (other than a preference eligible) --
"(i) who is not servicing a probationary or trail period under an initial appointment pending conversion to the competitive service; or
"(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary

appointment limited to 2 years or less;
"(2) 'suspension' has the same meaning as set forth in section 7501(2) of this title;
"(3) 'grade' means a level of classification under a position classification system;
"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and
"(5) ' furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subhcapter does not apply to an employee --
"(1) whose appointment is made by and with the advice and consent of the Senates
"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by --
"(A) the President for a position that the President has excepted from the competitive service;
"(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or
"(C) the President or the head o fan agency for a position excepted from the competitive service by statute;
"(3) whose appointment is made by the President;
"(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;
"(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;
"(6) who is a member if the Foreign Service, as described in section 103 of the Foreign Service Action of 1980;
"(7) whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;
"(8) whose position is within the United States Postal Service, the Postal rate Commission, the Panama Canal Commission, The Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the, Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or
"(9) who is described in section 5102(c)(11) of this title.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.".

(b) ACTIONS BASED ON UNACCEPTABLE PERFORMANCE. --Section 4303(e) of title 5, United States Code, is amended to read as follows:

"(e) Any employee who is --
"(1) a preference eligible;
"(2) in the competitive service; or
"(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to

appeal the action to the Merit Systems Protection Board under section 7701.".

(c) APPLICABILITY. -- The amendments made by this section shall apply with respect to any personnel action taking effect on or after the effective date of this Act.

[*3]
SEC. 3. ANNUITANT STATUS NOT A BAR TO APPEALING ONE'S REMOVAL.

Section 7701 of title 5, United States Code, is amended --
(1) by redesignating subsection (j) as subsection (k); and
(2) by inserting after subsection (i) the following:

"(j) In determining the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.".

[*4]
SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of the enactment of this Act, and, except as provided in section 2(c), shall apply with respect to any appeal or other proceeding brought on or after such date.
Speaker of the House of Representatives.
Vice President of the United States and President of the Senate.

21ST ITEM of Level 1 printed in FULL format.

Congressional Record – House

Monday, November 6, 1989

101st Cong. 1st Sess.

135 Cong Rec H 8001

REFERENCE: Vol. 135 No. 154

TITLE: CIVIL SERVICE DUE PROCESS AMENDMENTS

SPEAKER: MR. GILMAN; Mrs. MORELLA; MRS. SCHROEDER; Mr. SIKORSKI

TEXT:

Text that appears in UPPER CASE identified statements or insertions which are not spoken by a Member of the House on the floor.

[*H8001] Mr. SIKORSKI. Mr. Speaker, I move to suspend the rule and pass the bill (H.R. 3086) to amend title 5, United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel actions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3086

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Service Due Process Amendments".

SEC. 2. EXCEPTED SERVICE APPEAL RIGHTS.

(a)In General. – Section 7511 of title 5, United States Code, is amended to read as follows:

@ 7511. Definitions; application

"(a) For the purpose of this subchapter –

"(1) 'employee' means –

"(A) An individual in the competitive service –

"(i) who is not serving a probationary or trail period under an initial appointment; or

"(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

"(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions --

"(i) in an Executive agency; or

"(ii) in the United States Postal Service or the Postal Rate Commission; and

"(C) an individual in the expected service (other than a preference eligible) who has completed 1 year of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 1 year or less;

"(2) 'suspension' has the same meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee --

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by --

"(A) the President for a position that the President has excepted from the competitive service;

"(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

"(C) the President or the head of an agency for a position excepted from the competitive service by statute;

[*H8002] "(3) whose appointment is made by the President;

"(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

"(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

"(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

"(7) whose position is within the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

"(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, or the National Security Agency, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

"(9) who is described in section 5102(c)(11) of this title.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.".

(b) Actions Based on Unacceptable Performance. -- Section 4303(e) of title 5, United States Code, is amended by striking "who is a preference eligible or is in the competitive service and".

(c) Applicability. -- The amendments made by this section shall apply with respect to any personnel action taking effect on or after the effective date of this Act.

SEC. 3. ANNUITANT STATUS NOT A BAR TO APPEALING ONE'S REMOVAL.

Section 7701 of title 5, United States Code, is amended --

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

"(j) In determiningg the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.".

SEC. 4. LOCATION OF MSPB HEARINGS.

Section 1204(e)(1) of title 5, United States Code, is amended by adding at the end of the following:

"(c) Whenever it considers alternative places for conducting a hearing or other proceeding brought by or on behalf of an employee, former employee, or applicant for employment, the Board shall, to the extent practicable, select the place closest to the location of the position held, formerly held, or sought by the individual involved, unless the total administrative costs to the Government in conducting such proceeding would be lesser elsewhere.".

