Agreement

Between

UNITED STATES
PATENT & TRADEMARK OFFICE

AND

THE NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 245

EFFECTIVE DATE:

October 22, 2024

APPROVAL AND IMPLEMENTATION OF THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE UNITED STATES PATENT AND TRADEMARK OFFICE AND THE 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 National Treasury Employees Union (NTEU), Chapter 245. We believe this agreement will greatly benefit the covered employees and the USPTO.

We would like to thank the negotiating team members who worked tirelessly to bring it about and hope that the cooperation exhibited in reaching this agreement will be a building block for the relationship between these parties for many years to come.

10/22/24

David S. Gooder — Date
Commissioner for Trademarks
United States Patent and Trademark Office

10/22/24

Doreen P. Greenwald — Date
National President
National Treasury Employees Union

10-22-24

Jay Besch — 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 National Treasury Employees Union, Local 245.

10/22/24

Kathi Vidal — Date
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

TABLE OF 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 the 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 both parties desire to maintain a good Labor-Management relationship and agree to jointly collaborate through constructive and cooperative discussions that are of benefit to both parties; 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 NTEU Chapter 245. 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.

ARTICLE 2
RECOGNITION AND REPRESENTATION

Section 1

A. 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.

B. 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; and (6) any other employee(s) excluded by law.

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. Department of Commerce rules and regulations, in effect upon the effective date of this Agreement not in conflict with this Agreement;

D. To the extent that provisions of the USPTO 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.

E. Government-wide rules and regulations and USPTO rules, regulations, and policies, including any applicable Department of Commerce rules, regulations and policies, issued after the effective date of this Agreement that do not conflict with this Agreement, and over which all bargaining responsibilities have been fulfilled. Government-wide rules and regulations that conflict with this Agreement and are issued after its effective date will not supersede this Agreement during the term of the Agreement during which the rule or regulation was issued.

Section 2

This Agreement supersedes the prior term Collective Bargaining Agreement (executed on December 22, 2000) as well as all previous agreements and past practices that conflict with this Agreement. Previous agreements not in conflict with this Agreement shall continue in accordance with their terms, absent agreement by the parties to modify or extend them through midterm bargaining pursuant to Article 28 (Mid-term and Impact and Implementation Bargaining). Past practices not in conflict with this Agreement shall continue, absent written notification by either party of their intent to propose to discontinue or modify a particular practice. Any proposal to discontinue or modify a past practice shall be subject to bargaining as required by law or this Agreement.

ARTICLE 4
DEFINITIONS

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

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

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

C. "The Union" shall mean NTEU Chapter 245, or any of its officers, executive committee members or representatives, including NTEU National staff, when acting in their official capacities. References to the "bargaining unit" and "unit" also mean NTEU Chapter 245.

D. "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.

E. "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.

F. "FSLMRS" means the Federal Service Labor-Management Relations Statute, five U.S.C. Chapter 71.

G. "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, unless the Agreement expressly describes otherwise (as it does in Article 20 Duration). 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.

H. "Business Day" or "Week Day" means a day Monday through Friday, excluding federal holidays. In calculating periods of time prescribed or allowed as business or week days in the Agreement, Saturdays, Sundays, and federal holidays do not count as a day.

I. "Family Member & Immediate Relative": For the purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer, "family member and immediate relative" are defined as follows. Please note that these definitions for a family member do not apply to leave taken under the Family and Medical Leave Act:

1. spouse, and parents thereof;

2. children, including adopted children and step-children, and spouses thereof;

3. parents (biological, adoptive, step or foster) and spouses thereof;

4. brothers and sisters, and spouses thereof;

5. grandparents and grandchildren, and spouses thereof;

6. domestic partner and parents thereof (domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite set relations); and

7. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

J. "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 (5) work days.

K. "Downtime" shall mean time during operational hours where automation equipment, applications, and systems are not functioning properly and/or are unavailable to use when an employee wants to work.

L. "Telework" shall mean any work arrangement where an employee works from an authorized alternate worksite (including temporary alternate worksites) for all or some portion of the pay period.

M. "Seniority," for the purposes of selecting or distinguishing between bargaining unit employees in this Agreement, shall mean the amount of time an employee has been employed by the Office in their unit (i.e., Trademarks or TTAB). In the event it is necessary to resolve ties, the total time an employee has been employed in the bargaining unit shall be used. Seniority shall not include other federal service unless otherwise specified.

N. "USPTO Headquarters" or "Headquarters" means the campus at 600 Dulany Street in Alexandria, Virginia.

ARTICLE 5
MANAGEMENT RIGHTS

Section 1

The Office has the right, as provided in 5 U.S.C. § 7106(a) and subject to (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 may elect to negotiate with the Union 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.

Section 3

The Office agrees that it will bargain in good faith over proposals that constitute permissive subjects of negotiation under 5 U.S.C. § 7106(b)(1) so long as Executive Order No. 14003 remains in effect.

ARTICLE 6
MANAGEMENT OBLIGATIONS

Section 1

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

B. The Office shall not retaliate against any employee in the unit who has exercised their rights under law, regulation, or this Agreement.

C. The Office shall not engage in any prohibited personnel practice listed in 5 U.S.C. § 2302.

Section 2

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

Section 3

The Union and Management agree to give reasonable advance notice of no less than ten (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 Office will make the Union President and/or designee name, title, telephone number and email address accessible to bargaining unit employees.

Section 5

The Office will provide this Agreement electronically in the centralized intranet location that contains Office policies, rules, and regulations.

ARTICLE 7
EMPLOYEE RIGHTS

Section 1

A. 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 FSLMRS, such right includes the right:

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

2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the FSLMRS. The Office will not impose any restraint against any employees in the exercise of their right to designate a Union steward for the purpose of representing to the Office any matter of concern over the interpretation or application of this Agreement. The Office will not impose any restraint against any bargaining unit employees in the exercise of their right to designate a Union steward to represent the employee in any Office matter.

3. To initiate grievances in good faith or to provide information concerning a matter for which remedial relief is available.

B. Discussions between a Union representative and an employee seeking counsel or advice regarding non-criminal investigations are confidential, absent the Office's overriding need for the information determined on a case-by-case basis, consistent with applicable case law. The Office will not solicit information from any Union representative concerning the nature of such confidential discussions.

C. 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 Union affairs.

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. Managers will adhere to all applicable laws, rules, and regulations when dealing with confidential employee information.

Section 4

A. When an individual from outside the USPTO makes a complaint to the Office regarding a unit employee, where such complaint may be used in performance evaluations or any proposed disciplinary or adverse action, the Office agrees whenever possible to follow the following procedures, subject to the limitations set forth in Section 4.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 4.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 not be included in an employee’s record.

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 (either in paper or electronic copy) in accordance with Office policy. Employees have the right to inspect their Electronic Official Personnel Folder (eOPF).

B. All employees in the Unit shall be provided with notification of and electronic access to any document added to their Official Personnel Folder or eOPF 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 or eOPF. 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, or to interview the employee as a third-party witness, it shall be required that:

A. The management representative will notify the employee of the general nature of the meeting and of the right to have a Union representative present, if during the interview they reasonably believe that disciplinary action may result and whether they are the target of the investigation or a third-party witness.

B. Meetings will typically be scheduled between 8:30 a.m. and 5:00 p.m. (Eastern Time) Monday through Friday excluding holidays. Time zone where the employee works will be taken into consideration when meetings are scheduled.

C. In addition to the provisions of 5 U.S.C. § 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.

D. If the employee requests a Union representative, management may either stop the meeting or it shall be obligated to wait a reasonable time, to allow the employee the opportunity to secure representation, before proceeding with the meeting.

E. If an employee is represented in an interview and the subject of the interview changes to subjects over which the employee and the representative have not conferred, the employee or the representative may request a recess to confer on such issues.

F. When a Union representative represents an employee during any investigation, the role of the representative includes, but is not limited to the following rights:

1. to clarify the questions;

2. to clarify the responses;

3. to suggest other employees who may have knowledge of relevant facts;

4. to assist the employee in providing favorable or extenuating facts;

5. to request a caucus for a reasonable period of time; and

6. to advise the employee during an examination or a caucus.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

G. If in cases solely involving administrative misconduct (i.e., non-criminal matters) the employee refuses to respond to questions, the employee shall be advised that their failure to respond may result in discipline including removal.

H. The Office recognizes that interviews of employees by the Office's investigative officials generally should be limited to matters of official interest to the Office and, accordingly, will not address private matters outside the scope of the investigation

I. In cases where the Office has determined that no administrative action will be taken, the Office shall notify the employee and the Union in writing within five (5) week days of the conclusion of the investigation, including a statement of the decision made.

J. None of the preceding subparagraphs shall apply to inquiries or counseling sessions which apply solely to performance.

Section 8: Employee Interview Notices

A. Weingarten Rights. Employees will be provided annual notification of their right to representation.

B. When an employee is the subject of an investigation and the employee reasonably believes that their answer may incriminate them of criminal misconduct, the employee may assert their 5th Amendment right to remain silent, unless the employee is given assurances that their 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

C. Kalkines Rights. In an interview involving possible criminal matters, where prosecution has been declined by the appropriate authority, an employee will be required to answer questions only after the Office representative has provided the employee with the appropriate assurances that the employee will not be criminally prosecuted. Prior to requiring the employee to answer questions under such circumstances, the Office shall inform the employee that their statements concerning the allegations during the interview cannot and will not be used against them in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview.

Section 9

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 (2) 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 10

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 obligated to provide: reports, which are generated in the normal course of business; and data stored and accessible in the normal course of business. The Office is not obligated to write new programs in order to retrieve data.

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 11

A. An employee may resign at any time and will normally give two (2) 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 (i.e., as part of a settlement agreement). When an employee resigns before receiving written notice of proposed disciplinary or adverse action, no record will be maintained in the Official Personnel Folder or Electronic Official Personnel Folder regarding the possibility of such action, unless the Office follows the procedures set forth in 5 U.S.C. § 3322. All recorded information about the possible action within the control of the Office shall be specifically retained in confidential files maintained by the Office.

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

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

Section 12

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 13

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

Section 14

The Office shall not direct employees to engage in unlawful or unethical conduct.

Section 15

Any evidence derived from phone or communications monitoring, that is used as support for a proposed disciplinary or adverse action, shall be provided to the employee and/or the employee's designated representative, where not prohibited by law, rule or regulation.

Section 16

If an employee's Social Security number (SSN) or Personally Identifiable Information (PII) is disclosed to an unauthorized, third (outside) party by the Office or its agent, then the Office will offer the employee identify theft protection for one (1) year

Section 17

Employees are subject to ethical codes and/or rules of professional responsibility imposed by their licensing jurisdiction(s) in addition to their obligations as employees of the Office. In the event an employee reasonably believes that an assignment may subject them to discipline by their licensing jurisdiction(s), the employee may raise that issue to their supervisor. If the employee and their supervisor are unable to resolve the concern and the supervisor requires the employee to complete the assignment, that direction shall be provided in writing.

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. Management will consider the clarity to which employees were on notice of Office agreements, policies, or applicable rules and regulations, when an employee's failure to comply has come into question.

Section 2

All unit employees shall provide current mailing addresses and emergency contact information to their supervisors upon request. Employees are also encouraged to provide and update this information through HRConnect or any subsequent system.

Section 3

Each employee shall attempt to perform to the best of their capability.

Section 4

Employees' 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. Employees have the option of wearing either regular business attire or casual attire appropriate for a business setting. However, the Office does not have a dress code. Telework employees will make a good faith effort to ensure a home work environment appropriate for conducting Office business and meetings.

Section 5

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

Section 6

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

Section 7

The Office is entitled to require answers from employees in response to questions in matters of official interest, subject to the Office's obligation to provide appropriate warnings or notices of rights described in Article 7 (Employee Rights). Employees must provide truthful answers in

response to such questions. An employee who fails to provide such answers may be 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.

ARTICLE 9
UNION RIGHTS

Section 1

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

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 28 (Mid-term and Impact and Implementation Bargaining). .

Section 3

The Union has the right to consult with the Office concerning any matter affecting unit employees' working conditions.

Section 4

The Union has the right to speak to all new unit employees at the end of each orientation session (i.e., after management leaves the session).

A. During its presentation, the Union may discuss the contract, current Labor-Management issues, its insurance programs, the current laws and regulations on Federal sector labor relations, that does not slander or libel a government official, and/or direct employees to the Union SharePoint (or equivalent) intranet site to obtain Union-related materials (excluding internal Union business). The Union may request the names of employees unable to attend this session so that this information can be provided it to them separately.

B. The Union may provide new employees a package of materials.

C. Two (2) Union representatives will receive official time for each orientation session.

D. The Union's presentation will not exceed thirty (30) minutes.

E. The Union will be given notice at least five (5) workdays prior to the orientation session. Where unforeseeable circumstances make five (5) workdays advance notice impossible, the Office will notify the Union as soon as practicable and in no event less than five (5) hours before the orientation session.

Section 5

A. 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 forty-eight (48) 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. Where unforeseeable circumstances make forty-eight (48) hours advance notice impossible, the Office will notify the Union as soon as practicable and in no event less than five (5) hours before the formal discussion. Such notice shall include the time, place (i.e., virtual and/or physical room location), and the discussion agenda, if available.

B. The Union may have at least two (2) or as many representatives as management, whichever is greater, at all formal discussions.

C. Presentation documents prepared by the Office for the meeting and any meeting summaries shared with bargaining unit employees will be provided to the Union.

D. The Office will introduce the attending Union representative at the beginning of the meeting. During the formal discussions, the representative may ask relevant questions and may make statements including the Union's position with respect to the subject of the discussion. Participants will conduct themselves in a respectful and business-like manner.

E. At the conclusion of the formal discussion, the Union representative may inform employees that if any of them wish to discuss the meeting topics with them further or in private, the employee may contact the Union to meet with the steward.

F. Formal discussions will not occur before 9 a.m. or after 5 p.m. Eastern Time unless otherwise agreed by the parties. Outlook calendar invitations on their own do not constitute proper notice under this Section.

Section 6

Advance notice under Section 5 above shall include the time, place and topic of discussion.

Section 7

The Union shall receive results of the Federal Employees Viewpoint Survey (FEVS), including all results relevant to their bargaining unit. These results will be broken down and provided based upon the business units which have NTEU 245 bargaining unit members (i.e., Trademarks and the Trademark Trial and Appeal Board (TTAB)).

Section 8

The Union may refuse to represent employees in proposed disciplinary actions and in statutory appeals (for example, adverse actions, unacceptable performance actions, Equal Employment Opportunity complaints). When the Union chooses to represent an employee in such proceedings, the Union still retains all statutory rights.

Section 9

A copy of any survey, which is intended to be distributed to bargaining unit employees by the Office, will be first provided to the Union for comment at least five (5) business days in advance of distribution to bargaining unit employees. The Office will provide and discuss survey results with the Union.

Section 10

A. The Union may file 5. U.S.C. § 7114 (b)(4) requests for information with the Office of Human Resources, Labor Relations Division Chief or designee.

B. Upon receipt of an information request from the Union, the Office will notify the Union of the individual responsible for complying with the request and/or their designee if the individual is unavailable.

C. The Office will normally inform the Union within ten (10) workdays whether information requested under 5 U.S.C. § 7114(b)(4) will be supplied. The Union will be notified if the Office cannot meet the ten (10) workday timeframe, and advised of whether or not the request is still under review or if there are any issues with responding to the request (e.g., whether or not the Union has provided a particularized need). The Union may request that time periods for grievance processing be held in abeyance pending the Office's response and provision of information requested under 5 U.S.C. § 7114(b)(4).

D. Where requests for information that seek documents on multiple subjects or issues are numbered, the response will be similarly numbered**.**

Section 11

Nothing in this Article shall limit the Union's rights under this Agreement, law, rule, or regulation to attend formal discussions.

Section 12

Union Stewards may be allowed to earn credit hours for presentations to an agent of the FLRA, FSIP, MSPB and/or arbitrators and/or to the extent otherwise permitted by law and governing regulation.

Section 13

Nothing in this Article shall limit the Union's rights under this Agreement, law, rule, or regulation to attend formal discussions.

Section 14

A. *Unless otherwise prohibited by law, the Union is entitled to attend any discussion or meeting that constitutes a formal discussion under 5 U.S.C. § 7114. Accordingly, the Office will give the Union notice and the opportunity to attend any such formal discussion.

B. *When the Union is not involved in the negotiation of a settlement agreement, which impacts bargaining unit working conditions (e.g., grants, promises, or gives priority consideration for a promotion, reassignment, training, etc.), the Office shall provide the Union with a copy (with PII redacted) within five working days after the settlement has been executed. Nothing in this Article shall limit the Union's remedies under this Agreement, law, rule, or regulation involving formal discussions.

C. Any challenges by the Union to settlement agreements will be filed with the Office's Labor Relations Division.

D. The parties agree that all EEO complaint and settlement information must be kept confidential.

*Case No. 24 FSIP 042, August 26,2024

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 and Management agree to give reasonable advance notice of no less than ten (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 3

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

Section 4

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

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

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 disabling condition;

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

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

G. 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. The Union acknowledges that in order to receive information about an employee from the Office that is protected by the Privacy Act, the Union must provide the Office with a written or signed statement from the employee indicating their consent to the disclosure, as appropriate.

ARTICLE 11
GRIEVANCE AND ARBITRATION PROCEDURES

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 except when the employee has a statutory right of choice.

B. Employees with a statutory right of choice of venue may raise issues under the statutory procedure or this negotiated grievance procedure, but not both. Employees will have elected a forum (grievance or statutory procedure) if the grievance is reduced to writing and filed with the Labor Relations Division or a formal statutory complaint is filed, whichever is filed first.

C. This procedure is available to any employee in the unit, to the Union on its behalf or on behalf of employee(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. A grievance may be filed by a bargaining unit employee(s), the Union, or the Office.

B. A grievance is any complaint (except as provided in Section 4, below):

1. by a bargaining unit employee or employees concerning any matter relating to the employment of that bargaining unit member(s);

2. by the Union or the Office concerning any matter that relates to the employment of any employee in the bargaining unit or group of employees or that relates to the rights of the Union or the Office

3. by a bargaining unit employee or employees concerning a matter that affects the member(s) personally, or by the Union, or by the Office concerning:

a. the effect or interpretation, or a claim of breach of this Agreement or any midterm agreements;

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.

d. any claimed violation or misapplication of an Office policy that impacts the working conditions of bargaining unit employees.

Section 4

The following are considered not grievable, under the provisions of this procedure:

A. Matters excluded by 5 U.S.C. § 7121(c) relating to:

1. Any claimed violation of prohibited political activities;

2. Retirement, life insurance, or health insurance;

3. Suspension or removal in the interest of national security;

4. Any examination, certification or appointment;

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

B. Non-selection for employment or promotion from a group of properly ranked and certified candidates, provided that the group is properly ranked and certified and the selection is not otherwise unlawful;

C. Written proposed notices of actions which, if effected, would be covered by this procedure or any statutory appeals procedure; except where the proposal constitutes unlawful retaliation or harassment.