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act, and, except as provided in section2(c), shall apply with respect to any appeal or other proceeding brought on or after such date.

The SPEAKER pro tempore. Is a second demanded?

135 Cong Rec H 8001, *H8002

Mrs. MORELLA. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota (Mr. Sikorski) will be recognized for 20 minutes, and the gentlewoman from Maryland (Mrs. Morella) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. Sikorski).

GENERAL LEAVE

Mr. SIKORSKI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on H.R. 3086, the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. SIKORSKI. Mr. Speaker, I yield myself such time as I may continue.

Mr. Speaker, H.R. 3086 extends administrative due process rights to certain Federal employees in the excepted service. Who are these so-called excepted service employees? Most Federal employees are "competitive service" hired only after examination and ranking by the Office of Personnel Management. Others, however, are "excepted" from the competitive service either because there is no practical way to test peoople entering these positions or because certain occupations already require a minimum proficiency as a prerequisite to licensing. Examples of excepted service employees include attorneys, teachers, chaplains, scientists, and other specialists. There are between a quarter and a half million of the excepted service civil servants working for us.

The fact that an employee is not in the competitive services does not mean that the employee did not go through extensive competition. Any attorney who has tried to get a job at the Department of Justice will tell you hiring is extremely competitive. And it certainly shouldn't mean that public employees should be fired at whim and without recourse.

Nor can employees in excepted service positions be fired without notice. The requirements of constitutional due process and numerous agency grievance procedures usually require that excepted service employees be given notice and the opportunity to defend themselves before removal.

The key difference between the protections available to competitive service employees and veterans preference employees, on the one hand, and non-veterans, excepted service employees, on the other, is the right to appeal an adverse action to the Merit Systems Protection Board for independent review. H.R. 2086 eliminates that difference.

As amended, H.R. 3086 extends procedural protections to most excepted service employees who have completed 1 year of service in an executive agency, but specifically excludes the following groups; First, Presidential appointees; second, certain reemployed annuitants; third, National Guard technicians; fourth, members

of the Foreign Service; fifth, employees of the Central Intelligence Agency, The General Accounting Office, and the Veterans Health Services and Research Administration; sixth, employees, other than preference eligible, of the U.S. Postal Service, the Postal Rate Commission; and seventh, the Tennessee Valley Authority, the Federal Bureau of Investigations, and the National Security Agency.

What rights are we talking about? Specifically, the procedural protections provided by this legislation are spelled out in chapters 43 and 75 of title 5, United States Code. They are no big deal -- unless you're on of the employees affected. In cases involving removal, suspension for more than 14 days, reductions in grade or pay, or furlough for 30 days or less, the employee must be given 30 days advance written notice of the proposed action, an opportunity to respond in writing, a written decision containing specific reasons for the adverse action or the specific instances of unacceptable performance, and an appeal to the Merit Systems Protection Board -- basic rights.

Why are we proposing this? Besides being the right and proper thing to do, last year's Supreme Court decision in United States versus Fausto makes this legislation all the more urgent. In that decision, the Supreme Court cutoff an alternative method of judicial review for excepted service employees, saying that Congress, In passing the Civil Service Reform Act of 1978, had intended to deprive excepted service employees, other than those who were veterans preference eligible, of the rights to challenge adverse actions. This bill explicitly provides those rights.

This bill simply provides that over a quarter million hard working Americans working for the Federal Government as loyal employees will be assured basic due process rights. They work right next to other civil servants, sometimes with the same title, same pay, same grade, on the same project, in the same office but without the same rights of notice and appeal if their boss comes down on them. That's not fair and that's why similar measures passed the House under suspension of the rules during both the 99th and 100th Congresses and I urge my colleagues to once again support this measure.

I would also like to commend Representatives Schroeder, Dymally, Horton, and Morella for their hard work on this legislation and a host of legislation affecting the civil servants who work for the taxpayers of America.

[*H8003] U.S. Congress,

Congressional Budget Office,
Washington, DC., November 6, 1989.

Hon. William D. Ford,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3086, the Civil Service Due Process Amendments, as ordered reported by the House Committee on Post Office and Civil Service, October 25, 1989. We estimate that

implementation of this bill would cost about $2 million annually, beginning in 1991, assuming appropriation of the necessary sums.