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 monetary compensation or the employee's official personnel file is involved;

C. the death of a Grievant, except where monetary compensation is involved;

D. failure of the Grievant or the Union to meet any of the time limits herein; where an extension has not been granted and good cause is not provided to permit a late filing;

E. failure of the Grievant to properly set forth the substance of this grievance as required by Section 13.C of this article. However, if the Grievant has substantially complied with the provisions of section 13.C 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

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

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

B. failure of the Office to meet any of the time limits herein where an extension has not been granted and good cause is not provided to permit a late filing or;

C. failure of the Office to properly set forth the substance of this grievance as required by Section 13.A of this Article. However, if the Office has substantially complied with the provisions of Section 13.A but has omitted some material, the Union shall notify the Office at the first level of the grievance procedure, and the Office shall have five (5) working days to provide the omitted material to avoid termination. The Union's period for response to the grievance shall be reset to start from the time the omission is corrected; or

D. the request of the Grievant.

Section 7

A. The parties shall automatically grant one extension of five (5) business days for any deadline so long as the party requests it on or before that deadline.

B. The parties shall reasonably consider additional requests for extensions.

Section 8

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 may such a declaration be made after the issuance of the Step Two answer. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in connection with the related grievance.

Section 9

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 10

A matter of concern or dissatisfaction orally expressed by an employee to their supervisor is not a grievance provided for by this Section and is not subject to this Article.

Section 11

Informal discussions of issues of concern between employees and their supervisors that are not considered a grievance subject to this Article, including any requests that a supervisor reconsider a decision, will not toll the time period in which employees must file a grievance. However, employee requests for reconsideration of their performance appraisals are subject to the modified grievance procedure explained in Section 13.A.6 below.

Section 12

A. 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.

B. The Office agrees to hold grievance meetings through an electronic communications suite unless otherwise agreed by the parties.

C. Meetings will typically be scheduled between 8:30 a.m. and 5:00 p.m. (Eastern Time) Monday through Friday, excluding holidays. The time zone where the employee works will be taken into consideration when meetings are scheduled.

D. 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. In the event that the Office fails to abide by the time limits contained in this procedure where no extension has been granted, the Grievant, or the Union (where the Union has filed the grievance or is representing the Grievant), is entitled to elevate the grievance to the next level. However, if a decision is rendered after the time limit, that decision shall become a part of the record and the Grievant or the Union shall have ten (10) weekdays to amend or resubmit its Step 2 Grievance.

F. An employee or a group of employees processing a grievance under this Agreement shall be limited to Union representation or self-representation. The Union has the following rights in employee grievances where the Union is not acting as the employee's representative:

1. To be notified of the time and place of the proceedings;

2. To be given advance notice of at least two (2) business days to be present during the formal grievance procedure, settlement discussions and/or any "formal discussions" of the grievance. However, if the Union declines to designate a representative, then the meeting will be held without the Union.

3. To be furnished a copy of the written decision at any step at which a written decision is made that will become part of the record. This copy shall be furnished at the same time as it is furnished to the Grievant or to any other concerned official by the official responsible for making the decision; and

4. To state its position on the grievance as it pertains to the Union's and/or bargaining unit employees' rights, in writing.

G. A copy of any document becoming part of the grievance record under this article shall be furnished to the Grievant(s), Union, and Office by the person presenting the document when it becomes part of the record.

H. The Office shall consider the Union's request for the appearance of witnesses during any step of the grievance process who are employees of the Office. Evidence and witnesses that are relevant to the resolution of a grievance may be introduced at any stage of the grievance or arbitration process.

I. New issues may not be raised by either party unless they have been raised at or before Step 2 of the grievance procedure provided, however, the parties may agree to join the new issues with a grievance in process.

J. Where the steward is processing one (1) of their first three (3) grievances, the Union may have one (1) additional steward attend on official time under Article 9 (Union Rights).

K. Consistent with 5 U.S.C. § 7121(b)(2)(A), if a grievance alleges a prohibited personnel practice, an arbitrator may order a stay of the personnel action in a manner similar to the manner described in 5 U.S.C. § 1221(c) with respect to the Merit Systems Protection Board; and the taking, by the Office, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of the Office to take.

Section 13

The following steps constitute the required steps for processing grievances:

A. **First Step**

1. The grievance must be reduced to writing and submitted to the lowest level supervisor with authority to resolve the grievance (usually the employee's immediate supervisor) and to the Office's Chief of the Labor Relations Division's electronic email address (lrgrievance@uspto.gov or successor email which the Office will provide).

2. 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 Grievant, at their request, will be granted a five (5) working day extension to amend the grievance. However, such amendment must be based upon the information received.

3. If the Union files an information request at least ten (10) weekdays prior to the deadline for filing a grievance, the Union or Grievant may simultaneously request that the grievance filing deadline be tolled. The tolling request must identify the event or action prompting the anticipated grievance. The Office will respond to the tolling request no later than five (5) weekdays prior to the grievance filing deadline. If the Office grants the tolling request, the grievance filing deadline shall be tolled until five (5) weekdays after either the information is provided (if the Office agrees to provide requested information) or the Office denies the information request in writing.

4. The written grievance shall be submitted within thirty (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.

5. The supervisor with authority to resolve the grievance shall render a written decision within thirty (30) calendar days. If the management official to whom the grievance is submitted is the inappropriate management official, the Office shall redirect the grievance to the Division Chief of the Labor Relations Division (LR) within five (5) weekdays. LR will consult with the appropriate official(s) and shall designate the Step One official. If, because of the nature of the grievance, either the Union or the Office feels that the immediate supervisor

is not the appropriate Step One official, that party may contact the Division Chief of the Labor Relations Division or a designee to discuss whether such supervisor should hear the grievance. LR will consult with the appropriate official(s) and shall designate the Step One official. The Office retains the exclusive right to designate the management official to decide the grievance. The proper official shall render a written decision within thirty (30) calendar days of receiving a grievance from the management official. If the proper official is the Commissioner for Trademarks or designee, this will be the only step in the grievance process and the written decision will be considered a Step Two (final) decision.

6. Request for reconsideration of a performance rating:

    a. In lieu of a Step One Grievance, employees may request reconsideration of a performance rating by the approving official for the rating within five (5) business days

    b. The approving official, or their designee, shall provide a written response to the request within ten (10) business days

    c. If an employee pursues a formal grievance following the informal request for reconsideration process, the grievance will begin at Step Two

7. In the case of an Office grievance against the Union, the employee who will handle the grievance for the Office will be designated and the Union President shall be the person to receive the written grievance. The Union President or their designee shall render a written decision within thirty (30) calendar days.

8. The written grievance must contain the following information:

    a. name and work unit (i.e., law office number or TTAB) 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. a statement that the Grievant invokes the procedures under this article, and 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 or representative's signature or electronic signature.

h. Grievants are encouraged to also describe the harm suffered by the Grievant and how the requested remedy addresses the alleged harm.

9. If Step One fails to produce a satisfactory resolution, the Grievant may proceed to Step Two.

B. **Second Step**

1. Within ten (10) weekdays 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, for TTAB Interlocutory Attorneys, the TTAB Chief Administrative Trademark Judge) or a designated representative, who may not be the Step One decision maker

2. The written request must be submitted to the Commissioner for Trademarks (or, for TTAB Interlocutory Attorneys, the TTAB Chief Administrative Trademark Judge) or a designated representative and to the Chief of the Office's Labor Relations Division's electronic email address (lrgrievance@uspto.gov or successor email which the Office will provide) and shall include a copy of the original grievance and the Step One decision and should specify the portion or portions of the Step One decision to which the Grievant has objection. The request should also explain the basis for the objection and provide any additional information needed to respond to the request.

3. The Commissioner for Trademarks (or, for TTAB Interlocutory Attorneys, the TTAB Chief Administrative Trademark Judge) or designated representative shall conduct an investigation which shall include a conference with the Grievant, the Grievant's representative, the Union, and/or witnesses, if requested, unless the parties agree not to hold the conference. The conference shall be held within five (5) weekdays of the Grievant's submission of the Step Two grievance. If the Union declines to designate a representative, then the meeting will be held without the Union**.**

4. The Commissioner for Trademarks (or, for TTAB Interlocutory Attorneys, the TTAB Chief Administrative Trademark Judge) or designated representative shall render a written decision within thirty (30) calendar days of the request if no conference is held, or from the date of the conference if one is held. The response will also include the e-mail address for the Union to notify the Office of its invocation of arbitration and any other appeal rights of the Grievant. The e-

mail address will be provided to the Union/Grievant in the event that the e-mail address is changed.

5. 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 Grievant, at their request, will be granted a five (5) working day extension to amend the grievance. However, such amendment must be based upon the information received.

6. If the Union files an information request at least ten (10) weekdays prior to the deadline for filing a Step Two grievance, the Union or Grievant may simultaneously request that the Step Two filing deadline be tolled. The Office will respond to the tolling request no later than five (5) weekdays prior to the Step Two filing deadline. If the Office grants the tolling request, the Step Two filing deadline shall be tolled until five (5) weekdays after either the information is provided (if the Office agrees to provide requested information) or the Office denies the information request in writing.

7. In the event that Step Two fails to produce a satisfactory result, the Office or the Union (but not an employee) may invoke arbitration as provided in Section 17.

Section 14: Group Grievances

A. Group grievances shall be submitted to the Chief of the Office's Labor Relations Division's electronic email address (lrgrievance@uspto.gov or successor email).

B. At the Union's discretion, the Union may designate grievances as group grievances in the event that two (2) or more grieving employees have designated the Union to serve as their representative on one (1) or more grievances involving the same facts and the same issues, or the Union has filed one (1) or more grievances on behalf of two (2) or more employees involving the same facts and the same issues.

C. The Union is required to provide the names of all Grievants involved when it files a group grievance and the grievance must include information as to how the employees are similarly situated;

D. Group grievances will be processed in accordance with the uniform employee grievance procedure as described in Section 13.

Section 15: Institutional Grievances

For institutional (Union) grievances, in lieu of step-by-step procedures outlined above, the Union may submit a written grievance to the Chief of the Office's Labor Relations Division's electronic email address (lrgrievance@uspto.gov or successor email) with a copy to the Commissioner for Trademarks (or, for TTAB Interlocutory Attorneys, the TTAB Chief Administrative Trademark Judge), or designated representative. Upon request of the Union, the Office and the Union shall

meet within thirty (30) calendar days to discuss the grievance. A written decision shall be rendered within thirty (30) calendar days after the meeting or within thirty (30) calendar 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 17.

Section 16

Any amendment to a grievance must be in writing or shall not be considered.

Section 17: Arbitration

In the event that Step One in the case of an Office grievance or a grievance for which the first step official is the Commissioner or designee, or Step Two in the case of an individual or a Union grievance, fails to produce a satisfactory result, the Office or the Union (but not the employee) may invoke arbitration.

A. **Invocation**

1. The Union and the Office have the right to submit grievances to binding arbitration. The Union or the Office shall initiate arbitration by filing written notice with the Chief of the Labor Relations Division or with the President of the Union, as applicable, of its desire to arbitrate within thirty (30) days after the final Office or Union decision has been rendered. If a final decision was not timely rendered, the party that filed the grievance may invoke arbitration at any time after the date on which the decision was due and up until thirty (30) days after the decision is eventually provided.

2. If arbitration is not timely invoked, the grievance is dismissed. Dismissal of the grievance for this, or any reason permitted by this Article, shall not be the subject of a new grievance.

B. **Arbitrator Selection**

1. The parties shall attempt to select a mutually acceptable Arbitrator within seven (7) calendar days from the date of receipt of the notice in Section 17.A, above, by the other party.

2. If the parties fail to agree on an Arbitrator within this time period, within fourteen (14) calendar days after invoking arbitration the party invoking arbitration shall submit a request to the Federal Mediation and Conciliation Service (FMCS) for a panel of seven (7) arbitrators. The parties agree to instruct FMCS to provide only names of arbitrators who: are willing to conduct the arbitration remotely or waive travel and/or per diem expenses, and have Federal sector arbitration experience. In addition, the parties can jointly agree to tell FMCS to exclude certain named arbitrators from the panel. The party submitting the request shall pay the fee required by FMCS. If the party invoking arbitration fails to submit a request to

FMCS for a panel of arbitrators within this twenty-one (21) calendar day period, the grievance is dismissed, absent good cause to extend the period. Disputes between the parties as to the existence of such good cause shall be a threshold issue in the arbitration.

3. Within fourteen (14) calendar 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 and that arbitrator shall be deemed selected. If a party does not make itself available to strike within this fourteen (14) day period, the opposing party may unilaterally select an arbitrator from the panel and that arbitrator shall be deemed jointly selected.

4. Within seven (7) calendar days of selecting an arbitrator, one or both parties shall confirm with the arbitrator that they agree to serve without payment of travel and per diem or will conduct the arbitration remotely, and has availability within the next six (6) months to hear the case. If the arbitrator does not agree to serve without payment of travel and per diem or conduct the arbitration remotely or cannot provide availability within the six (6) months following invocation, either party may demand that the arbitrator be dismissed and replaced with the last-struck arbitrator from the panel. This process shall continue until an arbitrator is identified who agrees to the parties' requirements.

C. **Scheduling**

1. The Union and the Office shall confer with the arbitrator, via email or teleconference, no later than thirty (30) calendar days from the date that the arbitrator has confirmed acceptance of the parties' terms described in Section 17.B.2 to schedule a hearing, or to discuss hearing the case on briefs if the parties agree to request this procedure.

2. During the conference or communication with the arbitrator in Section 17.C.1 above, the parties shall also inform the arbitrator of any grievability or arbitrability issues presented. Such issues shall be heard by the arbitrator, and a written decision shall be issued, in advance of the hearing on the merits. The arbitrator shall require the submission of briefs on such issues within four (4) months of the date of the conference in Section 17.C.1, above. The arbitrator, taking into account the preference(s) of the parties, shall determine whether a hearing, on the record, on the grievability or arbitrability issues is necessary. The arbitrator shall issue a written decision within two (2) weeks of the hearing or briefing.

3. Together with the arbitrator, the parties will determine how many days the arbitration hearing should be. Hearings will normally begin at 8:30 a.m. and end at 5:00 p.m. Eastern Time, unless mutually agreed otherwise and in consideration of the location of the parties.

4. The arbitration hearing must be scheduled for no later than six (6) months following invocation. Following the establishment of a date for arbitration, each party may request a postponement of the hearing for up to two (2) months, contingent on the arbitrator being available within that period. This request for extension must be made at least twenty (20) days prior to the hearing. Either party may make additional unilateral requests that the arbitrator postpone, delay, or reschedule the hearing. If the arbitrator elects to do so, the requesting party shall pay any and all fees associated with the delay. In any grievance where the parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, they will equally share the cost of any fees associated with the delay. The fact that one party has no objection to the request of the other party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting party from paying the fees being charged. Indefinite extensions shall not be granted, unless mutually agreed to by the parties.

5. In the event that the grievance settles prior to or following the scheduling of a hearing, the parties shall equally share any cancellation fees imposed by the arbitrator unless the settlement provides otherwise. The hearing shall not be cancelled until the agreement is signed, but may be postponed.

D. **Arbitration Procedures**

1. The arbitration proceeding shall be held virtually.

2. The arbitrator shall hold the hearing notwithstanding that one party refuses to attend the arbitration.

3. The arbitrator's authority to make an award is subject to applicable law, regulation, and the terms of this Agreement.

4. The arbitrator shall have the authority to interpret this Agreement as necessary to render a decision consistent with the provisions of this Article but shall have no authority to add to, subtract from, alter, amend or modify any provisions of this or any other Agreement between the parties.

5. The parties agree to expeditiously present their case, and the arbitrator will ensure that the hearing is conducted in a fair and expeditious manner. The arbitrator 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.

6. The parties shall make their best efforts to jointly agree on: 1) the issue(s) presented to the arbitrator; 2) a set of stipulated facts; and 3) joint exhibits. The parties shall exchange written issues, stipulated facts, and joint exhibits, at least fourteen (14) days prior to the start of the hearing. 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.

7. At least seven (7) days prior to the first day of an arbitration, the parties will discuss settlement.

8. The parties shall exchange the following items at least seven (7) days prior to the first day of the arbitration

   a. *Witnesses.* Proposed witness lists,

   b. *Remedy*. The party invoking arbitration will specify the remedy sought,

   c. *Representatives/Attendees*. A list of representatives and any other proposed attendees for the arbitration. The parties agree that one non-participatory observer at a time may sit in on the hearing, without identifying the individual in advance.

   The advance notice requirement above does not apply to any witnesses necessary for rebuttal.

9. If either party intends to introduce an expert witness report during the hearing, such report and the curriculum vitae or resume of the expert must be provided to the opposing party no later than forty-five (45) days in advance of the hearing. This advance notice requirement does not apply to any experts necessary for rebuttal.

10. Bargaining history may not be used in an arbitration hearing unless the party proposing to use it has notified the other in writing at least thirty (30) days prior to the hearing. If a party gives notice of intent to use bargaining history, the other party may use it without providing notice. The parties should attempt to stipulate the bargaining history of each side and bargaining history testimony may be provided via telephone.

11. Both parties shall have the right to make opening and closing statements.

12. Both parties shall be entitled to call witnesses before the arbitrator. Upon objection of the opposing party and a proffer by the party requesting to present the witness, the arbitrator shall determine if the testimony of a proposed witness is irrelevant to the issue(s) presented, or is unduly repetitive, and shall exclude the witness on these or other appropriate grounds. Cross-examination will be permitted of all witnesses. All testimony shall be made under oath or affirmation. Normally, only one representative per party may question each witness.

13. The strict rules of evidence are not applicable, and the hearing shall be informal.

14. The Office will make employees available as witnesses when requested by the Union and approved by the arbitrator. If the Office determines it is not administratively practicable to comply with the Union's request, and the arbitrator determines the employee's testimony is relevant, then the hearing may be postponed at the expense of the Office. However, the Union may agree to submit an affidavit or declaration in place of the direct testimony of the employee.

15. Witnesses, the Grievant, and the Grievant's representatives who are bargaining unit members will be granted official time to participate in arbitration proceedings if the employee would otherwise be in a duty status. The Office will not pay overtime. Expenses for witnesses who are not employees will be borne by the party calling that witness.

16. If information was requested under this Agreement or Statute as part of the grievance, but the information was not provided, the failure to provide the requested information will be joined as an issue in the arbitration case, unless the Union has filed an unfair labor practice (ULP) with the Federal Labor Relations Authority (FLRA). If the Union has elected to file a ULP with the FLRA over an information request, no such issues will be joined or presented to the arbitrator. If the Union has not filed a ULP with the FLRA over the information request, the Union may ask the arbitrator to address the issue before the hearing or as part of the arbitration decision. Nothing in this Article entitles either party to discovery, unless such discovery is authorized by law.

17. The arbitrator may determine upon request of either party that the arbitration hearing shall not be open to the public or the press and/or that attendance at the hearing, other than of individual witnesses, shall be limited to representatives of each party and any mutually-agreed observers.

18. All witnesses shall be sequestered prior to their testimony.

19. A verbatim transcript of the proceeding shall be made by a court reporter unless the parties mutually agree that one is not needed. Each party bears its own cost of obtaining a copy of the transcript.

20. Post-hearing briefs will be exchanged unless the parties mutually agree to eliminate them on a case-by-case basis. The arbitrator shall set a date, not more than forty-five (45) days from the close of the hearing, for the submission of post-hearing briefs. Each party may submit a reply brief within ten (10) days of receiving the initial post-hearing brief. Extensions may only be granted by the arbitrator.

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

22. The arbitrator's decision shall be provided to the parties in electronic format no later than sixty (60) days after the conclusion of the hearing or receipt of post-hearing briefs, whichever is later.

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

E. **Arbitrator Fees**

1. Unless otherwise stated in this Article the arbitrator's fee and any other expenses, including court reporting fees, will be borne equally by the parties.