According to information for the Office of Personnel Management, the bill would increase by about 200,000 to 300,000 the number of Executive Branch employees eligible to appeal adverse actions to the Merit Systems Protection Board (MSPB). Under current law, most veterans' preference eligibles and employees in the competitive service can appeals adverse actions to the MSPB, which handles an

average of 4,500 initial appeals and petitions for review annually. Assuming the same proportion of excepted service employees would appeals to the MSPB as competitive service employees, enactment of this bill would require the MSPB to make an additional 500 to 900 decisions per year. The increased workload would result in addition costs of about $1 million in 1991, the first full year of implementation, gradually rising to about $1.1 million in 1994.

Extending appeal rights also would result in federal agencies having to ward back pay to excepted service personnel who are successful in their appeals. Based on experience with the appeals of Postal Service employees, we estimate that back pay for employees affected by this bill is likely to be about $1 million per year. Other costs associated with defending agencies' actions during MSPB appeals are not expected to be significant.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James Hearn, who can be reached at 226-2860.

Sincerely,
Robert D. Reischauer,
Director

Mr. Speaker, I reserve the balance of my time.

Mrs. MORELLA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3086, a bill to amend title 5 of the United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel actions, and for other purposes.

This is a bipartisan bill sponsored by members of the Post Office and Civil Service Committee and passed unanimously by the committee. I want to thank the sponsor of the bill and chairman of the Subcommittee on Civil Service, the gentleman from Minnesota [Mr. Sikorski] for his active role in the swift passage of the bill which will affect about 500,000 professional employees of the Federal government.

Mr. Speaker, presently, those who are in the excepted service, that is, those who are not in the competitive service -- such as attorneys, doctors, scientists, teachers, chaplains -- are not given the right to appeal adverse personnel actions. This bill would not be applicable to those enumerated in section 2 of the bill, such as political appointees, foreign service, and intelligence agency personnel. Appeal rights are given to those Federal employees in the competitive service. It is my firm belief that every employee

135 Cong Rec H 8001, *H8003

in the Federal Government should have the same protection.

Mr. Speaker, we are at a period when the Federal Government is finding it difficult to attract promising, top-flight employees because the private sector is able to compensate these men and woman at a much higher salary level. The very minimum we should be able to offer attorneys, doctors, scientists, chaplains, and others in the excepted service is a certain amount of fairness in appeal rights. Due process is one of our inalienable rights. Attorneys throughout our country plead due process even for the most heinous of criminals but our own attorneys in Federal Government cannot avail themselves of this right when it involves adverse action or assessment of their jobs.

I am pleased to have been one of the original cosponsors of this measure and I recommend unanimous passage of H.R. 3086.

MR. GILMAN. MR. SPEAKER, I RISE IN SUPPORT OF H.R. 3086 AND I COMMEND THE CHAIRMAN OF THE CIVIL SERVICE SUBCOMMITTEE, MR. SIKORSKI AND THE RANKING MINORITY MEMBER MRS. MORELLA FOR CRAFTING THIS IMPORTANT LEGISLATION. I ALSO WANT TO THANK THE CHAIRMAN OF THE FULL COMMITTEE, MR. FORD, FOR HELPING TO BRING THIS BILL TO THE FLOOR.

H.R. 3086 GRANTS APPEAL RIGHTS BASED ON ADVERSE ACTIONS AS WELL AS APPEAL AND PROCEDURAL RIGHTS FOR EXCEPTED SERVICE EMPLOYEES BEFORE THE MERIT SYSTEMS PROTECTION BOARD (MSPB) FOR ACTIONS BASED ON UNACCEPTABLE PERFORMANCE.

CURRENTLY, ONLY MEMBERS OF THE COMPETITIVE SERVICE AND PREFERENCE ELIGIBLE EMPLOYEES IN THE EXCEPTED SERVICE HAVE APPEAL RIGHTS. HOWEVER, SUCH GROUPS AS DOCTORS, TEACHERS, ATTORNEYS, CHAPLAINS, SCIENTISTS AND OTHERS DO NOT. H.R. 3086 CORRECTS THIS MISTAKE.

ACCORDINGLY, I URGE MY COLLEAGUES TO SUPPORT H.R. 3086.

MRS. SCHROEDER. MR. SPEADER, I WANT TO CONGRATULATE THE GENTLEMAN FROM MINNESOTA (M. SIKORSKI) FOR HIS HARD WORK ON H.R. 3086, THE CIVIL SERVICE DUE PROCESS AMENDMENTS. IN THE LAST 10 MONTHS NOT ONLY HAS HE GUIDED THIS BILL THROUGH CONGRESS, BUT HE ALSO ENGINEERED THE PASSAGE OF THE WHISTLEBLOWER PROTECTION ACT, THE HATCH ACT, AND MANY OTHER BILLS. SINCE BECOMING CHAIRMAN OF THE CIVIL SERVICE SUBCOMMITTEE, HE HAS PRESIDED OVER MORE HEARINGS THAN JUDGE WAPNER.