2. The parties agree that no arbitrator shall be paid in advance for services.

ARTICLE 12
PROMOTION AND REASSIGNMENT

Section 1

A. 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 (as defined by the Age Discrimination in Employment Act of 1967, as amended), marital status, sex (including pregnancy and gender identity), disability, sexual orientation, genetic information (including family medical history), military service (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994), or political or employee organizational affiliation, except as may be authorized by law 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.

B. No employee of the unit shall be placed in a disadvantageous position with regard to promotions by virtue of Office-initiated service on a detail or work project. Promotion of any 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 2

A. Employees in career ladder positions will be promoted in the first pay period after:

1. the employee becomes minimally eligible to be promoted after one year (the last workday of the 52nd week in their positions) or whatever lesser period satisfies the basic eligibility requirements); and

2. The employee is demonstrating the potential for satisfactory performance at the next higher level (i.e., the employee's current performance and current performance appraisal has an overall rating of fully successful or better in all critical elements); and

3. All other requirements of law and regulation are met.

B. The effective date will be the beginning of the first pay period after all applicable 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 U.S.C. § 5596 5 C.F.R. § 550 subpart H, and relevant Comptroller General decisions, shall be entitled to back pay from the first pay period after meeting such regulations and approval requirements.

C. Employees who are not promoted after completion of the minimum time in grade may request a written statement from their supervisor. 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 3

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 4: Merit Promotions and Other Competitive Actions

A. Examples of such actions are: competitive promotions; filling a position by temporary promotion for more than 120 days; assignment to higher-graded duties for more than 120 days; and any reassignments to a position with more promotion potential than the employee's current position.

B. An employee who has been at the GS-13 level for one (1) or more years may submit a certification and request for a promotion to GS-14 if:

1. they currently are performing at the fully successful level or higher in all PAP elements; and

2. they have worked 3,600 or more examining hours, including mentoring hours, overtime, and compensatory time work, or can certify to relevant experience;

3. they have achieved an overall rating of Commendable or higher on their most recent end of year performance appraisal.

4. they have:

   a. achieved a rating of Commendable or higher in the Quality element of their most recent end of year performance appraisal;

   b. achieved a rating of Commendable or higher in the Quality element of their most recent midyear performance review if the request is effective between the midyear and the end of the year; or

   c. requested a pull of ten cases to be reviewed by a managing attorney or other appropriate individual that is not the employee's own managing attorney and those cases have:

      i. no more than one procedural error

      ii. no more than one search deficiency

iii. no deficient written actions

If the first pull is unsuccessful, another pull may be conducted by a managing attorney or other appropriate individual. If the second pull is unsuccessful, the employee must wait six months before requesting another pull.

C. When Trademark-related vacancies are announced, the Office will send an email to all bargaining unit members attaching the vacancy announcements. The email will be sent when the position is announced. Vacancies announced will be open for a minimum of ten (10) business days. At minimum, the vacancy announcement 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. Evaluation methods;
9. Statement of equal employment opportunity;
10. Selective placement factors, if any;
11. Number of positions to be filled; and
12. How to submit applications

D. Changes to vacancy announcements of a substantive nature will require extension of the closing date or re-announcing the vacancy.

E. If more than eight (8) candidates are subject to panel evaluation, all eligible candidates will be evaluated and ranked in a fair and objective fashion. A panel for a particular position will consist of at least three (3) members, selected by Human Resources, 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.

F. Within thirty (30) 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.

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

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

3. Apart from documented cases of leave abuse, an employee's accumulation or balance of annual or sick leave may not be considered by the ranking panel or ranking official, selecting official or supervisor as a basis for selection for promotion.

G. The Office has determined that it will provide first consideration to current employees for bargaining unit vacancies by considering the best qualified internal candidates before external candidates are reviewed/considered.

H. 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. The certificate will usually include the names of three (3) to five (5) best-qualified candidates for the vacancy to be filled. Additional candidates may be certified where meaningful distinctions cannot be made. A maximum of ten (10) "Best Qualified" candidates may be referred to the selecting official, except as stated in Section 4.H.3 below, but the total number of candidates may be increased to the extent necessary to include candidates available from other appropriate sources under 5 U.S.C. § 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 (1) vacancy to be filled from a certificate, one (1) additional candidate may be added to the certificate for each additional vacancy. In the event additional vacancy(ies) occur within two (2) months after an announcement has closed, the old announcement may be used to fill the vacant position.

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

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

6. Interviews with the selecting official are optional. However, if one (1) member of the best qualified group is interviewed, all must be interviewed.

7. If the candidate selected is a unit employee, they 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., to permit arrangements to be made for the completion of essential assignments), this time period for promotions may be extended. No such extension shall be longer than one additional pay period.

I. Notice of the cancellation or withdrawal of all vacancy announcements will be provided to the bargaining unit and the Union President will be notified via email.

J. The Office shall notify candidates as to whether they were selected or not. An email to all bargaining unit members notifying employees of the selectees for a vacancy is sufficient to notify applicants of their non-selection.

K. Upon request, an employee may meet with the Office to discuss improving their prospects for future selection.

L. When requested by a competing bargaining unit applicant, and/or the Union on behalf of the 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, as 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 their 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 Human Resources or a knowledgeable supervisor.)

M. Upon request at completion of the selection process, a copy of the completed ranking and selection record 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. Whether or not the employee referred was in the bargaining unit, and if so, the series and grade of the employee referred;

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

7. The name of the selecting official;

8. Date of selection action; and

9. Date the selected employee will be 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, provided that the group is properly ranked and certified and the selection is not otherwise unlawful.

O. Due consideration will be given to requests for voluntary downgrades. Employees will not be coerced into voluntary downgrades by their supervisors or the Office.

Section 5: Voluntary Transfers and Reassignments

A. 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.

B. Such requests must be in writing and may include a statement of the reasons for the request. Requests may include a preferred destination(s), should be made to a level above the employee's immediate supervisor, who will treat the request as confidential.

C. The Office will notify an employee when an ongoing transfer or reassignment request may be granted to afford the employee the right of refusal or withdrawal. An employee may notify the Office they are withdrawing their request for a transfer or reassignment (i.e., a move between law offices**)** at any time prior to the approval or denial of the request. Nothing derogatory shall be implied from any request for transfer or reassignment and the employee so requesting shall be free from discrimination or reprisal therefore.

Section 6: Involuntary Reassignments

A. In exigent circumstances, the Office reserves the right to move employees between existing law offices or into new law offices due to operational needs without complying with the requirements of Section 6.B, below. The Union reserves all rights to bargain such changes to the extent permitted by law.

B. If it is necessary to involuntarily 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 USPTO service computation date shall be given first option for the reassignment, absent operational needs. If there are too few volunteers, employees with the most recent USPTO service computation date will be selected first for the reassignment, absent operational needs.

Section 7

Requests for personnel actions will be processed promptly.

Section 8

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

ARTICLE 13

PERFORMANCE APPRAISAL

Section 1

A. This Article is intended to be interpreted and applied in a manner consistent with 5 U.S.C. Chapter 43, and 5 C.F.R. Part 430.

B. The Union will be afforded the opportunity to bargain as allowed by law before new critical job elements and standards go into effect.

C. 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.

D. Predecisional involvement by the Union in matters that are traditionally considered an exercise of management rights that are subject only to impact and implementation negotiation may obviate the necessity of formal impact bargaining before implementation and may provide the Office with valuable input in its decision-making processes. Whenever management contemplates changing the parties' performance appraisal agreements (including performance appraisal plan riders and MOUs) through the exercise of management rights which would result in the need to bargain, it will first engage the Union in at least one partnership discussion before making a final determination of whether and how to make the contemplated change. Moreover, the parties agree that once a performance appraisal plan or modification thereof is decided by management, the parties will first engage in at least one partnership discussions over the impact and implementation of the proposed changes before engaging in formal bargaining. The Union will receive notice of the proposed changes before the bargaining unit. Either party may withdraw from partnership after the two meetings described above and trigger traditional bargaining pursuant to Article 28 (Mid-Term and Impact and Implementation Bargaining). Engaging in partnership on a topic over which the Office is not required to negotiate creates no right to formally negotiate.

Section 2: The Plan

A. The Office will establish a performance appraisal plan (Plan) for each employee. The Plan will consist of critical elements that are aspects of the employee's work where acceptable performance is essential to their position. Each element will have a performance standard that, at a minimum, states the expectations or requirements that must be met by the employee in order for their performance to be rated as fully successful in that element. An employee's performance will be rated in each element of the Plan.

B. Elements and standards must be reasonably related to the duties set forth in the employee's position description. Written performance appraisals will be based on a comparison of the employee's work performance throughout the entire rating period or applicable portion thereof to the elements and standards of their performance plan. An employee will be rated on actual performance.

C. The Plan normally will be delivered to an employee within thirty (30) calendar days of the beginning of each appraisal period. If an employee permanently changes positions during the appraisal period, they will normally receive a new Plan for the new position within thirty (30) calendar days of the assignment to the new position. The Office and the employee will sign and date the Plan. The employee's signature acknowledges receipt; discussion of the Plan; and that the employee will be rated based upon the Plan. If an employee does not understand any aspect of the Plan, they should immediately seek clarification with their supervisor.

D. The Office will not prescribe nor permit a predetermined or forced distribution of ratings. The Office will not use absolute performance standards for critical job elements unless authorized by law.

Section 3

The appraisal period is from October 1 of one year through September 30 of the following year, unless adjusted due to individual circumstances.

Section 4: Changes to the Plan

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

B. The Union will be notified of a change in plans before employees are notified**.** No permanent or temporary changes will be implemented until after the Office has fulfilled its bargaining obligations under the law. The parties will bargain in accordance with Article 28 (Mid-term and Impact and Implementation Bargaining). , unless otherwise agreed.

Section 5

The minimum appraisal period will be one hundred-twenty (120) calendar days.

Section 6: Formal (Mid-Year) Progress Review

A. The process of monitoring performance is ongoing. Therefore, the Office will counsel employees in relation to their overall performance rating on an as needed

basis. Such counseling will normally take place when a supervisor notices that an employee is no longer performing at least at a fully successful level.

B. Rating officials must conduct a mid-year progress review with their employees at approximately the midpoint of the appraisal period. During the review the Office will provide oral or written feedback on the employee's performance on the critical elements of the Plan. When the Office identifies unacceptable or marginal performance, the Office will provide the employee a written explanation including specific examples for each critical element below the fully successful level and identify areas of improvement and actions the employee should take to improve performance. An employee who leaves employment with the Office before the completion of the final performance rating for the appraisal period may request that their mid-year progress review not be placed in their official record.

Section 7: Written Performance Appraisal

A. Each employee will receive a written performance appraisal for each rating period from their immediate supervisor or rating official that will be based on their performance compared to the standard for each element. The written performance appraisal will indicate whether the employee's performance was acceptable or unacceptable in each element. At a minimum, the appraisal also will include a brief narrative summary of the employee's achievements and any areas for improvement and/or growth in the coming rating period.

B. The performance of Union representational functions and use of approved official time will not be considered as a negative factor when evaluating an employee's performance against their performance standards.

C. All appraisals of performance will be made in a fair, reasonable and accurate manner, based upon the employee's performance during the appraisal period, to include work performed on details and/or work projects, using verifiable data.

D. Interim ratings will be prepared during the course of a rating period when an employee has spent the minimum appraisal period (120 days) in a covered position and then changes to another position. When calculating a final rating where an employee had interim rating(s) during that appraisal period, the following steps should be used:

1. The rating official for the employee's position of record appraises the employee on the work done if the employee has served in that position for at least 120 days of the appraisal period.

2. Double the score assigned for the position of record.

3. Add the doubled score to any other interim rating scores received within that appraisal period.

4. Divide the total score by the number of positions occupied for 120 days or more during that appraisal cycle plus 1 (e.g., if the employee occupied two positions for 120 days or more in the appraisal cycle, the total score would be divided by 3). This rating becomes the final score. Scores with decimals at .5 and above should be rounded up.

E. All ratings must also be based on adequate observation and knowledge by the rating official of all factors affecting the employee's performance. Adverse comments relating to an unsatisfactory rating made by the supervisor must be supported by appropriate and actual examples.

F. Ratings below fully successful will be supported by data and/or written narrative justifications citing specific examples for each critical element below the fully successful level. This narrative shall also identify areas of improvement and actions the employee should take to improve performance.

G. The Office and employee will sign and date the written performance appraisal. The employee's signature acknowledges receipt and discussion of the appraisal and does not necessarily signify the employee's agreement. Either the manager or the employee may request a meeting regarding the written performance appraisal, which will be remote, unless the employee and manager otherwise agree.

H. In lieu of a Step One Grievance, an employee may request an informal reconsideration of their numerical rating or the comments in their appraisal by an official in a position higher than the rating official within five (5) weekdays of the employee's receipt of their appraisal. The Office will respond to this request within 10 weekdays. The Office will not retaliate against an employee for requesting reconsideration of their performance appraisal.

I. Management has determined that it will continue to apply supplemental standards when appropriate. If management changes this determination, it will bargain with the Union to the extent required by law.

Section 8: Performance Appraisals for Employees on Details

A. The Office will provide the employee the expectations or requirements for their performance rating with respect to that detail and/or work project within fifteen (15) calendar days of the employee starting the detail and/or work project.

B. The Office will provide notice and bargain with the Union to the extent required by law when proposing a new or changed detail and/or work project, including with respect to employees' performance appraisal plans.

Section 9: Within Grade Increases

A. An employee paid at less than step 10 of the grade of their 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 their assigned position must be at least at the Fully Successful level.

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

3. The employee must not have received an equivalent increase during the waiting period. Quality step increases are not equivalent to within grade increases.

B. Unless denied by the supervisor based on performance, within grade increases will be processed by OHR according to applicable Office rules and procedures. The Office will pay employees, retroactively if necessary, at the next higher step beginning the pay period following an employee's advancement.

C. 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 may request a reconsideration of the negative within-grade increase (WGI) determination in writing within fifteen (15) calendar days upon receiving written notice of the WGI denial.

D. At any time after the WGI has been denied, the Office may prepare a new rating and grant the WGI after the employee has demonstrated consistent and sustained performance at the Fully Successful level or higher. However, the Office shall determine whether the employee's performance is at an acceptable level of competence at least as frequently as every two quarters following the original eligibility date for the WGI and for as long as the WGI continues to be denied, determinations will be made after no longer than each quarter. An employee may request that their supervisor review their performance after one quarter, and the supervisor may decide that one quarter of improved performance is sufficient to grant the WGI.

Section 10: Performance Improvement Plans

A. Prior to proposing any action under 5 U.S.C. Chapter 43, the Office will place an employee on a performance improvement plan (PIP). The PIP will include the following:

1. An identification of the critical elements and performance standards for which performance is unacceptable and include the minimum performance standard, as

set forth in the employee's performance plan, that must be achieved in order to successfully complete the PIP.

2. A statement that will advise the employee of the length of time, no less than ninety (90) days and usually not more than ninety-eight (98) days (seven (7) bi-weeks) and subject to Subsection Section 10.B below, that the employee has to bring performance up to at least the marginal performance level (the "opportunity period");

3. A description of what the Office will offer to assist the employee to improve the unacceptable performance during the opportunity period. The Office may, upon written request of the employee, or where otherwise deemed appropriate by the Office, provide training, closer supervision, mentoring, counseling or other assistance as appropriate to the employee to meet performance expectations before taking action to remove the employee from their position;

4. Identification of which supervisor or management official(s) will be overseeing the PIP and available to assist the employee in reaching at least a marginal level of performance;

5. Meetings may be conducted at the request of the employee or at the discretion of the supervisor. These meetings may be remote, and the Office will not require an employee to be present in-person if the employee is on a telework program that does not require reporting to USPTO facilities. Regular meetings (at least twice a month) are encouraged between the supervisor or appropriate management official(s) and the employee to discuss the status of the employee's performance and continued expectations; and

6. A statement that unless the employee's performance in the critical element(s) improves to a minimally acceptable level (i.e., at least marginal) by the end of the PIP and is sustained for a period of one (1) year from the start of the PIP (maintenance period), the employee may be reduced in grade or removed.

B. In the event that unforeseen circumstances arising during the PIP period prevent the rating official from assessing the employee's performance at the end of the period (e.g., prolonged absence due to illness or injury or similar), the rating official shall extend the PIP period until an assessment can be made, consistent with law.

C. If during the opportunity period the employee demonstrates definite improvement, but not enough to meet the marginal level of performance, the Office may extend the PIP for a reasonable time.

D. Employees shall be given clear notice of their performance expectations for the one (1) year period at the start of the PIP, including specific metrics of what constitutes the minimally acceptable level of performance. For purposes of determining if an employee has maintained successful performance during the one (1) year following the issuance of the PIP, the employee's performance will be assessed based on

periods that are distinct, each at least six (6) bi-weeks long, and do not overlap. Specifically, in the absence of any extensions, the employee will be evaluated during the initial PIP period (usually seven (7) bi-weeks) followed by three consecutive maintenance periods (each six (6) or seven (7) bi-weeks) to complete the one (1) year period. The Office will provide these assessment dates to the employee at the start of the maintenance period. Employees will have access to bi-weekly reports of their performance metrics in relation to their performance expectations for the one (1) year period at the start of the PIP. The supervisor is also required to notify the employee of any potential issues with performance prior to the conclusion of any period of assessment in order to provide the employee with an opportunity to address any shortcomings in performance.

E. Consistent with Section 10.B above, if the employee demonstrates at least the marginal level of performance during the PIP and maintenance period, the rating official shall not extend the PIP nor the maintenance period. The employee will have demonstrated minimally acceptable performance.

F. If the employee has not performed at least at the marginal level, management may propose a reduction in grade or removal as appropriate. If this action is undertaken, the procedure set forth in 5 U.S.C. Chapter 43 or 5 U.S.C. Chapter 75 will be followed.

G. When employees are placed on PIPs, on a quarterly basis the Union may request and be provided information as to:

1. The number of employees on PIPs;

2. The critical element(s) on which the PIP(s) are based, including a break out of the number of PIPs by critical element; and

3. The number of employees who have successfully completed the initial PIP but are still subject to a maintenance period, including what critical element(s) are being evaluated in the maintenance period.

Section 11: Action Based on Unacceptable Performance

A. The Office shall administer any unacceptable performance action in a manner consistent with 5 U.S.C. Chapter 43 and 5 C.F.R. § 432 or 5 U.S.C. Chapter 75. The Office will make reasonable efforts to assist the employee in improving deficient performance and will provide reasonable opportunity for the employee to correct performance problems before initiating any removal or demotion action. For purposes of this Section, an action based on unacceptable performance is a reduction in grade or removal of an employee who fails to meet the minimally acceptable level of performance in one or more critical element(s) of the employee's position.

B. Supervisors will notify all employees of the existence of the Employee Assistance

Program when placing an employee on a PIP or proposing an action based on unacceptable performance.

C. Prior to placing an employee on a PIP or taking action against an employee based on performance, the rating official shall consider mitigating factors of which they are aware.

D. If an employee is having difficulty maintaining a fully successful level of performance, the employee may request assistance from their supervisor and/or any other available Office resources.

E. The Office may not rely on any alleged deficiency or criticism of the employee's performance to which the employee has not been given the opportunity to reply either orally or in writing. The Office's written decision shall specify the instances of unacceptable performance by the employee on which the action is based, the specific action to be taken, the effective date, and the employee's applicable appeal and/or grievance rights.