I ALSO WANT TO COMMEND THE GENTLEMAN FROM CALIFORNIA [MR. DYMALLY]. HE IS THE TRUE LEADER IN THE FIGHT TO GIVE EXCEPTED SERVICE EMPLOYEES THE RIGHT TO APPEAL ADVERSE ACTIONS. WE ARE PASSING THIS BILL TODAY BECAUSE OF HIS COMMITMENT TO FAIRNESS AND DUE PROCESS.

H.R. 3086 EXTENDS ADMINISTRATIVE NOTICE AND APPEAL RIGHTS TO EXCEPTED SERVICE EMPLOYEES. EXCEPTED SERVICE EMPLOYEES WORK BESIDE COMPETITIVE SERVICE EMPLOYEES BUT ARE DENIED DUE PROCESS RIGHTS BECAUSE THEY ARE HIRED THROUGH A DIFFERENT PROCESS.

H.R. 3086 GIVES EXCEPTED SERVICE EMPLOYEES -- ATTORNEYS, TEACHERS, SCIENTISTS, AND CHAPLAINS -- THE RIGHT TO APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD (MSPB) ADVERSE ACTIONS AND ADVERSE PERFORMANCE BASED APPRAISALS. THIS RIGHT IS ENJOYED BY MEMBERS OF THE COMPETITIVE SERVICE AND PREFERENCE ELIGIBLE EMPLOYEES.

135 Cong Rec H 8001, *H8003

WE PASSED THIS SAME MEASURE IN THE 99TH AND 100TH CONGRESS. EVERY YEAR WE GO THROUGH THIS AND EVER YEAR IT MAKES AS MUCH SENSE AS IT DID THE YEAR BEFORE THE EXTEND COVERAE TO EXCEPTED SERVICE EMPLOYEES. THIS RIGHT EXISTS FOR FEDERAL EMPLOYEES IN THE COMPETITIVE SERVICE AND THERE IS NO REASON WHY EXCEPTED SERVICE EMPLOYEES SHOULD BE EXCLUDED.

EXCEPTED SERVICE EMPLOYEES WORK ALONG-SIDE COMPETITIVE SERVICE EMPLOYEES, CONTRIBUTE TO THE SAME RETIREMENT SYSTEM, AND FACE THEY SAME INSECURITY WHEN THERE IS A REDUCTION IN FORCE. BUT THEY HAVE NO RECOURSE OR DUE PROCESS RIGHTS WHEN CHARGED WITH MISCONDUCT. IT IS TIME WE PROVIDE THEM WITH THIS NECESSARY PROTECTION. I URGE MY COLLEAGUES TO SUPPORT H.R. 3086, THE CIVIL SERVICE DUE PROCESS AMENDMENTS ACT OF 1989.

Mrs. MORELLA. Mr. Speaker, I yield back the balance of my time.

Mr. SIKORSKI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Jontz). The question is on the motion offered by the gentleman from Minnesota (Mr. Sikorski) that the House suspend the rules and pass the bill, H.R. 3086, as amended.

The question was taken, and (two-thirds having voted in favor therof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

14TH ITEM of Level 1 printed in FULL format.

Congressional Record – Senate

Monday, July 10, 1990;
(Legislative day of Tuesday, July 10, 1990

101st Cong. 2nd Sess.

136 Cong Rec S 11134

REFERENCE: Vol. 136 No. 100

TITLE: CIVIL SERVICE DUE PROCESS AMENDMENTS

SPEAKER: Mr. BOREN; Mr. DOLE; MR. PRYOR

TEXT:

[*S11134] Mr. BOREN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order 547, H.R. 3086, the civil service due process reform bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3086) to amend title 5, United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel actions, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with an amendment to strike all after the enacting [*S11135] clause, and insert I lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Service Due Process Amendments".

SEC. 2. EXCEPTED ERVICE APPEAL RIGHTS.

(a)In General. – Section 7511 of title 5, United States Code, is amended to read as follows:

@ 7511. Definitions; application

"(a) For the purpose of this subchapter –

"(1) ‘employee’ means –

"(A) An individual in the competitive service –

"(i) who is not serving a probationary or trail period under an initial appointment; or

"(ii) who has completed 2 year of current continuous service under other than a temporary appointment limited to 1 year or less;

"(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions --

"(i) in an Executive agency; or

"(ii) in the United States Postal Service or the Postal Rate Commission; and

"(C) an individual in the expected service (other than a preference eligible) --

"(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

"(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

"(2) 'suspension' has the same meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee --

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by --

"(A) the President for a position that the President has excepted from the competitive service;

"(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

"(C) the President or the head of an agency for a position excepted from the competitive service by statute;

"(3) whose appointment is made by the President;

"(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

"(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

"(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

"(7) whose position is within the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

"(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, or the National Security Agency, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

"(9) who is described in section 5102(c)(11) of this title.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.".

(b) Actions Based on Unacceptable Performance. -- Section 4303(e) of title 5, United States Code, is amended by striking "who is a preference eligible or is in the competitive service and".

(c) Applicability. -- The amendments made by this section shall apply with respect to any personnel action taking effect on or after the effective date of this Act.

SEC. 3. ANNUITANT STATUS NOT A BAR TO APPEALING ONE'S REMOVAL.

Section 7701 of title 5, United States Code, is amended --

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

"(j) In determiningg the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of enactment of this Act, and, except as provided in section2(c), shall apply with respect to any appeal or other proceeding brought on or after

such date.

AMENDMENT NO. 2436

(Purpose: To specify employees who may appeal certain personnel actions to the Merit Systems Protection Board.)

Mr. BOREN. Mr. President, on behalf of Senator Pryor, I send to the desk an amendment to the committee substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. BOREN], for Mr. Pryor, proposes and amendment numbered 2436.

Mr. BOREN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered

The amendment is as follows:

On page 10, strike out line 12 through 16 and insert in lieu thereof the following:

(b) Actions Based on Unacceptable Performance. -- Section 4303(e) of title 5, United States Code, is amended to read as follows:

"(e) Any employee who is --

"(1) a preference eligible:

"(2) in the competitive service; or

"(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.".

Mr. PRYOR. Mr. President, The bill, as amended, amends section 7511 of title 5, United States Code, to extend procedural protections to certain employees in the excepted service who have completed 2 years of current continuous service in an Executive agency. The bill covers such occupations as attorneys, physicians, teachers, chaplains, and scientists.

The procedural protections are as follows: in cases involving removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less, the employee must be given 30 days advance written notice of the proposed action, an opportunity to respond in writing, a written decision containing specific reasons for the adverse action or the specific instances of unacceptable performance and an appeal to the Merit Systems Protection Board (MSPB).

The Office of Personnel Management originally opposed H.R. 3086. However, after reviewing their position, OPM Proposed certain changes to the bill which would eliminate its objections. OPM recommended that there should be a 2-year waiting period before excepted service personnel would receive the procedural protections; that excepted service personnel in probationary or trail positions should not be eligible for the protection, and that the Panama Canal Commission, the Defense Intelligence Agency and other intelligence officers and employees of the military departments should be excluded from coverage from H.R. 3086.

The subcommittee has agreed to accept these suggestions. The 2-year waiting period excepted service personnel will ensure that the agency can fully judge an employee's performance and yet vest these employees with important job protections. The exclusion for probationary or trial positions is intended to address specific job situations. Presidential management interns and veterans readjustment appointees currently serve for a 2-year probationary period. Under H.R. 3086, for the 2 years those employees spend as excepted service, they will not be eligible for procedural protections. However, immediately upon their conversion to the competitive service, the employee will be eligible for appeal rights without having to wait another year. The probationary exclusion will cover situations such as students in certain cooperative education program. These students can serve in the excepted service for 4 years during their schooling. Again, if converted to the competitive service, appeals rights will be immediately available.

Excluding employees in the Panama Canal Commission and the Defense Intelligence Agency simply follow the pattern set out in the House-passed bill.

[*S11136] The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2436) was agreed to.

Mr. BOREN. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment to the proposed the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it Pass?

So the bill (H.R. 3086) was passed.

Mr. BOREN. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPENDIX E

STATEMENT OF WORK SCHEDULE ELECTION FOR FULL TIME EMPLOYEES

Employee Name: _____ Organization: _____

COMPRESSED

I elect to participate in the following Compressed Work Schedule Program and select the following day off:

☐ **Compressed 4/10 Plan**

- ☐ Monday
- ☐ Wednesday
- ☐ Friday

is the extra day off each week.

☐ **Compressed 5-4/9 Plan**

- ☐ 1st ☐ 2nd Monday
- ☐ 1st ☐ 2nd Wednesday
- ☐ 1st ☐ 2nd Friday

is the extra day off in the biweek

Only employees who elect one of the Flexible Work schedules below will be eligible to work credit hours. For full-time employees, credit hours are limited to those who cannot work 32 hours of overtime in a pay period because of pay cap regulations. Holiday pay is limited to a maximum of 8 hours for these schedules.