F. An employee may raise a medical condition for the Employer's consideration consistent with 5 C.F.R. § 432.105(a)(4)(iv).

G. When there is a meeting between an employee and their 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), an employee will be entitled to be accompanied by a Union representative during such meeting. If such a request is made, the supervisor or their delegate will honor the request. If after the proposal notice has been delivered and the employee has designated the Union as their representative, the employee shall have the right to have Union representation at any discussion between the Office and the employee. The Union reserves its rights under Article 9 (Union Rights) and statute.

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

1. The action being proposed;

2. The specific instances of unacceptable performance on which the present action is based;

3. The critical elements of the employee's position on which the performance is considered unacceptable;

4. The employee's right to reasonable time to answer the Office's notice of proposed action orally and/or in writing. Reasonable time shall normally be considered to

be fourteen (14) calendar days from receipt of the proposal. Reasonable extensions of time will be granted if requested and for good cause shown;

5. The employee's right to be represented by an attorney or other representative, including the Union;

6. The name of the individual to whom the response shall be made and who will serve as the Office's deciding official;

7. 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 5 U.S.C. § 7114, the Freedom of Information Act, the Privacy Act, or the Civil Service Reform Act;

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

9. That the thirty (30) calendar day notice period shall begin when the employee received the notice

I. A proposed action may be based on instances of unacceptable performance which occur within a one (1) year period ending on the date of the proposed action.

J. **Decision.**

1. The decision to retain, reduce in grade, or remove the employee shall be made within thirty (30) calendar days after the expiration of the advanced notice period. The period may be extended for good cause or consistent with government-wide regulation. The decision notice will include a statement indicating that an SF-50 reflecting the adverse action will be placed in the employee's OPF / eOPF, unless otherwise agreed.

2. The Office may not rely on any alleged deficiency or criticism of the employee's performance to which the employee has not been given the opportunity to reply either orally or in writing. The Office's written decision shall specify the instances of unacceptable performance by the employee on which the action is based, the specific action to be taken, the effective date and the employee's applicable appeal and/or grievance rights.

3. If the employee's performance improves to at least marginal during the opportunity period, then the employee will be notified in writing.

4. Before a decision to reduce in grade or remove an employee is effective, the employee has the ability to resign or, if eligible, to retire. The employee will be able to submit a resignation or retirement until 5:00 P.M. Eastern Time on the effective date stated in the written decision. The employee must submit an email or other written statement to their supervisor by no later than 5:00. P.M. Eastern Time and indicate that the resignation or retirement is effective at (or before) 5:00 P.M. Eastern Time.

K. In the event that the employee maintains a rating of at least fully successful for one (1) rating year from the date of the advance written notice, the Office shall remove any record from the employee's OPF of the unacceptable performance for which the action was proposed.

L. Cancellation. If an action for unacceptable performance is canceled or rescinded, the action will be removed from the employee's OPF and/or eOPF.

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 Office will provide a professional office environment for NTEU 245 bargaining unit members.

B. The goal of the Office shall be to provide a private, wall-enclosed office for all NTEU 245 bargaining unit members working at the USPTO Headquarters facility. Toward that end, the Office agrees to provide, or to make a good faith effort to secure space so as to provide, a private office of at least 120 square feet to all employees working at the USPTO Headquarters facility forty (40) or more hours per biweek.

C. The Office agrees to consult in good faith with the Union about any problems with respect to achieving Section 2.B. Should existing space prove inadequate to satisfy Section 2.B above, the Office agrees to give good faith consideration to the reallocation of existing space. To the extent required by law, the Office will bargain with the Union over changes in office space and/or moves to additional or newly acquired space.

D. Management will provide a secure workspace.

Section 3

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

A. it shall be done by seniority among employees on each floor;

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

C. 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 attorneys with exterior offices on that floor will be given the option of either doubling in an exterior office or taking an interior office alone;

D. Employees shall be given two weeks' notice that they are to be doubled. Employees will be notified as soon as practicable of the names of other employees who are to be doubled;

Section 4

A. Subject to budgetary constraints, the Office shall allow for voluntary physical office moves to occur as follows:

B. 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.

C. Selection of new offices shall be by seniority. If multiple employees have the same seniority, there shall be a random draw to pick offices.

D. 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 may do so on the accelerated date; in all cases, the Office shall notify employees in advance of upcoming move dates.

E. 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 in such office temporarily.

F. Notwithstanding Section 4.A above, in extraordinary circumstances, if a Managing Attorney (or higher level manager) desires to assign a room out of the agreed upon sequence of priority, they may do so only if the variance is due either to: (i) a reasonable accommodation, (ii) special requirements of the work; or (iii) operational need.

G. When required by management to move between buildings or offices, employees will be instructed to pack personal and work-related belongings in boxes or packing crates provided by the Office. Boxes and crates must be labeled in accordance with instructions provided by management.

1. The Office will not be liable for personal belongings lost or damaged during the move.

2. Employees must move personal items that are too large to fit in the provided boxes or crates on their own. This includes personal furniture, pictures, and lamps.

3. Employees wishing to move their own personal belongings should remove them from the original office when packing and return them to the new office following the Office move of work-related material.

H. The Office will be responsible for moving all packed boxes/crates as provided by management to the employee's new office.

I. The employee will promptly report if any information technology (IT) equipment is not working properly following the move.

J. On campus Examining Attorneys in training may be assigned to space conducive to learning and collaboration and will be assigned a permanent work space following completion of training.

Section 5

A. Smoking, including the use of electronic cigarettes or vaping devices, is prohibited by bargaining unit employees in all Federal Government buildings and facilities where prohibited.

B. The following items are a partial list of prohibited from personal offices in all USPTO facilities unless provided or approved by the Office:

1. Refrigerators (except as part of a reasonable accommodation)

2. Space heaters (except as part of a reasonable accommodation) and other items with a heat source (coffee and tea pots, hot pots, hot plates, toaster ovens, etc.)

3. Aquariums

4. Upholstered furniture (unless provided by the office)

5. Any electronic gear with frayed cords

6. Candles or any other item that uses a flame

C. Additional items may be added by management after notice to the Union and the opportunity to bargain to the extent required by law. Factors that would lead to a prohibition include items that would cause a heavy load on the electrical system or something that is considered unsafe by the lessor or the safety division.

Section 6

A. The Office agrees to continue furnishing work areas in a manner appropriate to the legal profession. The Office agrees to provide adequate storage space for the performance of job responsibilities.

B. Upon request, the Office will provide employees:

1. ergonomic office furniture and equipment (e.g., standing desks, ergonomic chairs, footstools, keyboards, mice) to employees working at USPTO Headquarters facilities; and

2. ergonomic version of the standard suite of office equipment (e.g., keyboards, mice) that employees are entitled to while working on a telework program.

Section 7

A. 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, maintenance, and cleaning of such areas. When such painting, maintenance, or cleaning will cause employees to vacate their work area or otherwise disrupt employees' work, the Office will notify the Union and bargain any changes to the working conditions of bargaining unit employees to the extent required by law.

B. The Union agrees that employees will refrain from physical alterations of their work areas and will maintain and decorate them in a manner that is consistent with Agency policy and appropriate to the legal profession.

Section 8

A. The Office agrees to allow bargaining unit employees electronic access to the Trademark Law Library and Trademark Law Library resources. Upon request, employees will be permitted in-person access to the Trademark Law Library during available hours.

B. Management will provide access to a Health Unit or Health Unit Services at the USPTO Headquarters and Regional Offices (to the extent such services are offered to Office employees at those locations), which will offer services available to bargaining unit members, including screening and education programs.

C. The Office shall have an annual health and safety, including air and water quality, inspection in each Office 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.

D. If an employee becomes ill or is injured in the performance of their duty, the employee should seek medical attention as appropriate (e.g., Health Unit, emergency services). In order to secure information concerning necessary claim forms and guidance on other filing requirements, employees must contact Office-designated personnel. Employees are responsible for providing timely and complete claim forms and keeping Office-designated personnel apprised of their status and estimated time for return to work

Section 9

An employee, or their designated and authorized representative, will be permitted to review documents relating to their claim for workers compensation.

Section 10

No bargaining unit employee will be assigned or reassigned to office space until such time as the office space is substantially ready for occupation.

Section 11

A. In the event of failure of the air conditioning system, heating or lighting facilities, the Office agrees that on-campus employees who are ineligible for telework or otherwise not telework-ready may use available leave, utilize work schedule flexibilities, or be provided administrative leave (excused from duty with no loss of leave or salary), except that the Office may relocate employees if alternative workstations are available.

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

Section 12

Upon receiving equipment or information about equipment, the Office will make available to the Union any information received from the manufacturer that shows environmental, health, or safety effects on both employees and the work area (e.g., recalls, warnings, or usage guidance).

ARTICLE 15
OVERTIME, CREDIT HOURS, AND COMPENSATORY TIME

Section 1: General Rule

A. Overtime, credit hours, and compensatory time may be earned remotely (i.e., via telework).

B. The term "credit hours," as used in this Article, refers to Regular Credit Hours and not IFP Credit Hours, as defined in Article 24 (Work Schedules).

C. Compensatory time and credit hours are earned and used in 15-minute increments.

D. All qualified employees will be given equal opportunity to work authorized overtime, credit hours, and compensatory time to complete production work. Employees at the fully successful level with twelve months of tenure in Trademark Examination Operations and/or TTAB will normally be considered minimally qualified to work overtime and compensatory time.

E. Employees must request authorization prior to working overtime, credit hours, or compensatory time. The Office shall notify employees if they are ineligible to work overtime, credit hours, or compensatory time. Prior to validating time and attendance for the biweek, an employee's request for authorization and a supervisor's approval of requests for overtime, credit hours, or compensatory time must be in the Office's time and attendance system. Any authorization granted to a particular employee to work overtime, credit hours, or compensatory time presumes that an exception to any eligibility criteria has been made if such criteria were not met by the employee. However, employees are responsible for knowing how many hours of overtime or compensatory time they may work within the biweekly premium pay cap and should consult with the Office of Human Resources if needed. Moreover, the Office will provide a calculator or equivalent resources to assist employees in making such biweekly premium pay cap calculations.

F. Complaints or disagreements concerning authorized overtime, credit hours or compensatory time shall be processed in accordance with the negotiated grievance procedure.

Section 2: Overtime

A. 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.

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

C. Employees may be eligible to work up to 32 hours of paid overtime per pay period, subject to the overtime pay cap. Employees who exceed the overtime pay cap shall have cases worked on overtime, and not otherwise compensated, counted double for any available productivity awards

Section 3: Credit Hours

A. Credit hours are available to employees on flexible work schedules. Credit hours are not available for fixed schedules.

B. Employees that are limited or barred from earning overtime or compensatory time due to the overtime pay cap shall receive credit hours for approved time worked in excess of the pay cap, subject to the regulatory cap.

C. Credit hours may be worked on a holiday in accordance with Article 24 (Work Schedules), Section 2.D.

D. Credit Hour Limitations

1. Credit hours must be earned before they are used.

2. Full-time employees may not carry over more than 24 credit hours from one pay period to the next. Part-time employees may not carryover more than one-fourth of the hours in their biweekly basic work requirement.

3. Credit hours are not available for fixed schedules (e.g., 5/4-9, 4/10, non-gliding basic work week). Employees who request a change from a flexible schedule to a fixed schedule must use all credit hours before beginning the fixed schedule.

E. Miscellaneous Credit Hours Rules

1. 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.

2. Employees may work credit hours on any day in a week, including both weekend days.

3. Credit hours may not be used on Sundays as Sunday is not a regular workday. Employees may earn credit hours on Sunday.

Section 4: Compensatory Time

A. **General Rules**

Consistent with applicable laws and regulations, an employee may be granted compensatory time in lieu of payment for overtime work, if requested by the employee, for irregularly or occasionally scheduled overtime work. Employees must request and gain supervisory approval in advance of working compensatory time

1. FLSA Exempt employees with a rate of basic pay in excess of the maximum for GS-10 may be compensated for irregular or occasional overtime work by an equal amount of compensatory time off at the request of the employee with management approval.

2. FLSA Non-Exempt, and FLSA Exempt employees earning less than the maximum for GS-10, may elect compensatory time off for irregular or occasional overtime work, but may not be required to work compensatory time in lieu of overtime pay.

B. Part-time employees earn compensatory time on a pro-rata basis.

C. Compensatory time hours must generally be earned before being used as time off. However, an employee whose personal religious beliefs require absence from work during certain periods of time may use compensatory time in advance of earning it, in accordance with 5 C.F.R. § 550.1006.

D. The use of compensatory hours off should be scheduled in advance using the Office's time and attendance system unless unforeseen circumstances exist. An employee must normally submit a compensatory time leave request in the Office's time and attendance system at least three (3) working days prior to the absence.

E. Consistent with applicable law and regulation, no request for using compensatory time hours shall be arbitrarily denied. Requests to earn compensatory time will be granted in accordance with applicable law and regulation.

F. **Regular Compensatory Time**

1. An employee may use up to 80 hours consecutively.

2. 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.

3. An employee may not carry forward more than a cumulative eighty (80) hours of compensatory time, excluding religious compensatory hours and parental compensatory hours from one fiscal year to the next. The combined total of compensatory hours earned, excluding the exceptions named herein, may not exceed four hundred (400) hours in a fiscal year. The 400 hours does not include

those hours earned in the parental and religious compensatory time programs.

G. **Compensatory Time for Parental Leave**

1. An employee may carry over up to 320 hours of parental compensatory time from one pay period and/or fiscal year to the next to be used solely for parental leave.

2. An employee may use up to 320 hours in any 12-month period in addition to other forms of compensatory time used. Earning and use of maternity/paternity compensatory time must be coordinated with the employee's supervisor; provided that the supervisor will not preclude an employee from earning and using parental compensatory time up to the 320-hour cap.

3. There is no conversion of hours between regular compensatory hours and parental compensatory hours.

4. Part-time employees earn parental compensatory time on a pro-rata basis.

H. **Compensatory Time Restrictions**

1. Compensatory time off, excluding religious compensatory time, must be used no later than twenty-six (26) pay periods after the pay period in which it was earned. It is the employee's responsibility to monitory their earned compensatory time, and to make arrangements to use that earned compensatory time before its expiration date.

2. FLSA Exempt Employees will lose or forfeit the unused compensatory time off if:

    a. the employee fails to use accrued and accumulated compensatory time off within the required twenty-six (26) pay periods; or

    b. the employee transfers to another agency or separates from federal service before the expiration of the twenty-six (26) pay periods, unless the Office decides to pay the employee due to operational needs.

3. An employee who is exempt under FLSA with unused compensatory time off, who separates from the federal service or is placed in a leave without pay (LWOP) status under the following circumstances, will be paid for the unused compensatory time off if:

    a. the employee performs service in the uniformed services (38 U.S.C. § 4303 and 5 CFR § 353.102); or

    b. the employee has an on-the-job injury with entitlement to injury compensation (5 U.S.C. Chapter 81).

c. the employee fails to use compensatory time off due to an exigency of the service beyond the employees' control (5 C.F.R. § 550.114(d)(2))

4. FLSA Non-Exempt Employees who fail to use the compensatory time off within the required twenty-six (26) pay periods will receive payment for the unused compensatory time off if:

    a. the employee transfers to another agency or separates from the Office before using their earned compensatory time;

    b. the employee separates from the federal service;

    c. the employee is placed in LWOP to perform service in the uniformed services as defined under 38 U.S.C. § 4303 and 5 CFR § 353.102; or

    d. the employee has an on-the-job injury with entitlement to injury compensation (under 5 U.S.C. Chapter 81).

    e. Earned compensatory time has not been used within twenty-six (26) pay periods.

5. Payment for the unused compensatory time off for irregular or occasional overtime work must be in an amount equal to the amount of overtime pay the employee would otherwise have received for hours of the pay period during which compensatory time off was earned by performing overtime work.

I. **Effect of Sick and Annual Leave**

1. An employee's use of annual leave will have no effect on their eligibility to work overtime, or compensatory time.

2. If an employee uses sick leave for the entire day, they will not be eligible to earn compensatory time.

3. Compensatory time off may not be used to liquidate or reduce a balance of advanced annual or sick leave. A negative leave balance does not impact an employee's ability to earn and use compensatory time off.

Section 5: Religious Compensatory Time

Instead of requesting annual leave or LWOP, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in compensatory time work for time lost for meeting those religious requirements. Employees must request and gain supervisory approval, which will be granted consistent with applicable laws and regulations, in advance of earning or using religious compensatory time.

A. All employees are eligible to earn and use religious compensatory time in accordance with 5 U.S.C. § 5550a / 5 C.F.R. Part 550, Subpart J.

1. Religious compensatory time shall be earned and used in fifteen (15) minute increments.

2. An employee must record the earning and use of religious compensatory time in the Office's time and attendance system.

B. An employee's request to use religious compensatory time should be made normally at least three (3) workdays in advance, using the Office's time and attendance system, unless unforeseen circumstances exist. The employee has a responsibility to comply with this requirement; however, an employee request made less than three (3) days will be considered and granted if feasible.

1. An employee may work such religious compensatory time thirteen (13) pay periods before or after the grant of religious compensatory time off.

2. A grant of advanced religious compensatory time off must be repaid by the appropriate amount of religious compensatory time work within thirteen (13) pay periods.

C. Negative balances of religious compensatory time remaining longer than 13 pay periods will be automatically converted to credit hours, compensatory time off in lieu of overtime pay, compensatory time off for travel, annual leave, and/or time-off awards to liquidate an employee's debt of hours. Any negative balance of religious compensatory time off remaining after any charging of these types of paid time off may be resolved by charging the employee leave without pay.

ARTICLE 16
UNION REPRESENTATION AND OFFICIAL TIME

Section 1

A. "Official time" will be provided consistent with 5 U.S.C § 7131 and this Article.

B. "Bank" official time shall be granted for employees representing the Union in the amounts that have been agreed by the parties to be reasonable, necessary, and in the public interest.

C. "Non-bank" official time shall be granted for employees representing the Union in accordance with Section 4, for participation in informal, mutually agreed upon meetings, and for Office-initiated meetings or collaboration and preparation for such meetings, if appropriate. Non-bank time does not count against Union "Bank" time described in Section 1.B above.

D. Official time must be noted on an employee's timesheet using time codes designated by the Office.

Section 2

A. Union representatives shall be authorized bank official time subject to the limit calculated in Section 3 with a maximum rollover of 500 hours to conduct the following activities:

1. to prepare, investigate, and represent employees in grievances, and to counsel employees;

2. for formal discussions with the Office concerning grievances, or personnel policies, practices, or other general conditions of employment;

3. 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-bank time for both the meeting and for the preparation for the meeting, if appropriate;

4. to review and respond to memoranda, letters, and requests from the Office, as well as newly-proposed instructions, manuals, notices, etc., which affect personnel policies, practices, or working conditions;

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

6. for consideration of all matters concerning the interpretation and/or application of this Agreement and/or the FSLMRS; and

B. Use of bank official time will be measured on a fiscal year basis, and for the first fiscal year in which the Agreement is in effect, will be prorated from the effective date of the Agreement. This prorated total of bank official time for the first fiscal year in which the Agreement is in effect will be added to the Union's balance of bank official time as of the effective date of this Agreement (i.e., the Union will not lose its accumulated bank official time upon the effective date of this Agreement).

Section 3

The annual allotment of bank official time shall be calculated as follows: 1,600 hours + 1.5 times the number of bargaining unit employees. The amount will be calculated at the start of the fiscal year (October 1).

Section 4

Union representatives shall be authorized non-bank official time for the following meetings and activities:

A. meetings of Labor Management Working Groups or other committees on which Union stewards are authorized membership;

B. informal, mutually agreed upon meetings and Office-initiated meetings (including preparation for such meetings) between Union representatives and designated Trademark management officials.

C. Collective Bargaining Agreement negotiations, Federal Labor Relations Authority (FLRA) proceedings, if so determined by the FLRA, Federal Service Impasses Panel (FSIP) proceedings, and mediation/arbitration;

D. attendance by one (1) representative at Trademark Public Advisory Committee and Patent Public Advisory Committee meetings.

Section 5

A. The Union may designate one representative who may work 100% official time for the purposes described in this Article. The official time for the designated representative shall be tracked but will not count against the Union's allocation of bank official time. This Section does not limit additional stewards from using official time in accordance with this Article.

B. There shall be no rules limiting the amount of official time used by any Union representative. All representatives may use bank official time as determined by the

Union so long as the representative is engaged in appropriate representational activity.

Section 6

Employees shall be granted official time for the following meetings and activities. This time does not count against the Union's bank time:

A. Employees will be granted 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.

B. Employees may use official time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of title 5, United States Code.

C. A Grievant shall be granted a reasonable amount of official time up to 8 (eight) hours for preparation of the grievance and/or to prepare for arbitration. Upon request, the Office may grant reasonable additional preparation time if appropriate.

D. 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 7

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 8

Management shall authorize a total of 160 hours of official time per year for the purpose of attending Union sponsored training, provided the training is of concern to the employee in their capacity as a Union representative. This time may include such training offered as part of the Union's annual legislative conference.

Section 9

During the first month of the contract, the Union may hold a one (1) hour meeting on non-bank official time at which all employees may attend to discuss the terms of the contract.

Section 10

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

Section 11

A. The Union President or their designee will approve all time charged to Union activities by electronic message. Union representatives charging time to Union activities shall copy or forward this approval to their supervisor.

B. Upon request, the Office agrees to provide the Union President or their designee a breakdown of the official time reported by each Union representative on a quarterly basis. The listing will include the date of the report, the representative's name, the type of Union time reported, the amount of time reported, the cost code charged, the total times reported for the quarter, year-to-date totals for each cost code, and the balance of official time remaining.

Section 12

When Union representatives intend to conduct official Union business, they will notify their supervisor by leaving an electronic or telephonic communication indicating where they are and approximately how long they will be conducting official Union business. Union representatives should inform their supervisor as early as possible and make efforts to avoid any scheduling conflicts. The supervisor should not frustrate the representative from fulfilling their representational duties.

Section 13: Stewards

A. The Union may designate stewards to act on its behalf in accordance with the following:

1. In addition to a President and any Vice President, the Union shall be authorized to appoint and assign stewards as the Union deems appropriate. There is no limit on the number of employees who may serve as stewards.

2. All stewards must be bargaining unit employees or USPTO retirees in good standing.

B. Authorized time spent performing Union representational duties will not be considered as a negative factor in evaluating any critical or noncritical element of an employee's performance appraisal, and the Office will not place a representative at a disadvantage in appraising performance due to the time spent performing representational activities. Union representative performance ratings will be based only on their non-representational job-related duties, and a representative who performs full-time representational duties (i.e., 90-100% of work hours, excluding leave) during a performance appraisal cycle will be considered unratable and will not receive a rating. Stewards shall not be demoted, denied promotion, awards,

commendations, or recognition for which they are otherwise qualified based on their performance of representational duties.

C. A steward may request the Office to consider reassigning their assigned duties to accommodate representational activities.

Section 14

A. The Union agrees to electronically provide the Chief of the Office of Human Resources Labor Relations Division with a complete list of Union representatives and their position by April 1 every year. The list will be updated as soon as practicable if changes in representation take place. This includes the appointment or removal of Officers and stewards. The Union will simultaneously submit changes electronically to the Chief of the Office of Human Resources Labor Relations Division and the representative's immediate supervisor. The Office will not recognize any changes prior to the effective date.

B. In unusual situations, the Union President or their designee, may orally notify the Chief of the Office of Human Resources, Labor Relations Division about the designation of a Union representative.

C. Should the Office believe that an individual has not been listed or has been incorrectly listed, it will notify the Union in writing of its concern.

Section 15

Interviews between Union representatives and employees and/or supervisors will be held away from other employees and the public so as not to interfere with the work of the Office.

ARTICLE 17
FACILITIES AND SERVICES TO THE UNION

Section 1

A. The Office shall provide the Union access to Office-designated bulletin boards and one dedicated article space per issue in the quarterly electronic Trademark publication TM People. The Union will include a statement in each article indicating that all content therein reflects the opinions of the NTEU 245 Executive Board and does not set forth the policy or positions of the USPTO.

B. The Union agrees that the Union will not place any disrespectful, unlawful**,** or libelous material directed toward any management official or any material maligning the personal integrity of any management on official bulletin boards, in the TM People, or in any other electronic publications, including any mass communications to the bargaining unit. All material posted on the bulletin boards shall have the prior approval of the Union President or their designee.

C. Designated bulletin boards shall normally consist of one bulletin board on each floor (to include glass enclosed boards) occupied by unit members.

D. Notices shall be reasonable in size and shall be identified as posted by the Union.

E. The Union may request and receive any standard information technology (IT) services generally available to employee groups (e.g., SharePoint, Teams, and One Drive) for communication, collaboration and storage purposes. The Office shall make every effort to maintain these services, or their substantial equivalent, through at least the duration of the parties' CBA. The Union agrees to use these resources in a manner consistent with safe and secure IT practices and pursuant to Office IT policies and procedures applicable to all employees. The Office will not be responsible for content posted on the Union's intranet web site. The Union will maintain its site in accordance with the same standards applicable to all other users.

Section 2

A. If available, upon no less than five (5) business days' advanced request by the Union, the Office will provide meeting space, adjacent or within the Trademark Operations designated space, for Union-sponsored meetings. If not available, or if business exigencies require the use of space already promised to the Union, the Office agrees to offer space at other reasonable times.

B. Upon no less than five (5) business days' advanced request by the Union, the Office will provide virtual meeting space for Union-sponsored unit-wide meetings.

Section 3

A. The Office will provide the Union private, wall-enclosed (full ceiling height), furnished offices of at least one-fifty (150) square feet for the Union President and Union Vice President(s) and a private, wall-enclosed (full ceiling height), furnished conference room of at least three hundred (300) square feet. Under no circumstances will the Union President and Vice President(s) have more than one assigned office space each, nor will they be required to share offices.

B. In the Union conference room, the Office will provide the Union two (2) docking stations with two (2) monitors and one (1) printer of the same general type and capability as currently used by bargaining unit employees, for use in fulfilling its representational duties. This hardware and/or software will be refreshed in a manner consistent with the Office's refresh cycle. Additionally, the Office will provide the Union with access to any color printers accessible to Trademark examining attorneys at Headquarters.

C. The Office agrees to allow the Union officers, Executive Committee, and designated Union representatives the limited use of photocopy machines to make copies of material directly related to representational duties when photocopiers are not being used for normal business. Use of photocopy machines does not extend to any material relating to the Union's internal affairs.

D. The Office shall provide the Union with access to Internet resources and communication methods in a manner consistent with safe and secure IT practices and pursuant to Office IT policies and procedures applicable to all employees. The Union may request access to any blocked or filtered sites through the procedures established by the Office of the Chief Information Officer or the appropriate Agency office.. In accordance with law, Union representatives, in connection with matters covered by this agreement, may only use interoffice email transmittal for communications with the Office and bargaining unit members on representational matters.

E. Union representatives who have access to Office telephones, voicemail, e-mail, or other Government owned devices and software for performing their regular duties may utilize those devices for labor-management and representational matters.

F. The Office will provide and facilitate Union representatives' access to Office networks on Union representatives' personal devices. This includes the Office providing at least four (4) licenses for any software necessary to provide such access.

Section 4

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, upon request,

management will supply to the Union a listing of all duly published Office policies, USPTO 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. Unit members shall be provided notice of newly issued Office policies impacting them. Notice includes publishing in Trademark and Office-wide intranet publications.

C. The Office shall make this Agreement and all other applicable and effective agreements and policies available electronically in the centralized intranet location that contains Office policies, applicable rules and regulations. The Office will update the centralized intranet location within a reasonable time of issuance of new or modified agreements, policies, rules, or regulations. The Office will also provide a means to download agreements and policies when bargaining unit employees access them.

Section 5

A national representative of the Union will be allowed access to the Office's premises, including designated security areas, normally accessible to Trademark employees during their regular course of business, as long as they are escorted by an NTEU Chapter 245 representative. For visits for public or private meetings with USPTO executives or a visit with local or national media in attendance, a national representative of the Union will be allowed access to the Office's premises so long as the Office is notified at least seventy-two (72) hours in advance of the visit, unless otherwise agreed. National representatives of the Union with the capability to do so will be allowed access to the Office's virtual meeting spaces.

Section 6

The Office will permit the Union to distribute membership and benefits literature in work areas as long as the person distributing does so on their own time or appropriate leave.

Section 7

A. Bargaining unit employee information will be available via the Employee Locator on the USPTO intranet.

B. The Union will be provided a bi-weekly electronic listing of the following information for all employees in the unit:

1. Full Name

2. E-mail Address

3. Employee Number

4. Occupational Series Code

5. Organization/Cost Code

6. Bargaining Unit Code and Description

7. Grade and Step

8. Position Title

9. Duty Station

10. USPTO Entry on Duty (EOD) Date

C. Upon request, the Union will be provided a listing of new hires within three weeks from their date of employment.

Section 8

Beginning with the effective date of this Agreement, the Union will provide the Office with a quarterly listing of all of its stewards. The listing will include the phone number and e-mail address of the person, their organizational location, and area of representational responsibility. The Office will provide the Union with its most recently updated Organizational chart.

ARTICLE 18
LEAVE

Section 1: Annual Leave

A. **Accrual and Use of Annual Leave**. Employees will earn and use annual leave in accordance with applicable laws, rules, regulations, and this Article. Employees may utilize annual leave in fifteen (15) minute increments and must record annual leave usage through the electronic time and attendance system. Annual leave may be informally requested verbally (by telephone or in person), by e-mail, or electronic messaging, but the request must subsequently be recorded in the electronic time and attendance system. Employees must request annual leave and may not be charged annual leave without consent.

B. **Requesting and Scheduling for Annual Leave**

1. The use of annual leave is a right of the employee subject to the operational needs of the Office precluding that individual employee from taking leave at the requested time(s). The Office shall make every reasonable effort to grant employee requests for annual leave and requests will only be denied in unusual circumstances.

2. Annual leave, including annual leave for emergency situations, shall be granted or denied by the immediate supervisor or authorized designee. The supervisor shall respond to the request as soon as practicable. When the supervisor is not available, the Office will have someone available to respond to leave requests and will notify employees of available alternate supervisors. If a request for annual leave is denied, the supervisor will provide the basis of the denial to the employee in writing. Employees may appeal denials to the next level supervisor (e.g., Group Director). The supervisor's denial is effective unless the second level supervisor grants the leave. The deadline for filing a grievance shall run from the initial denial

3. Employees are normally required to request annual leave at least three (3) working days in advance. If an employee on an Increased Flexitime Program schedule needs leave to meet their basic work requirement (BWR) and there is no significant disruption to the employee's responsibilities or a failure to attend a mandatory event, the Office may approve a request for annual leave that has not been made in advance. Under these circumstances, the employee should request their supervisor's approval of the annual leave as soon as practicable, but no later than when time and attendance reports are due.

4. All requests for Annual leave must be both submitted and approved in the Office's electronic time and attendance system. Employees should enter their request in the time and attendance system prior to taking the leave unless

unforeseen circumstances exist. Employees must make requests for annual leave and will not be charged annual leave without first making a request.

5. Requests for annual leave may be made and shall be granted if not made in advance of when time and attendance submissions are due for the bi-week where the time and attendance system is not properly functioning where the employee attempted to make a timely request and informed the supervisor of the absence using other means such as phone or email.

6. In exigent circumstances (i.e., in cases of emergency leave not scheduled in advance) unscheduled annual leave may be requested telephonically, by email, or via electronic messaging. In these situations, the employee will leave a telephone number where the supervisor can reach the employee. If their supervisor intends to deny the leave request, they must inform the employee as soon as possible. The employee will not be considered absent without leave while awaiting their supervisor's response. This does not preclude the Office from charging an employee as absent without leave if the employee does not have sufficient annual leave to cover the requested time period and is not granted advanced leave or otherwise meets their BWR during the relevant pay period. Upon the employee's return to the Office the employee will enter the leave into the Office's time and attendance system.

7. Employees on a fixed 8-hour work schedule requesting unscheduled annual leave must attempt to directly contact their supervisor or their designee within the first 90 minutes of the employee's tour of duty, or as soon as possible thereafter, in order to request and obtain approval for their use of annual leave for that day. When an employee's request is denied, the employee is expected to report to work as soon as possible. If the employee reports as soon as possible, the period between the beginning of the work shift or the time the employee is due to report back and the actual reporting time will be charged to annual leave.

C. **Use or Lose Annual Leave**

The Office will issue an annual communication to all employees reminding them of the regulations concerning "use or lose" annual leave to include the possibility of forfeiture. It is the responsibility of supervisors and employees to consult to ensure that annual leave may be scheduled so that annual leave will not be forfeited. Consistent with 5 U.S.C. § 6304, and the annual memorandum, employees may have forfeited annual leave restored at the end of the leave year if the annual leave was approved and was scheduled in advance. The Office will restore annual leave that was forfeited due to an exigency of the public business or sickness of the employee only if the annual leave was scheduled in writing by the start of the third biweekly pay period prior to the end of the leave year and the employee was prevented from using the leave due to exigency of the public business or sickness. Forfeited annual leave may also be

restored due to administrative error that results in annual leave being forfeited through no fault of the employee.

D. **Substituting Sick Leave for Annual Leave**

1. When illness occurs within a period of annual leave, sick leave may be granted upon the employee's request and approval by the supervisor, for the period of the illness.

2. An employee may submit a request to change previously approved annual leave to sick leave where sick leave is appropriate. The Office's decision regarding an employee's request will be governed by the relevant provisions of Section 2 of this Article.

E. **Advance Annual Leave**

1. In accordance with all applicable government-wide regulations and this Agreement, an employee may be granted an advance of annual leave when:

   a. the employee is eligible to earn annual leave;

   b. the employee has served more than ninety (90) day on their current appointment;

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

2. Requests for advanced annual leave will not be unreasonably denied.

Section 2: Sick Leave

A. **Accrual and Use of Sick Leave.**

1. Employees will earn sick leave in accordance with applicable laws, rules, regulations, and this Article. Employees may utilize Sick leave in fifteen (15) minute increments and must record Sick leave usage through the electronic time and attendance system. Sick leave may be informally requested verbally (by telephone or in person), by e-mail or by electronic message, but the request must subsequently be recorded in the electronic time and attendance system. Employees must request sick leave and may not be charged sick leave without consent.

2. An approved absence which would otherwise be chargeable to sick leave may be chargeable to earned compensatory time, compensatory time for travel, or award leave at the option of the employee, or to non-FMLA Leave Without Pay (LWOP) at the request of the employee and approval by the Office.

B. The Office will grant accrued sick leave up to the regulatory limits for an employee for:

1. absences required by physical or mental illness;

2. medical appointments (e.g., medical, dental, optical examinations);

3. medical treatment;

4. injury;

5. pregnancy or childbirth;

6. circumstances in which an employee working would expose others to contagious diseases or illnesses;

7. purposes relating to the adoption of a child (e.g., appointments with adoption agencies, social workers, and attorneys; court proceedings; travel); and any other activities necessary to allow the adoption to proceed;

8. care of a family member as well as to care for a family member with a serious health condition; and

9. bereavement, including to arrange and attend funeral services for family members ("family member" is defined in the Article relating to Definitions).

C. For purposes of this Article, a serious health condition shall have the meaning set forth in 5 C.F.R. § 630.1202.

1. For the purposes of this Section, "family member and immediate relative" are defined as:

   a. spouse, and parents thereof;

   b. children, including adopted children and step-children, and spouses thereof;

   c. parents (biological, adoptive, step or foster) and spouses thereof;

   d. brothers and sisters, and spouses thereof;

   e. grandparents and grandchildren, and spouses thereof;

   f. domestic partner and parents thereof (domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relations); and

g. any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

2. Note that the definitions of family member under the Family and Medical Leave Act differ from this article. FMLA definitions prevail with regard to FMLA protections.

D. **Requesting Sick Leave**

1. All requests for Sick Leave will be administered consistent with law, rule and/or regulation.

2. Sick leave, including sick leave for emergency situations, shall be granted or denied by the immediate supervisor or authorized designee. The supervisor shall respond to the request as soon as practicable. When the supervisor is not available, the Office will have someone available to respond to leave requests and will notify employees of available alternate supervisors.

3. Sick leave shall be requested three (3) workdays in advance where possible, such as for routine dental, eye, or other medical examinations.

4. If the need for sick leave is unforeseeable, the employee shall request sick leave as soon as practicable. If their supervisor intends to deny the leave request, the supervisor must inform the employee as soon as possible. The employee will not be considered absent without leave while awaiting their supervisor's response. This does not preclude the Office from charging an employee as absent without leave if the employee does not have sufficient accrued leave to cover the requested time period and is not granted advanced leave or otherwise meets their BWR during the relevant pay period. If the sick leave is denied, the employee can substitute accrued annual leave (or other time off), approved advanced leave, or approved leave without pay. Upon the employee's return to the Office the employee will enter the leave into the Office's time and attendance system.

5. When employees are unsure of whether they will need sick leave, employees should notify their supervisors of any potential need for sick leave during the biweek. If there is no significant disruption to the employee's responsibilities or a failure to attend a mandatory event, the Office may approve an employee's request for sick leave that has not been made in advance. Under these circumstances, the employee should request their supervisor's approval of the sick leave as soon as practicable.

6. Employees on a fixed work schedule requesting unscheduled sick leave must attempt to directly contact their supervisor or their designee within the first ninety (90) minutes of the employee's tour of duty, or as soon as possible thereafter, in order to request and obtain approval for their use of sick leave for that day. When an employee's request is denied, the employee is expected to

report to work as soon as possible. If the employee reports as soon as possible, the period between the beginning of the work shift and the time the employee reports to work will not be charged as absent without leave (AWOL).

7. Upon returning to work, the employee must complete and submit a sick leave request in the Office's time and attendance system to document the unscheduled sick leave. All requests will be considered consistent with laws, rules, and/or regulations.

E. **Employee Unable to Request Leave**

1. When for good and sufficient reasons, an employee is unable to notify their supervisor of their inability to report for duty or to telework as previously scheduled, the employee shall notify their supervisor as soon as practicable or another person may act on the employee's behalf to notify the supervisor or designee of the employee's need for sick leave. The employee must later request sick leave through the time and attendance system when those submissions are due or as soon as practicable thereafter.

2. Requests for sick leave may be made and shall be granted if not made in advance of when time and attendance submissions are due for the bi-week where the time and attendance system is not properly functioning where the employee attempted to make a timely request using other means such as phone or electronic communication.