FLEXIBLE

I elect to participate in the following Flexible Work Schedule Program and select the following day off:

☐ **Flexible 5 day - 8 hr/day Plan**

☐ **Flexible 4/10 Plan**

- ☐ Monday
- ☐ Wednesday
- ☐ Friday

is the extra day off each week.

☐ **Flexible 5-4/9 Plan**

- ☐ 1st ☐ 2nd Monday
- ☐ 1st ☐ 2nd Wednesday
- ☐ 1st ☐ 2nd Friday

is the extra day off in the biweek

_____ _____
Employee's signature Date

☐ Approved ☐ Not Approved (written justification must follow)

_____ _____
Supervisor's signature Date

This form is provided as a convenience to employees. Alternative formats may be substituted.

APPENDIX F

PRODUCTIVITY AWARDS SCALE

GS-14		GS-13		GS-12		GS-11	
Points per 1/2 year	1/2 year award	Points per 1/2 year	1/2 year award	Points per 1/2 year	1/2 year award	Points per 1/2 year	1/2 year award
1650	$10,000.00	1650	$10,000.00	1650	$10,000.00	1650	$10,000.00
1600	$9,000.00	1600	$9,000.00	1600	$9,000.00	1600	$9,000.00
1550	$8,000.00	1550	$8,000.00	1550	$8,000.00	1550	$8,000.00
1500	$7,000.00	1500	$7,000.00	1500	$7,000.00	1500	$7,000.00
1450	$6,000.00	1450	$6,000.00	1450	$6,000.00	1450	$6,000.00
1400	$5,000.00	1400	$5,000.00	1400	$5,000.00	1400	$5,000.00
1350	$4,000.00	1350	$4,000.00	1350	$4,000.00	1350	$4,000.00
1300	$3,500.00	1300	$3,000.00	1300	$3,000.00	1300	$3,000.00
1250	$3,000.00	1250	$2,500.00	1250	$2,500.00	1250	$2,500.00
1200	$2,500.00	1200	$2,000.00	1200	$2,000.00	1200	$2,000.00
1100	$2,000.00	1100	$1,500.00	1100	$1,500.00	1100	$1,500.00
1000	$1,500.00	1000	$1,000.00	1000	$1,000.00	1000	$1,000.00
900	$1,000.00	900	$750.00	900	$750.00	900	$750.00
800	$750.00	800	$500.00	800	$500.00	800	$500.00
700	$500.00	700	$400.00	700	$400.00	700	$400.00
600	$300.00	600	$300.00	600	$300.00	600	$300.00
500	$200.00	500	$200.00	500	$200.00	500	$200.00
400	$100.00	400	$100.00	400	$100.00	400	$100.00

APPENDIX G

APPENDIX K

MEMORANDUM OF UNDERSTANDING

BETWEEN
U.S. PATENT AND TRADEMARK OFFICE
AND
NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 243
FOR THE
PUBLIC TRANSPORTATION SUBSIDY PROGRAM

This agreement is entered into by the Patent and Trademark Office (PTO) and the National Treasury Employees Union (NTEU), Chapter 243, to address the Pilot Public Transportation Subsidy Program (PTS) as authorized by Public Law 101-509, Section 629 and Department of Commerce (DOC) regulations.

A. Prior to implementation, the PTO will ensure that NTEU 243 bargaining unit members have been surveyed to obtain data on commuting patterns and preferences. A copy of the survey will be provided to NTEU, Chapter 243 prior to its distribution to bargaining unit employees.

B. Upon implementation, the PTO agrees to provide any NTEU Chapter 243 bargaining unit member who elects to participate in and qualifies for the pilot PTS Program up to $30.00 worth of fare media each month within the program budget to be used for commuting to and/or from work via public transportation systems, which are participating in MetroPool's Metrochek Program.

C. In accordance with applicable DOC guidelines and Public Law 101-509, all NTEU Chapter 243 bargaining unit employees are eligible to participate in the pilot PTS program, except those who:

1. use any other type of government subsidized transportation programs (i.e., parking, vanpools, or carpools, discounted farecards or bus tokens); or

2. use a parking space during working hours; or

3. are members of a vanpool or carpool.

D. Employees who want to participate in the pilot PTS program should do so by filing a "PTS Application Form" at inception of the pilot program. An employee may submit an application for PTS eligibility consideration by the 15th day of each month preceding the month in which he/she wishes to begin receiving the subsidy.

1. Newly hired NTEU Chapter 243 bargaining unit employees will be provided PTS program information and an application form during the new employee orientation process. Any interested employee should complete and submit an application for eligibility consideration. If the employee meets the eligibility criteria, the application will be approved and the employee will receive the subsidy in the form of fare media.

2. Any employee who wishes to discontinue his/her participation in the PTS program must notify the PTS Coordinator in writing.

3. Applications must be received by the PTS Coordinator by the 15th of the month preceding the month the applicant wishes to begin participation in the program. Applicants will be required to specify the mailing address to which the subsidy is to be delivered on the application form.

4. To ensure maximum use of available resources and compliance with the Act, employees will be asked to certify their participation in the program every calendar month. Participants shall certify in writing that they are eligible for a transit subsidy, and that they are obtaining it for their commute to and/or from work. Certification must be received by the PTS Coordinator by the 15th of the month preceding the month in which the applicant wishes to continue participation in the program or forfeiture of the fare subsidy for the following month will result. The employee will be required to indicate on the certification form if their address is correct or report a new mailing address.

E. The fare media subsidies, along with the monthly certification form and stamped, self-addressed reply envelope for returning the completed certification, will be mailed to each participant using the U.S. Postal Service. Due to the negotiable nature of the fare media, lost subsidies will be replaced only in rare circumstances and under no circumstances will more than one lost subsidy be replaced per employee during the duration of the program. In instances of lost subsidies, an employee must, in writing, provide the following information:

1. certify that the subsidy was not received at the address provided by the employee on the prior month's certification form;

2. provide the employee's name, position, and organization;

3. indicate whether the employee is representing him/herself, or is represented by the union;

4. provide name, title, address, and telephone number of the employee's representative, if any;

5. provide a specific account of why he/she believes the subsidy was not received at the address provided by the employee; and

6. certify that the employee has not previously received a subsidy replacement. Any dispute over a non-receipt of a subsidy must be submitted by the participant to the PTS Coordinator within 5 work days of the first day of each month. Any dispute not submitted within this period will not be considered. A meeting may be requested by either party during which the employee may be represented by a union representative. A written decision will be rendered 10 work days following the filing of the request or the meeting, whichever is later. This decision will be considered the final PTO decision at Step 3 of the negotiated grievance procedure and may be appealed directly to arbitration in accordance with Article 47 of the Term agreement.

F. Fare media are not transferable and are to be used only for the commute to and/or from work. Giving, selling, trading, or transferring fare media to other individuals, or purchasing the same from another individual is prohibited, even if the other individual is eligible to receive the subsidy. Any unused portion of the subsidy at the end of the month should be returned to the PTS Coordinator in the stamped, self-addressed envelope provided with the next month's certification form for redistribution to bargaining unit members. Receipt or non-receipt of the subsidy does not alter an employee's responsibility to report to work.

G. Participants will certify that they are eligible and will comply with the established guidelines. Misuse of the subsidy may result in disciplinary action.

H. Any participant who is aggrieved over a misapplication or misinterpretation of a procedure in the program may appeal in writing to the PTS Coordinator within 15 work days after the matter or the date the employee first became aware of the occurrence. The appeal must contain the following information:

1. the date the appeal was submitted to the immediate supervisor;

2. the employee's name, position, and organization;

3. an indication of whether the employee is representing him/herself or is represented by the union;

4. the name, title, address and telephone number of the employee's representative, if any;

5. a specific account of the incident giving rise to the grievance;

6. specific reference to the provisions to this agreement in dispute;

7. an explanation of how the provisions of the program have been violated; and

8. a detailed statement of the specific remedy sought.

Any appeal not filed within this period of time will not be considered. A meeting may be requested by either party during which the employee may be represented by a union representative. A final written decision will be rendered 10 work days following the filing or meeting, whichever is later. A grievance form may be used in lieu of filing a written appeal letter. The final decision by the deciding official will be considered the final decision at Step 3 of the negotiated grievance procedure and may be appealed directly to arbitration in accordance with Article 47 of the term agreement.

After the second month of operation, if more than 2% of eligible employees request subsidy replacement during the pilot program, the parties will meet and discuss an assessment of the problem and alternative solutions.

I. If the PTO's budget allows, the pilot PTS Program will run from the date of implementation through the end of December 1993. The pilot program will be terminated prior to that time if the program authority by Public Law is revoked. If the program authority is revoked prior to the termination of this agreement or if PTO's budget does not allow, the Union will be given reasonable advance notice and will be given an opportunity for impact and implementation bargaining.