F. **Documentation of Illness**

1. For infrequent absences of short duration (five (5) consecutive workdays or less) due to illness or injury, an employee's oral self-certification will be acceptable evidence of incapacitation. The Office has determined that medical documentation will not be required simply because an employee is absent on specific workdays or specific work times. The Office retains the right, however, to request a medical certificate on such days if it has reasonable grounds to believe that the employee is improperly requesting or using sick leave.

2. An employee requesting sick leave for absences of more than five (5) consecutive workdays may be required to document their request with a doctor's note or other administratively acceptable evidence. In this circumstance, the employee's supervisor may decline to approve sick leave until the requested doctor's note or other administratively acceptable evidence is provided.

3. An employee with a chronic or continuing condition may be required to provide a doctor's note evidencing the condition periodically (i.e., quarterly or upon the condition changing) if the original certificate does not specify the

expected duration of the employee's condition and the anticipated length of the employee's incapacitation. Employees who provide such documentation of their chronic condition will not otherwise be required to provide documentation of their chronic condition. Employees with a chronic or continuing condition may discuss the possibility of reasonable accommodation with the Office.

4. An employee must provide any required medical certification no later than fifteen (15) days after the date the Office requests it. If it is not practicable under the circumstances for the employee to provide the requested certification within fifteen (15) days despite their diligent and good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than thirty (30) days after the date the Office requests the certification. An employee who does not provide the required medical certification within the specified time period is not entitled to sick leave.

5. An acceptable medical certificate (i.e., a doctor's note) is a written statement signed (or stamped) and dated by a registered practicing physician or other health care provider certifying to the incapacitation, examination, treatment, or the period of disability of an employee while they are or were undergoing professional treatment.

6. Employees who, because of illness, are released from duty, and are not subject to a leave restriction will not be required to furnish a medical certificate to substantiate sick leave for the day released from duty. Subsequent days of absence will be subject to the provisions of this Section.

7. Nothing in this Agreement shall preclude an employee from working and claiming work hours on days on which they also use approved sick leave (subject to the 12-hour limitation for employees on IFP or within an employee's fixed work schedule). An employee's submission of work and/or claiming of work hours on a day on which they also take sick leave shall not be used as the only evidence of an employee's alleged misuse of sick leave.

G. **Approval and Denial of Sick Leave Requests**

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

H. **Leave Restriction**

1. Where the Office has reasonable ground to believe that an employee has abused sick leave, a written communication may be issued warning the employee that if the described abuse continues, sick leave restriction may be imposed. If subsequently imposed, a 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. Any such written notice will describe the frequency, patterns, or circumstances which led to its issuance.

2. At the end of the stated period, the Office shall review the employee's situation and shall provide the employee notice of rescission or renewal of the restriction due to continued abuse. The Office's decision will be in writing.

3. Leave restrictions will not be based solely on an employee's presence in the Office systems or submission of work on days where the employee has requested sick leave.

4. Employees placed on leave restriction letters may file a grievance in accordance with the grievance procedures contained in Article 11 of this Agreement.

I. **Advanced Sick Leave**

1. When an employee's sick leave balance has been exhausted, the Office has determined that it will consider providing an employee advanced sick leave when all of the following conditions have been met:

   a. the employee is eligible to earn sick leave;

   b. the employee's request does not exceed two hundred-forty (240) hours; or whatever lesser amount complies with applicable regulations (e.g., 104 hours for bereavement leave);

   c. the employee is expected to return to duty for a period sufficient to repay the leave;

   d. the employee has provided administratively acceptable medical documentation, or other appropriate evidence of the reasons for the sick leave; if such documentation is required by the terms of this Section and

   e. the employee is not subject to a leave restriction.

2. Even if all of the conditions above have been met, the Office may deny advanced sick leave to probationary employees during the first year of their probationary period.

3. Requests for advanced sick leave will be given due consideration and will not be arbitrarily denied.

J. **Substituting Annual Leave for Sick Leave**

An approved absence for the purpose of sick leave will be charged to annual leave upon request of an employee if there is no just cause for the Office to deny the request.

K. **Medical Information**

a. Unless warranted, and consistent with law and regulation, the employee will not be required to reveal any details about the nature of their underlying medical condition to the Office, and the Office may not require the employee to sign a release for their medical information.

b. The Office will treat any medical information or evidence given by the employee, in support of a request for sick leave, as confidential. The Office may disclose such information subject to its Privacy Act obligations, and any other applicable laws, for work-related reasons on a need-to-know basis.

L. **Sick Leave Not Relevant to Performance Appraisal**

The Office will not consider the use of approved sick leave as a negative factor in preparing the employee's written performance appraisal.

Section 3: Leave Share Programs

The Office will continue its voluntary leave sharing programs (i.e., the Voluntary Leave Bank Program and the Voluntary Leave Transfer Program). The parties will negotiate any changes to the parameters of those programs to the extent required by law.

Section 4: Parental Leave

A. Paid Parental Leave

1. Employees who meet qualifying criteria are entitled to twelve (12) administrative workweeks (up to 480 hours) of Paid Parental Leave (PPL) following birth, adoption, or foster care of a child.

2. A full-time employee is entitled to a maximum of twelve administrative workweeks (480 hours) of PPL during the 12-month period beginning on the date of birth, adoption, or placement of a child in foster care (or children, in the instance of multiple children in a single birth, adoption, or foster care placement).

3. Eligibility. To be eligible for PPL:

(i) The leave must be directly connected to the birth, adoption, or foster care placement of a child;

(ii) The employee must have been employed by the federal government for at least twelve (12) months prior to using paid parental leave (does not require twelve (12) recent or consecutive months of federal employment);

4. To invoke their right to PPL, employees must complete and submit the appropriate Office Form and meet any other Paid Parental Leave Act requirements which the Office will provide to employees inquiring about PPL.

5. Employees who invoke their right to PPL must agree in writing before the PPL begins to remain at the Office for a period of twelve (12) weeks after the conclusion of their parental leave.

6. In accordance with 5 U.S.C. § 6382, if an employee does not remain at the Office for a period of twelve (12) weeks after the conclusion of their parental leave, the Office may recover the paid parental leave contributions the employee received unless the employee fails to return due to the reasons described in 5 U.S.C. § 6382(d)(2)(F)-(G).

7. PPL benefits expire twelve (12) months from the date of birth, adoption, or foster care placement. For employees who experience multiple births or placements in a 12-month period, a new 12-month period and entitlement for PPL will begin with each birth or placement. However, the maximum PPL an employee can take during a 12-month period remains 480 hours (or appropriate prorated amount for part-time employees).

B. In addition to the twelve (12) weeks of paid parental leave, employees will be granted a combination of accrued sick leave, annual leave, advanced leave, leave from the leave bank (if approved), compensatory time, credit hours (if applicable), or leave without pay for an additional six (6) months of parental leave.

C. Employees are reminded that sick leave to recuperate from child birth (or to care for someone recuperating from child birth) is limited to the time actually required to recover after the birth (usually six (6) weeks for a non-Cesarean delivery and eight (8) weeks for a Cesarean section) as determined by the employee and their doctor, but may be longer. Appropriate medical documentation may be required in accordance with Section 2.F above if the employee needs more than the six (6) or eight (8) weeks of recovery time. This leave may be taken immediately after the birth before the employee takes paid parental leave. Thereafter, employees may only use sick leave for appropriate sick leave purposes as described above (sick leave for family care purposes is limited to twelve (12) weeks per leave year and is separate from the twelve (12) weeks of paid parental leave).

D. The Office will not ordinarily require the employee to return to duty earlier than nine (9) months after childbirth if the employee takes continuous parental leave or twelve (12) months after childbirth if the employee takes intermittent parental leave. The

employee is not required to invoke entitlement to FMLA in order to request up to nine (9) months of parental leave. However, the employee must invoke entitlement to FMLA to receive leave under the FMLA including the substitution of paid parental leave.

E. Each parent eligible for FMLA leave is entitled to use a total of up to twelve (12) weeks of LWOP under the Family Medical Leave Act (FMLA) or paid PPL for the birth of a child and care of the newborn, or for adoption or foster care of a child, or as otherwise authorized by FMLA and/or the Federal Employee Paid Leave Act (FEPLA). FMLA and/or PPL leave may be used on an intermittent basis for absences in connection with childbirth, adoption, and care of the newborn or newly adopted child, foster care or as otherwise authorized by FMLA or FEPLA.

F. The employee is responsible for notifying the supervisor of their intent to request leave under this Section, including the type of leave, approximate dates, and anticipated duration.

G. If the employee needs a modification of duties or a temporary assignment due to a physical or mental impairment that substantially limits a major life activity in connection with pregnancy or birth of a child, the employee should request a reasonable accommodation through the Office of Equal Employment Opportunity and Diversity. The Office, working with the employee, will identify possible accommodations that have the potential to reduce the difficulties, either in the environment or the job tasks, and which will allow the employee to perform the essential functions of the position.

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

Section 5: Parental Bereavement Leave

Eligible employees shall be granted up to two (2) workweeks of paid parental bereavement leave in connection with the death of a qualifying child. This leave is in addition to leave to which employees are otherwise entitled.

Section 6: Leave for Religious Observances

Consistent with the needs of the Office and in accordance with relevant law and regulations and Office policy, an employee will be advanced compensatory time when their personal religious beliefs require abstention from work for certain period of the workday or work week.

Section 7: Leave Without Pay

A. Leave without pay (LWOP) is a temporary non-pay status and absence from duty. The granting of LWOP is a matter of supervisory discretion, except where provided by law or this Agreement.

B. LWOP may affect entitlement or eligibility for certain Federal benefits.

C. LWOP will only be implemented at an employee's request, or when imposed consistent with applicable law and regulation.

D. **Requesting Leave Without Pay**

1. To request LWOP, an employee must submit a request in the Office's time and attendance system. The reason for the request must be included in the leave request. LWOP requested in lieu of sick leave may be subject to the medical certificate requirements in Section 2. F above.

2. Approval. The Office will issue its decision regarding a request for LWOP as soon as practicable. If a request for LWOP is approved, the Office will identify the dates its approval of LWOP begins and ends. If a request is denied, the Office will provide the reason for the denial in writing.

3. Employees are entitled to LWOP as a matter of right under the following circumstances:

   a. Disabled veterans requiring medical treatment (E.O. 5396);

   b. Absence because of service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994;

   c. For the first year during which an employee is receiving workers' compensation payments from the U.S. Department of Labor, pursuant to 5 U.S.C. Chapter 81; and

   d. Employees entitled to LWOP under the Family and Medical Leave Act (FMLA).

E. **Unpaid Leave for Family Friendly Purposes**

1. Employees may schedule and be granted up to twenty-four (24) hours of LWOP to:

   a. attend school and early childhood educational activities that are directly related to the educational advancement of a child. This includes, but is not limited to, parent-teacher conferences, meetings with child-care providers,

interviews for a new school or child-care facility, participation in volunteer activities that support a child's educational advancement, or school-sponsored activities. Employees who do not have children may request LWOP under this heading for participation in school activities deemed important to the educational advancement of a child, such as tutoring or attendance at school board meetings. "School" refers to elementary and secondary schools, Head Start programs, or child-care facilities;

b. accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. LWOP for these purposes is in addition to an employee's entitlement to sick leave for general family care; and

c. accompany elderly relatives to routine medical or dental appointments or other professional services that are directly related to the care of the elderly relative. This includes, but is not limited to, making arrangements for housing, meals, phone services, banking services, and other such activities. "Elderly relatives" refers to an individual related by blood or marriage to the employee. LWOP for these purposes is in addition to an employee's entitlement to sick leave for general family care and LWOP under the FMLA.

2. These benefits are extended to domestic partners of Federal employees.

3. An employee may request additional LWOP consistent with applicable regulations.

Section 8: Family and Medical Act (FMLA) Leave

A. FMLA leave is LWOP, except that an employee may elect to substitute accrued or accumulated annual or sick leave or Paid Parental Leave for any part of the 12-week period of FMLA leave. Advanced annual or sick leave, or leave made available to an employee under a Leave Transfer Program may also be substituted for FMLA leave.

B. Consistent with FMLA, employees who have completed at least twelve (12) months of service (not required to be twelve (12) recent or consecutive months) and who are not employed on an intermittent basis or in a temporary appointment with a time limitation of one (1) year or less, are entitled to a total of twelve (12) weeks of unpaid family and medical leave during any twelve (12)-month period for one or more of the following reasons:

1. The birth of a son or daughter of the employee and the care of such son or daughter;

2. The placement of a son or daughter with the employee for adoption or foster care;

3. The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

4. A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of their position.

5. For any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent who is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

C. An Employee shall notify the Office of their intent to substitute paid leave for any part of the FMLA leave prior to the date such paid leave commences, except where otherwise allowed by regulation

D. An employee may invoke entitlement to FMLA by providing notice to the Office by either written, oral, or electronic means that they intend to take FMLA leave.

1. If FMLA leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee should provide notice to the Office of their intent to take leave no less than thirty (30) calendar days before approximate date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within thirty (30) calendar days, the employee shall provide such notice as is practicable.

2. If the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care), and the employee cannot provide thirty (30) calendar days' notice of their need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party).

3. If the FMLA leave is for a purpose identified in Sections 8.B.3 or 8.B.4 above, the Office may require the employee to provide a medical certificate from a health care provider. The certificate must include the information required in 5 C.F.R. § 630.1208.

   a. At the time the Office notifies the employee that a medical certificate is required, it shall also notify the employee, in writing, of the specific information required to be provided on the medical certificate, as stated in 5 C.F.R. § 630.1208. An employee must provide the written medical certification required by Section 2.F above, signed by the health care provider, no later than fifteen (15) calendar days after the date the Office requests such medical certification.

   b. If it is not practicable under the particular circumstances to provide the requested medical certification no later than fifteen (15) calendar days after

the date requested by the Office despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than thirty (30) calendar days after the date the Office requests such medical certification**.**

c. If an employee submits administratively acceptable medical certification (i.e., completed in accordance with 5 C.F.R. § 630.1208) signed by a health care provider, the Office may not request new information from the health care provider. However, a health care provider representing the Office, including a health care provider employed by the Office or under administrative oversight of the Office, may, with the employee's permission, contact the health care provider who completed the medical certification for the purpose of clarifying the medical certification.

d. If the Office doubts the validity of the original certification pursuant to Section D.3, the Office may require, at the Office's expense, that the employee obtain the opinion of a second health care provider designated or approved by the Office concerning the information certified pursuant to Section D.3 above. Any health care provider designated or approved by the Office shall not be employed by the Office or be under the administrative oversight of the office on a regular basis unless the employee is located in an area where access to health care is extremely limited - e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the Office. If the opinion of the second provider differs from the original certification, the Office may require at the Office's expense that the employee obtain a third opinion, by a provider jointly approved by the Office and the employee, which opinion shall be binding.

e. At its own expense, the Office may require subsequent medical recertification on a periodic basis, but not more than once every thirty (30) calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in 5 C.F.R. § 630.1202. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the Office may not request recertification until that period has passed. The Office may require subsequent medical recertification more frequently than every thirty (30) calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the Office receives information that casts doubt upon the continuing validity of the medical certification**.**

f. If the employee is unable to provide the requested medical certification before leave begins, or if the Office questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the Office shall grant provisional leave pending final written medical certification.

g. If the employee presents the medical certification in a sealed envelope marked "MEDICAL CONFIDENTIAL" or appropriately encrypted email, it will be reviewed only by those whose official duties require such access.

Section 9: Military Leave

A. Military leave for federal employees, as defined by 5 U.S.C. § 2105, is authorized by 5 U.S.C. § 6323. The Office shall grant military leave in accordance with law.

B. The Office will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301, et. al. Employees who return from active military service in support of Overseas Contingency Operations (OCO) are entitled to five (5) days of excused absence each time they return from active military duty. In order to receive the five (5) days of excused absence, employees must spend at least forty-two (42) consecutive days on active duty in support of OCO. A returning employee is authorized to use this excused absence only once during a twelve (12) month period beginning after the first use of the excused absence. The five (5) days are to be taken immediately after returning to Federal civilian duty and are taken consecutively.

Section 10: Administrative Leave

A. This Section is implemented in accordance with 5 U.S.C. § 6329a, Administrative Leave, and 5 U.S.C. § 6329c, Weather and Safety Leave, enacted as part of the Administrative Leave Act of 2016. The parties recognize that there are limitations on administrative leave contained in Section 6329a, including a limit of 80 hours per calendar year for full-time employees and prorated equivalent for part-time employees.

B. **Administrative Leave for Voting**

1. The Office will allow employees to use up to four (4) hours of administrative leave for voting in connection with (i) each federal general election day, including early voting, and (ii) each election event (including primaries and caucuses) at the federal, state, local (i.e., county and municipal), tribal, and territorial level that does not coincide with a federal general election day, including early voting.

2. Employees may use administrative leave for voting in connection with each covered election event in which the employee participates by voting.

3. Employees may use administrative leave for any travel time to and from the employee's voting poll location.

4. If an employee needs to spend less than four hours to vote, the Office will only grant the needed amount of administrative time.

C. **Administrative Leave to Serve as a Poll Worker or Observer**.

The Office will allow employees to use up to four (4) hours of administrative leave per leave year to serve as a non-partisan poll worker or observer at the federal, state, local, tribal, and territorial level. If those duties require an employee to be absent from work for a longer period of time, the employee must use annual leave (accrued or advanced), earned compensatory time off, or credit hours. Employees may also request leave without pay in accordance with the Office's policies and this Agreement.

D. **Denials of Administrative Leave for Voting or to Serve as a Poll Worker or Observer.**

The Office may only deny administrative leave requested pursuant to this Subsection if the Office determines that the employee cannot be relieved of duty during the time requested without significantly impairing mission-essential operations. The Office will strive to accommodate leave requests by making necessary operational adjustments.

E. **Court Leave.**

1. Court leave shall be granted to employees for jury duty. Court leave shall also be granted for employees appearing in court in a non-official capacity as a witness on behalf of the United States, District of Columbia, or a state or local government. The Office shall provide employees court leave without loss or reduction in pay or leave**.**

2. Employees are encouraged to discuss the rules regarding payment for jury duty with their supervisor and/or Union representative.

F. **Blood Donation**

Upon advance request to their supervisor, an employee who makes a donation of blood without compensation will receive administrative leave totaling up to four (4) hours from the time they leave their work station for donation and recuperative purposes. The request must subsequently be recorded in the electronic time and attendance system.

G. **Bone Marrow Donation**

Employees will be granted up to seven (7) days of administrative leave each calendar year to serve as a bone marrow donor. Employees will be granted up to thirty (30) days of administrative leave each calendar year to serve as an organ donor. Any leave provided for both bone marrow and organ donations shall be in addition to an employee's voluntary use of annual and/or sick leave. The leave permitted under this Section will include the time required for travel, any testing to determine if the employee is a compatible donor, as well as the time required to undergo the donation or transplant procedure and to recuperate. In addition to bone marrow or organ donor leave, an employee may also request other leave and time off for these purposes.

H. **Health Benefits Fair**

The Office shall grant an employee up to a total of four (4) hours of administrative leave per calendar year for the purposes of attending a health benefits fair, reviewing health benefits information and materials, receiving financial counseling, and seeking supplemental retirement counseling,

I. **Weather and Safety Leave**

1. Employees that are not on an approved telework program will be granted weather and safety leave if emergency or inclement weather conditions require the Office to close the employee's post of duty. In accordance with government-wide regulations, the Office will give appropriate consideration to exercising its authority to grant employees weather and safety leave to leave work early in order to reduce the risk of travel if emergency conditions develop during work hours. In the event an extended closure of operations is considered, Trademark management will be reasonably available to discuss the closure with the Union President.