If, at the expiration of this agreement, the PTO determines that the Public Transportation Subsidy Program does not meet the objectives of Public Law 101-509, that the program is ineffective, that funding is not available or that the program authority by Public Law is revoked, the program may be terminated at the end of December 1993. If a decision is made to terminate the program, PTO will provide thirty (30) days advance notice to the union and an opportunity for appropriate bargaining.

J. Management reserves the right to determine the program budget. Management has determined that the program budget for calendar year 1993 will not exceed $300,000. If another bargaining unit should be given a monthly subsidy greater than the monthly subsidy granted to Chapter 243 bargaining unit members as a result of term collective bargaining agreement negotiations, management may increase the monthly subsidy for Chapter 243 bargaining unit members up to that amount. However, the total amount of the subsidy will not exceed the amount of the program budget determined by management.

APPENDIX H

MEMORANDUM OF UNDERSTANDING

In the interest of fostering good labor/management relations, the Patent and Trademark Office (herein the Office) and NTEU Chapter 245 (herein the Union), have agreed to the provisions contained in this memorandum of understanding.

1. Pass/Fail Performance Appraisal System

The Office and the Union hereby agree to participate in a work group to determine the feasibility and desirability of a two-level Performance Appraisal System, commonly called a Pass/Fail System. This MOU is agreed to in conjunction with the negotiations of Article 13, Performance Appraisal.

2. Compensatory Time Pilot Program

If, during the life of the new Negotiated Agreement (fiscal years 1997 - 1999), the Office decides to discontinue the Compensatory Time pilot Program, or to modify the program so as to cause a reduction in the rights of employees to work compensatory time under the pilot program, the Union will be given the opportunity to request collective bargaining. The Office agrees to participate in such bargaining. The Union has ten (10) working days in which to request such bargaining.

3. Pilot Transit Subsidy Program

Bargaining unit members will continue to be eligible to receive transit subsidies in the amount of $30.00 per month in accordance with the provisions of Appendix K of the agreement between NTEU Chapter 243 and the Office and in accordance with the decision and Order of the Federal Services Impasses Panel, Case No. 95 FSIP 108, dated November 6, 1995. It is agreed that Appendix K of the NTEU 243 agreement, which outlines the Pilot Transit Subsidy program, will be attached as an appendix to the NTEU 245 contract.

4. Parking Fees

The President of NTEU Chapter 245 or a designee, will be allowed to participate in any parking fee negotiations with Westfield Realty concerning the South Tower Building.

5. **Compressed Work Schedules**

Bargaining unit employees will have thirty (30) days from the effective date of the new contract agreement in which to join the Compressed Work Schedule program, change options, or change their non-work day selection. After this thirty (30) day period, the provisions of the contract apply.

Philip G. Hampton II
Assistant Commissioner for Trademarks
For the Office

Howard Friedman
For the Union

APPENDIX I

Agreement between the National Treasury Employees Union (NTEU), Chapter 245 And The United States Patent and Trademark Office (USPTO) Regarding the Transition Plan for the Collective Bargaining Agreement

The NTEU, Chapter 245 (Union) and the USPTO (Office) hereby agree that they have negotiated a Collective Bargaining Agreement. Should that agreement be ratified and executed by December 22, 2000 and become effective, this understanding will govern the transition for FY2001.

Awards:

There is no entitlement to a performance award or other type of incentive award. All awards are subject to budgetary limitations and are paid at the discretion of the Office.

For FY2001, a special performance based award may be granted to Trademark Examining Attorneys for performance from October 1 to March 31 and may be paid after March 31. The criteria and amount of the award will be determined as indicated in Article 31, Section 3 of the Agreement except that adjustments to the amount of the awards will be determined as follows:

> No award will be less than one half the amount of the award that would have been earned if calculated under the prior year's agreement for production as indicated in Article 31, Section 3 of that agreement.

For FY2001, the quality and mentoring awards in the new Agreement will be calculated based on the entire fiscal year.

The intent of these provisions is to insure that no employee is inadvertently disadvantaged, for awards purposes, during the first six months of FY2001 even though the parties understand that it may not be clear until the completion of the fiscal year whether equivalent amounts for awards were determined.

Union time:

For FY2001, the authorized hours referred to in Article 16, Section 1, will be calculated as follows:

> October 1 to December 31, 2000: 1600 hours prorated by the number of months divided by 12

Plus

1500 hours + 1.5 times the number of bargaining unit employees on January 2, 2001, prorated by the remaining nine months in the fiscal year.

If as of July 1, 2001, the total number of bargaining unit employees increases or decreases by 10%, the appropriate adjustment will be made to bank hours utlizing the above formula and averaging them together for the nine month period.

For the Union

12·16·02
Date

For the Agency

INDEX