2. Employees that are not on an approved telework program may be granted weather and safety leave if their post of duty is open, but emergency or inclement weather conditions prevent the employee from safely traveling to or safely performing work at their place of work for a part or all of their workday. Factors the Office may consider include:

    i. Distance between the employee's residence and place of work;

    ii. Mode of transportation normally used;

    iii. Effort made by the employee to get to work;

    iv. Success other employees in similar situations had in being able to report for work;

v. Any physical disability of the employee; and

vi. Any local travel restrictions or evacuation orders.

3. Participants in approved telework programs may be granted weather and safety leave if the participant was not able to telework at their alternate worksite because (1) the weather or safety event that caused the Office to close or authorize late arrival also impacted the employee's ability to work at any alternate worksite, or (2) the condition at Headquarters impacts the ability to work at an alternate worksite (e.g., the Office network is inoperable, the servers are down). In these instances, all employees, including TWAH and TTABWAH Program participants, will be treated in the same manner and will receive the appropriate weather and safety leave.

4. When a foreseeable weather or safety event causes the Office to close or authorize late arrival or early departure, any participant in an approved telework program must take steps within their control to be prepared to telework, flex around the full or partial closure, and/or take leave. The Office will consider providing such employees weather and safety leave for extended weather and safety events that impact an employee's ability to work on a case-by-case basis. Unscheduled telework due to a closure, early dismissal, or delayed arrival due to weather or safety events will not count against the allowable telework days or hours.

5. Employees (including employees on pre-approved paid leave) will generally remain on leave. However, if the employee is scheduled to use sick leave for a medical appointment and that medical appointment is cancelled, the legal-basis for the sick leave has been eliminated and the sick leave must be cancelled. In addition, if an employee under an approved telework agreement has scheduled annual leave, that leave may be cancelled if the employee is ready, willing, and able to telework and agrees to perform telework in lieu of the scheduled leave.

Section 11: Amending Time and Attendance Submissions

The Office will notify employees, and employees will notify the Office, of any potential errors in their time and attendance submissions as soon as practicable. The Office shall allow employees to correct and amend previously submitted time and attendance submissions where an error in reporting is identified by either the employee or the Office. Additional leave requests in these amended time and attendance submissions will not be unreasonably denied in order to correct the error in the time and attendance submission. Employees will validate such amendments and affirm that the information is correct as submitted.

Section 12: Holiday Pay

Employees must be in a pay status or a paid time off status (i.e., leave, compensatory time off, compensatory time off for travel, or credit hours) on their scheduled workdays either before or after a holiday in order to be entitled to their regular pay for that day. The minimum time in a pay status required to receive regular paid holiday time off is one hour. Employees who are in a non-pay status for the workdays immediately before and after a holiday may not receive compensation for that holiday.

Section 13

Employees who return from leave of six (6) months or more may request time for refresher training. Request for such training will be given due consideration and not arbitrarily denied.

ARTICLE 19
CAREER DEVELOPMENT DETAILS AND TRAINING

Section 1

A. The Office shall designate certain work assignments as "career development details." Career development details are temporary assignments of at least ninety (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. Career development details 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 available for possible selection to higher level vacancies.

B. Career development details may not be for more than 120 days. Career development details may be renewed for periods not exceeding 120 days. Upon request, the Office shall provide the Union with a listing of employees on currently active details, including their start and end dates.

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 email announcement to all unit employees.

B. The Office may announce multiple details simultaneously and establish a roster of eligible employees from the responses to that announcement. Details should normally 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.

C. When an employee on an internal career development detail is expected to serve in the position for 120 calendar days or more, they must have an approved performance plan in place within 15 calendar days of the beginning of the detail.

Section 3

A. Selection preference for career development details shall be given to those qualified applicants who have the least amount of service on career development details. Preference shall be given first to employees who have never served on detail. Qualified applicants that have not been selected for a career development detail within the past year should be selected before qualified applicants that have been selected for a career development detail within the past year. A career development

detail which terminated more than four (4) years prior to the announcement of a new detail will be ignored in assigning selection preference.

B. Before selection, the skills and abilities 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. The Office shall select from among the top five (5) rated applicants. Ties in applicant qualifications shall be broken by Office seniority. In the event of multiple details, the Office may expand this list of the five (5) applicants by one (1) applicant for each additional detail.

Section 4

After the action has been completed, the Office shall furnish the following information to the Union or a competing applicant upon request:

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

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

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

Section 5

If there are insufficient volunteers for a career development detail, the Office will select from among appropriately qualified employees in reverse order of seniority, using USPTO entrance on duty date.

Section 6: Work Projects

A. For the purposes of this Article, special work assignments, not specifically delineated in the performance appraisal plan, including temporary and intermittent assignments, which do not fall within the definition of a career development detail, are designated as work projects.

B. The parties agree that bargaining unit employees who are currently performing work in work projects will not be prompted, required or otherwise solicited for input representative of the bargaining unit without Union representation being present and the Union being apprised of such input and resulting responses from these bargaining unit employees.

C. 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 as soon as practicable but at least one week in advance.

D. The Office will first solicit volunteers for work projects. If there are too many qualified volunteers for the work project, the Office will select from among appropriately qualified employees by seniority, using USPTO entrance on duty date. If there are insufficient qualified volunteers for a work project and the Office determines to assign employees to the work project, the Office will select from among appropriately qualified employees in reverse order of seniority, using USPTO entrance on duty date. The Office has the right to determine which employees are appropriately qualified.

E. Selections will be made in a fair, equitable, and impartial manner. In selecting employees for work projects, when applicable, the Office should consider the following selection factors, including but not limited to: seniority; previous relevant experience; writing samples; and the most recent summary rating.

F. 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 Office 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 should notify the Union when it creates a work project pursuant to this Subsection prior to the announcement or assignment of employees to the work project. If prior notification is not possible, the Office will notify the Union as soon as practicable.

G. The Union reserves all rights to bargain changes to working conditions caused by the Office's implementation of a work project, to the extent permitted by law, other than work project announcement and selection procedures.

Section 7: Return to Regular Duties

There is no formal position change and employees return to their regular duties at the end of a career development detail or work project, unless the employee is selected for a different position after commencing their career development detail or work project.

Section 8

A. All training must be approved in advance. The Office will reasonably consider an employee's requests for training.

B. The Office will endeavor to provide training opportunities that will directly enhance the employee's position. The Office will not unreasonably deny an employee's request to attend these trainings.

C. The Office recognizes that attendance at certain conferences, seminars, and meetings outside the Office is both desirable and in the best interests of the Office. Therefore, the Office shall annually post electronically a list of such outside conferences,

seminars and meetings for which attendance was approved in the previous calendar year.

D. The Office will announce opportunities to attend conferences, seminars or Annual meetings offered through organizations such as the American Bar Association, American Intellectual Property Law Association, or the International Trademark Association to all employees whose job performance might be enhanced by attendance. If there is limited availability, 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.

E. 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. The Office will not unreasonably deny such requests.

F. When available, the Office will seek continuing legal education (CLE) accreditation for trainings offered through the Office or its agents to employees. The Office will apply for Virginia CLE credit. Generally, the Office will not apply for CLE credit outside of Virginia, but employees may seek CLE credit outside of Virginia via reciprocity or application. Each state has its own rules and regulations indicating what qualifies for CLE credit. Certain programs, subjects, and formats may not receive credit in some states and there may be specific rules regarding who may earn credit or the maximum number of credit hours that may be earned with specific formats. Employees should contact their state CLE regulatory entity for specific questions about their CLE rules. The Office will offer employees at least twelve (12) hours of trainings (provided by the Office or its agents) for which CLE credit is available per year. Employees may attend these CLEs on their own time (unless the training is mandatory) or using training time provided for in Section 8.H, below.

G. To the extent necessary to complete and/or submit a form, the Office will assist in the processing of completed forms provided by employees who are seeking accreditation for training sponsored by the Office.

H. 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.

I. Upon approval, any training time in excess of forty (40) hours per year to attend functions that directly enhance employees' ability to approve their current duties shall be compensable time.

Section 9

It is agreed and understood that the Office may restrict the amounts of time approved for training under Section 8 above because of limited funds or conflicts with operational needs. If this circumstance arises, the Office will notify the Union as soon as possible.

Section 10

Employees will use their uspto.gov email address to register for courses via the USPTO Learning Center or successor system.

Section 11

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 access to electronic resources dealing with pertinent subject matter.

Section 12: Professional Dues

To the extent the Office or OPM require that employees must be members of particular professional societies and/or organizations (e.g., attorneys) in order to be employed in a USPTO position, the Office will reimburse employees for their bar dues.

ARTICLE 20
DURATION

Section 1: Effective Date of Agreement

This Agreement shall be reviewed by the head of the Office within thirty (30) days after it is executed by the parties. It shall be effective on the date it is approved by the head of the Office or, absent approval or disapproval, on the 31st day after execution.

Section 2: Duration, Roll-Over, and Intent to Terminate/Renegotiate

A. This Agreement shall remain in full force and effect for five (5) years from the effective date, (e.g., if the agency-head approval or 31st day is January 1, 2025, the initial term of the contract will run from January 1, 2025 until midnight December 31, 2029). Thereafter, the Agreement shall be automatically renewed annually unless either party gives written notice of intent to terminate and renegotiate over a successor agreement to the other (e.g., following the earlier example, each renewal term would run from January 1 to the following December 31).

B. Such notice of intent to terminate and renegotiate shall be given not sooner than 180 days and not less than 120 days before the anniversary of the effective date. Once such notice is given, the moving party must submit its substantive proposal(s) to the other party, within thirty (30) days of the reopening notice and the responding party will have 90 days to submit counter proposals (including proposals regarding additional articles the party wishes to open).

C. Following notice of intent to terminate and renegotiate by a party, this Agreement will remain in effect until a successor agreement becomes effective, except that any government-wide rules or regulations that conflict with this Agreement will supersede this Agreement upon the effective date of a successor agreement or after 180 days from the date on which the Agreement expired, whichever is sooner, after all bargaining obligations have been fulfilled.

D. The parties shall begin negotiations over ground rules no later than thirty (30) days after the parties exchange proposals.

Section 3: Limited Reopening of the Agreement

A. On or before June 30th of the 3rd calendar year after the effective date of the Agreement, either party may reopen up to two article~~s~~ by providing notice to the other party. The notice must include revised proposals for each article that is to be reopened.

B. If only one party requests reopening, the other party may, on or before July 31st of that year, provide notice of up to two article~~s~~ that will also be reopened. Proposals for these two-additional articles must be submitted to the opening party by July 31st.

C. Counter proposals may be submitted by both parties on or before August 31st of that year.

D. Bargaining will begin the first full week after August 31 and proceed pursuant to midterm bargaining procedures as set out in this Agreement.

ARTICLE 21
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: Permanent Part-Time Employment

A. Part-time employment will be available for up to 60 part-time employees in the NTEU 245 bargaining unit unless agreed otherwise by the parties. All other applicable rules and regulations regarding part-time employees remain the same.

B. Management may consider additional requests for part-time.

Section 3: Temporary Part-Time Employment

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, medical condition, 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. 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. Requests to have permanent status will be handled in the same manner as other requests to work on permanent part time basis. Employees on temporary part-time must adhere to requirements for permanent part-time.

B. Employees who are considered to be in a "temporary part-time" status pursuant to this Section do not count against the 60 permanent part-time employees NTEU 245 is entitled to pursuant to Section 2, above.

Section 4

Any attorney desiring to work part-time should submit a request for part-time status to the first line supervisor. 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 Office will respond to the request in writing within fourteen (14) days of receipt. If a request is denied, a written explanation of the specific reason for the denial will be given. The Union shall be simultaneously served with a copy of all responses with personally identifiable information redacted.

Section 5

A. An attorney may request to work between 16 to 32 hours per week. Requests for part time employment will be considered by the Office, subject to operational needs, for approval under the following circumstances:

1. The employee is a GS-13 or above;

2. The employee must be regularly scheduled to work at least 8 hours between 8:30 a.m. and 5:00 p.m. and 16 hours between 6:30 a.m. and 8:00 p.m. Monday through Friday, each week local time, not Eastern time. Employees are prohibited from working between the hours of midnight to 4:30 a.m. Eastern Time;

3. If the employee works at the USPTO headquarters facility, the employee will normally share an office. However, the Office will not require office sharing if the employee is working forty (40) or more hours on campus per biweek. Employees sharing offices may coordinate among themselves to avoid overlapping schedules.

B. At the start of each quarter, the employee must indicate the specific days and the number of hours each day that the employee will work each pay period. Employees may schedule a minimum of 4 hours to a maximum of 10 hours each day they are scheduled to work. The schedule need not be the same each week but must be the same for each pay period (i.e., bi-week) in a quarter. Start and end times are flexible within the workday, subject to the requirements of Section 5.A.2

C. Subject to the numerical limitation in Section 2, employees currently working part-time schedules will retain their schedules and not be involuntarily removed from part-time schedules.

D. Subject to the numerical limitation in Section 2 and the eligibility requirements of Section 5, the Office will approve permanent part-time schedule requests in chronological order of the requests.

E. An increase of a part-time employee's tour of duty above thirty-two (32) hours per week or sixty-four (64) hours per pay period is not permitted for more than two (2) consecutive pay periods.

F. Prior to part-time employment, Employees may consult with the Office of Human Resources to determine the impact of part-time employment on subjects including but not limited to: retirement, RIF, health and life insurance, promotion, and step increases. The Office will provide a point of contact for employees to obtain this information.

G. Employees will not be required to meet higher performance standards to be considered for or to maintain part-time status.

H. An employee's work schedule/tour of duty is not a merit factor and shall not be considered in connection with any promotion action.

I. A part-time employee receives a full year of service credit for each calendar year worked (regardless of tour of duty) for the purpose of computing, career tenure, completion of trial period, within-grade increases, change in leave category, and time-in-grade restrictions on advancement.

J. A part-time employee is entitled to a holiday when the employee's daily tour of duty commences on a calendar holiday. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the applicable number of holiday hours. In the event the President issues an Executive order granting a "half-day" holiday, a part-time employee is generally excused from half of the hours of their work schedule on that day.

Section 6

A request for returning to work on a full-time schedule will be honored to the extent that there is a vacancy. In the event there are more participants seeking to fill available full-time positions, selection will be based upon seniority. If a request is denied, a written explanation of the specific reason for the denial will be given. The Union shall be simultaneously served with a copy of all responses with personally identifiable information redacted.

Section 7

A. The supervisor and part-time employee may agree to change the hours or days the participant will work in a pay period (i.e., bi-week). No amendments can be made that result in an amended scheduled workday falling on a holiday or government closure, unless that workday falling on a holiday or government closure was already scheduled.

B. Part time employees may be required to temporarily adjust their work schedules to attend all mandatory meetings and mandatory training sessions if these mandatory events occur on days when the participant is not otherwise scheduled to work. Employees may make a request to their supervisor, that no adjustments to their schedule will be made where the event or training is recorded and available consistent with the participant's schedule. Such requests will be given reasonable consideration taking the employee's situation in mind. If the event or training is not recorded and available consistent with the participant's schedule, part time employees with obligations that prevent them from changing their work may request and be granted available leave. The Office will record and make available mandatory trainings when technically feasible, to allow absent employees to attend trainings when they return to work.

ARTICLE 22
CHILD CARE

Section 1

The Office and the Union agree that adequate childcare facilities for the children of all employees are very desirable. To that end, the Office agrees to maintain its current childcare facilities unless the Office demonstrates that maintaining the facilities would significantly increase its costs in a manner that outweighs the current facilities' benefits.

If a decision is taken to change or eliminate these facilities, the Office will notify the Union and bargain to the extent allowed by law.

Section 2

The Office will evaluate whether to implement a Childcare Subsidy program, including financial impacts and administrative requirements. The Office and the Union will discuss this evaluation under Article 30 (Labor Management Relationship) within one year of the effective date of this Agreement. Prior to this discussion, the Office will provide the Union with any existing briefing materials and/or reports regarding its evaluation of any Childcare Subsidy program.

ARTICLE 23
OUTSIDE EMPLOYMENT

Section 1

An employee may engage in an outside activity, including non-Federal employment, provided that the activity does not conflict with the employee's Government duties, as set forth in the Federal Rules of Ethics.

Section 2

Employees shall not engage in any outside employment or private practice of law, with or without compensation, which:

A. Interferes with efficient performance of their official duties or employment obligations; or

B. Violates any applicable law, rule, or regulation.

Section 3

A. Prior to engaging in any outside employment or the private practice of law, an employee shall provide evidence of Department of Commerce (DOC) pre-clearance for this employment to their supervisor. This information shall include:

   1. The nature of the outside employment.

   2. An acknowledgment that the dates and hours of the outside employment shall not overlap with the employee's claimed hours of work for the Office.

B. When the circumstances for which approval was originally granted change, the employee must provide the supervisor with evidence of DOC pre-clearance for the change in circumstances.

Section 4

Employees are prohibited from engaging in the outside employment or the private practice of law during claimed hours of work for the office or using government premises or equipment

Section 5

Failure to obtain DOC pre-clearance for outside employment or the private practice of law in accordance with the provisions of this article may subject the employee to disciplinary action.

ARTICLE 24
WORK SCHEDULES

Section 1: Definitions

A. Basic Work Requirement (BWR) - The number of hours, excluding overtime hours, compensatory time earned, and credit hours earned, an employee is required to work or otherwise account for by use of approved leave, credit hours off, holiday hours, excused absence, compensatory time off, leave without pay, or time off earned as an award. The BWR for full-time employees is eighty (80) hours per two-week pay period (bi-week). The BWR for part-time employees must be thirty-two (32) to sixty-four (64) hours per pay-period (bi-week). (See Article 21, Part-Time Employment).

B. Tour of Duty - The limits within which an employee must complete the employee's BWR, as determined by the work schedule the employee has selected.

C. Compressed work schedule (CWS) - A fixed work schedule in which an employee can complete the BWR in less than 10 working days. These include the "5-4/9" and "4/10" work schedules.

D. Alternate Work Schedules (AWS) - Schedules other than a Fixed Eight-Hour Work Schedule. AWSs include flexible 8 Hour and Increased Flextime Program (IFP) work schedules.

E. Flexible Time Bands - The time periods on either side of core hours during the workday, workweek, or pay period within which employees participating in a flexible work schedule may complete their BWR.

F. Mid-Day Flex Hours - Time periods during which employees who participate in FWSs discontinue working in the middle of the day without being charged leave, and subsequently return and work additional hours on that day within the Time Band allowed for the employee's work schedule. The employee may "flex" (stop and start working) more than once each day.

G. Core Hours - The time periods during a workday, workweek, or pay period that are within the tour of duty, during which an employee covered by a FWS is required by the Office to be present for work, on approved leave, or using credit hours. (See 5 U.S.C. 6122(a)(1)).

H. Flexible Work Schedule (FWS) - One of several types of work schedules all of which include core hours and flexible time bands.

I. IFP Credit Hours - Hours used to vary a workday within the same pay period. These hours must be used in the same pay period and cannot be carried over to another pay period.

J. Regular Credit Hours - For employees on FWSs, those hours that an employee who is limited or barred from earning compensatory time due to the overtime pay cap elects to work in excess of the employee's BWR so as to vary the length of a workweek or workday in the same or a different pay period. Employees do not need advance supervisory approval to work or earn credit hours, except for credit hours worked on a holiday. A full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly BWR to be carried over to another pay period.

K. Overtime - Overtime pay is pay for hours of work officially ordered by management and approved in advance. For a regular administrative workweek, this includes hours in excess of 8 hours in a day or 40 hours in a workweek. For a compressed schedule, overtime refers to hours worked in excess of a compressed schedule. For IFP, overtime refers to hours in excess of 80 hours in a biweek.

L. Compensatory hours - Compensatory time is an alternative form of compensation for paid overtime which is earned and used in accordance with Article 15 (Overtime, Credit Hours, and Compensatory Time).

Section 2: Operational, Flexible, and Core Hours

A. All employees must meet the BWR as defined in Section 1 of this Article.

B. The Office's operational hours are Monday – Saturday, 4:30am – 11:59pm, Eastern time. In addition, credit hours may be earned on Sundays between 4:30am – 10:00pm, Eastern time. The Office may offer expanded hours of operation for employees when systems are available, but there will be no expectation that employees be available for work during the expanded hours unless it is required by a special assignment such as international activity, mandatory travel, or a special work project or detail.

C. The Office's core hour is on every Tuesday from 1:00pm – 2:00pm Eastern time. All employees are required to be in work status or on approved leave, credit hours, or compensatory time during this hour.

D. 12 Hour Work Limitation: Employees, regardless of work schedule or whether the time is recorded as regular time, overtime, compensatory time earned, Regular Credit Hours earned, or IFP Credit Hours earned, are precluded from working more than 12 hours in a day. However, supervisors may approve an employee to work more than 12 hours in emergency or other rare situations such as an employee

engaged in international activity, mandatory travel, or Union negotiations. Employees who are approved to work on a holiday may:

1. Work up to twelve (12) hours, including holiday work hours up to the number of hours of holiday leave to which the employee is entitled, and any additional regular hours, overtime, compensatory time, or credit hours. Holiday work hours and additional regular hours count toward an employee's BWR. Credit hours will count toward the work requirement when used. Employees working holiday hours are paid holiday premium pay in lieu of holiday leave (subject to the biweekly premium pay cap).

2. Alternatively, employees on the IFP work schedule may choose to take eight (8) hours of holiday leave that counts toward their BWR and earn up to eight (8) credit hours that will count toward their BWR when used.

E. Employees on flexible schedules are not required to take a thirty-minute unpaid meal break regardless of the number of hours worked in a day. Employees may choose not to take a meal break or employees may choose to take an unpaid meal break of any duration and should treat that time as mid-day flex. This does not apply to employees on fixed schedules. Employees on fixed schedules are still required to take an unpaid meal break of at least thirty minutes as the fixed work schedules do not allow for mid-day flex. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

Section 3: Increased Flextime Program (IFP):

A. All employees may elect to participate in IFP, unless they are assigned to a work project or detail that requires a different schedule. IFP is a flexible work schedule that allows a full-time employee to complete the basic work requirement of 80 hours for the pay period by varying the number of days and the number of hours worked each day.

B. First-year trial period employees are subject to the restrictions on IFP set forth below:

1. First-Year Trial Period Employees: If a participant is a first-year trial period employee (i.e., GS-9/11 for examining attorneys), the employee is:

a. required to consult with their manager, when asked to do so, to discuss how their intended work schedule (regardless of location) accommodates the needs of training; and

b. required to be available at Headquarters for training purposes as prescribed by the manager or their designee regardless of their work at home schedule as long as they are provided at least 2 weeks' notice of the need.

C. IFP Credit Hours may be worked between the hours of 5:30 a.m. and 10:00 p.m. Eastern time, Sundays and holidays. Hours voluntarily worked by employees on Sunday must be recorded as credit hours in lieu of a regular workday. Subject to the twelve-hour work limitation, employees may work IFP Credit Hours without pre-approval.

D. With supervisory approval, in unusual circumstances an employee may work IFP Credit Hours at any time during their tour of duty to use if the employee cannot be in a duty status during the Core Hour.

E. A workweek consists of seven consecutive days, beginning Sunday and ending Saturday. An employee may not work both Sunday and Saturday of the same week unless working overtime, compensatory time or credit hours.

F. Employees on IFP may vary the number of hours worked each day (can be less than eight but no more than twelve) and the days worked each week, as long as they meet the BWR. Employees must work or take leave for a minimum of fifteen minutes for four days per workweek, only one of which may be a weekend day (Saturday or Sunday), including the core hour during the week.

G. Regular hours cannot be worked on Sunday.

H. Sick leave, annual leave, compensatory time used, and credit hours used and other approved time off count toward the BWR. If the employee does not meet the 80-hour requirement, overtime, compensatory time, or credit hours worked will be credited as regular time.

I. Employees may mid-day flex (divide the work day into two (2) or more blocks) voluntarily, and will not be forced to mid-day flex involuntarily.

J. An employee may choose to vary the number of hours and minutes worked each workday as long as 80 hours is accrued by the end of the pay period inclusive of the core hour requirements.

K. Employees should notify their supervisor if they will be flexing for an entire weekday, prior to the absence.

L. With the exception of first-year trial period employees, employees on IFP may work Monday through Saturday between the hours of 4:30am – 11:59pm (Eastern time), and Sundays between the hours of 5:30am – 10pm (Eastern time). The Office may offer expanded hours of operation for employees when systems are available, but there will be no expectation that employees be available for work during the expanded hours unless it is required by a special assignment such as international activity, mandatory travel, or a special work project or detail.

Section 4: Fixed 8 Hour Schedule

A. Requires the employee to work 5 shifts of eight hours, plus an unpaid meal break of at least 30 minutes each shift, with fixed arrival and departure times. (Example: 8:30 a.m. to 5:00 p.m., Monday through Friday).

B. Employees cannot earn and use credit hours or use mid-day flex.

C. Beginning and Ending. Fixed 8 Hour Schedules may begin and end at any time during the Office's operational hours. Times: Daily shifts will begin and end on quarter-hour increments. (Examples: 6:30 a.m. to 3:00 p.m.; 9:15 a.m. to 5:45 p.m.; but not 6:50 a.m. to 3:20 p.m.) First-year trial period employees may be restricted to certain hours as described in Section 4.A, above.

Section 5: Holidays

A. Employees working the Fixed 8 Hour Work Schedule, Flexible 8 Hour Work Schedule, or IFP will receive eight (8) hours of paid leave for holidays.

B. Employees working 5/4-9 and 4/10 CWS schedules will receive paid leave for the number of hours they are regularly scheduled to work that day.

C. If a holiday falls on a non-work day - except for holidays falling on a Sunday or Monday non-workday - the employee's preceding workday is the designated "in lieu of" holiday. (See 5 U.S.C. § 6103(b)). If the holiday falls on a Sunday or Monday non-work day, the work day after the holiday is the designated "in lieu of" holiday. Employees on 5/4-9 and 4/10 CWS schedules will receive the number of hours they are regularly scheduled to work on the day of their "in lieu of" holiday.

Section 6: Time Accountability

A. Employees will register their work time and indicate their schedule and presence.

B. Employees will utilize the editable comment feature on the presence indicator to post their schedule information.

C. Employees will post a reasonable approximation of either their regular and recurring schedule on the presence indicator (e.g., "8:00 am - 5:30 pm Mon-Thu, 8:00 am - 4:30 pm 1st Friday, off 2nd Friday; on campus") or of their current schedule ("Teleworking 8 am - noon and 4 pm - 8 pm today") on the presence indicator. Schedule should include approximate start and stop times, and the location ("on campus" or "teleworking") where those hours will be worked. Employees will update the schedule to reflect any future changes.

D. It is understood that, at times, the number of hours an employee actually works may vary from the originally-posted schedule provided by the employee. There is no

rigid formulation for the required accuracy of the posted information, but employees will provide sufficient information for supervisors to know, with reasonable confidence, when the employee is expected to be available for communication, collaboration, and the performance of official duties.

E. Presence indicator status alone is not an indication of whether an employee is working. When viewed in conjunction with other information (e.g., extended inability to reach an employee, time and attendance system records, lack of responsiveness), it may give rise to a supervisor inquiring further into an employee's work status.

Section 7

Employees may elect to work any of the schedules listed in this Article regardless of their performance rating. Consistent with Article 13 (Performance Appraisal), employees on performance improvement plans may be required to meet with their supervisor during the improvement period at a mutually agreeable time.

ARTICLE 25
AUTOMATION

Section 1

A. In order to provide the Union an opportunity for collaboration and early input into the Office decision-making process for the development of new automated equipment, applications, and systems, the parties shall discuss such projects in a Labor Management Working Group prior to the Office deciding to implement these technologies that will impact bargaining unit members. The Office will also discuss the development of technologies that will impact bargaining unit members in the LMWG forum as soon as practicable.

B. The Office will furnish the Union with information regarding the development and implementation of new automated equipment, applications, and systems. To the extent possible, management will include specific information on plans for gathering user input on projects (e.g., planned focus groups, beta tests, etc.) and implementation of the new technology.

C. The parties recognize that the LMWG forum is an informal one and not a substitute for the negotiations process. Upon the Office providing the Union written notice of any changes in employment conditions, the parties may agree to discuss the change in an LMWG and to hold the deadlines for formal negotiations in abeyance until the parties reach agreement through an LMWG or determine that a satisfactory conclusion cannot be reached prior to formal negotiations.

D. If either party provides the other its written determination that satisfactory conclusion cannot be reached after discussing the changes in an LMWG, formal negotiations may be pursued to the extent required by law; however, the Union agrees to waive its rights to a formal clarification meeting (under Article 28 (Mid-term and Impact and Implementation Bargaining)).

E. Upon Union request, the Office will provide the Union with performance and reliability data regarding automated search systems and other Office databases.

F. The Office shall provide the Union with the results of system evaluations for existing equipment and technologies and those under development.

Section 2

A. The Office is responsible for keeping equipment in good working order and addressing reported issues in a timely fashion.

B. The Office will provide notice to the unit as soon as possible if any automation equipment poses a health and/or safety concern.

C. The Office will inspect automation equipment (remotely or by having the equipment shipped to the Office), applications, and systems as necessary to ensure that employees are able to perform their work duties without impairment, and will provide technical support services to maintain all equipment, software, and systems in proper repair.

D. The Office will provide and exchange automation equipment necessary for teleworking through parcel delivery and pickup services.

Section 3

A. Employees will use government-furnished equipment as instructed.

B. USPTO maintains ownership and control of any and all equipment, software, other materials, and work-related data over USPTO networks (excepting data that is entirely personal such as health and medical information, personal financial information, or other non-business related and sensitive personal information provided over USPTO networks) provided to the participant. The USPTO acts as the insurer for damage, theft, or other loss (e.g., fire, flood, etc.) of the USPTO equipment and materials only. Equipment provided by the Office will be serviced and maintained by the Office.

Section 4

A. 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.

B. Training under this Article will typically be provided through remote and electronic means. The Office will record training sessions and make them accessible to the unit electronically whenever possible.

Section 5: System Unavailable Time

A. System Unavailable Time (i.e., System Downtime) is currently governed by the Memorandum of Understanding Between the USPTO and NTEU, Chapter 245 Regarding the Implementation of Trademarks TM Exam Center (TM Exam Implementation MOU), which is attached for reference as Appendix A.

B. The parties will extend or modify their agreement regarding System Unavailable Time in accordance with the TM Exam Implementation MOU.

Section 6: Collaboration Tools

A. Requirements for the use of Collaboration Tools are currently governed by the Memorandum of Understanding Regarding USPTO's Policy on Time and Attendance Tools, Communication, and Collaboration, signed March 29, 2017. The parties will negotiate any changes to the requirements to the extent required by law in accordance with that agreement and Article 28 (Mid-term and Impact and Implementation Bargaining).

B. Before proposing and implementing a disciplinary or adverse action for time and attendance related issues, the Office will consider whether its time and attendance systems or systems for recording work performed (i.e., TRAM or its successor) show that the employee was in attendance on the dates and/or times when the employee claimed to be working. If the Office elects to proceed with proposing a disciplinary or adverse action, it will provide the records for those systems to the employee.

Section 7

Nothing in this article shall preclude the parties' obligations under Article 28 (Mid-term and Impact and Implementation Bargaining) of this Agreement.

ARTICLE 26
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

Neither the Office nor the Union shall discriminate against any employee on the bases of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 years and over), disability (mental and physical), genetic information, marital status, political affiliation, veteran status, labor organization affiliation or non-affiliation, or reprisal for engaging in legally protected activity.

Section 3

A. The Office Equal Employment Opportunity (EEO) complaint procedure, contact information, Affirmative Action Plans, and NoFEAR Act reports will be electronically accessible through the Office's Office of Equal Employment Opportunity and Diversity website.

B. Upon request, the Office shall brief the Union on the subject matter**s** identified in Section 3.A above, and as appropriate, on any other activities of the Office of Equal Employment and Diversity.

Section 4

A. The Office will continue to provide EEO counseling to any aggrieved person who believes that they have been discriminated against on the bases of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 years and over), disability (mental and physical), genetic information, or reprisal for engaging in legally protected EEO activity. Aggrieved employees have the right to elect to keep their identity confidential during EEO counseling.

B. The Office of Equal Employment Opportunity and Diversity's website shall be accessible through an intranet link located on the Trademark landing page or its future equivalent.

Section 5

In an attempt to resolve allegations of discrimination 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 6

A. A claim involving discrimination based upon race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age (40 years and over), disability (mental and physical), genetic information, or reprisal, may, at the discretion of the employee, be raised either under the Office's EEO complaint process or through the grievance procedure provided in Article 11 (Grievance and Arbitration Procedures) of this Agreement, but not both. Consistent with law, an employee will be deemed to have exercised their election to raise a matter either under the Office's EEO complaint process or under the negotiated grievance procedure at such time as the employee timely files a formal complaint of discrimination with the EEO office or timely files a formal grievance concerning the alleged discrimination in accordance with the provisions of Article 11 (Grievance and Arbitration Procedures) of this Agreement, whichever event occurs first. Engaging in the informal EEO process does not constitute an election of forum for remedies for claims of discrimination.

B. If an employee wishes to utilize the EEO complaint process, the employee must seek EEO counseling within forty-five (45) calendar days after the event causing the allegation or after the date the employee became aware of the event. Alternatively, an employee may elect to file a grievance and they may seek the advice of a Union representative.

C. Any employee seeking to file an EEO complaint, or any employee participating in the Office's administrative complaint process, shall be free from restraint, coercion, interference, or reprisal. Employees engaged at any stage in processing the EEO complaint, including the counseling stage, shall have the right to be accompanied, represented, and advised by a personally chosen representative, including a Union representative, when there is no apparent or actual conflict of interest or other basis for denial. Both the employee and the employee's representative, if either is in a duty status, shall be afforded a reasonable amount of EEO official time for the initial preparation of the employee's pre-complaint, as well as for each subsequent step of the complaint procedure.

Section 7

A. The Office will continue to provide statutorily required EEO notifications and training.

B. Employees are encouraged to familiarize themselves with Equal Employment Opportunity and Diversity through participation in Community Day events, and resource materials offered on the OEED Website (i.e., learning videos, training modules, and lunch and learns)

ARTICLE 27
DUES WITHHOLDING

Section 1

Eligible employees who are members of the Union may pay dues through the authorization of voluntary allotments from their compensation. Any employee officially assigned to the Office may authorize automatic payment of their Union dues, provided that:

A. the employee is included in the bargaining unit;

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

C. the employee has voluntarily completed Standard Form 1187 (SF-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 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 by any means, ask its members to read the form and to receive completed forms by any means 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 electronically submit the completed authorization form to the Office of Human Resources, Labor Relations Division. When SF-1187 is submitted, the Office will promptly notify the Union of any employee's ineligibility for dues deduction. Incomplete forms will be returned to the Union.

C. The Office will prepare remittances and reports as follows, unless notified in writing by the Union of a change in the payee or address:

1. Transmit to the Union the total amount deducted for all employees and total amount remitted to the Union;

2. Dues will be wire transferred to the bank account designated by the Union;

3. Remittance will be made per pay period and directly to the Administrative Controller, National Treasury Employees Union, 800 K Street, NW, Suite 1000, Washington, DC 20001.

D. Upon receipt of a properly certified standard form 1187, the Office of Human Resources will notify the Union and employee that the form has been received. The deduction will begin as soon as possible but no later than one full pay period after the properly completed authorization form is received by the Labor Relations Division.

E. If the amount of regular dues is changed by the Union, the Office of Human Resources, Director 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. A copy of this notification must also be delivered to the Director of the Office of Finance and the Chief of the Office of Human Resources, 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 Human Resources, Labor Relations Division. Revocations may only be effected by submission of a completed Standard Form 1188 that has been initialed or signed by the NTEU 245 President or designee. If the SF-1188 is not initialed, the Employer will return it to the employee for resubmission.

B. However, initial Union dues payroll 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.

C. Revocation notices for employees who initiated dues withholdings on or before August 9, 2020 and who have had dues withholding in effect for more than one (1) year must be submitted to the Office of Human Resources during USDA pay period 15 each year. Revocations will become effective during USDA pay period 18.

D. Pursuant to 5 C.F.R. § 2429.19, employees who initiated dues withholdings on or after August 10, 2020, may elect to revoke their dues withholdings any time after the one-year anniversary date of their dues allotment by submitting a completed Standard Form 1188 that has been initialed or signed by the NTEU 245 President or designee. The revocation will become effective as soon as administratively feasible.

Any subsequent request to initiate dues withholdings will require a new Standard Form 1187 and will restart a new one-year anniversary under 5 U.S.C. § 7115.

E. The Office shall reactivate the dues allotments in effect for employees who temporarily leave the bargaining unit (e.g., an employee returning to their permanent positions from details or temporary appointments in non-bargaining unit positions, etc.) or otherwise have their dues withholding suspended within one (1) full pay period after the employee returns.

Section 4

A Union dues payroll deduction will be terminated by the Office of Human Resources, 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 in good standing.

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 ten (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 Human Resources, Labor Relations Division. After such notice, the appropriate adjustment shall be processed within two (2) pay periods.

Section 6

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 or file for a waiver of the Office's collection action in accordance with law, e.g., the Debt Collection Act of 1982 and applicable implementing regulations. Such repayment or filing for a waiver 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 they have 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 dues withholding records to NTEU on a biweekly basis.

If NFC does not provide the dues withholding records to NTEU for a particular pay period, NTEU may request and the Office will provide the following information in Excel or in ASCII (preferably comma or tab delineated) format via electronic file transfer:

A. Employees' names in alphabetical order by last name;

B. Employee number;

C. Grade & step;

D. Adjusted base pay (including locality pay);

E. Pay plan;

F. Total amount of dues withheld;

G. Pay period;

H. Duty city (four digit # field);

I. Duty state (two digit # field);

J. Duty county (three digit # field).

If NFC notifies the Union that it will no longer provide the records, the Union will notify the Office and the Office will provide dues withholding records on a recurring basis.

Section 9

The Union shall pay no fees for these services.

ARTICLE 28
MID-TERM AND IMPACT AND IMPLEMENTATION BARGAINING

Section 1

A. Mid-term 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, including the reasons for the action and copies of relevant statutes, regulations, and other relevant supporting materials.

B. 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 impact and implementation of such a change(s) in conditions of employment can be bargained retroactively at the request of the Union.

C. All meetings, bargaining sessions, and mediation may be conducted virtually at the option of either party.

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 no less than fifty (50) calendar days before the anticipated effective date of the change.

B. Within one (1) week thereafter, the parties shall meet to explain and clarify the Office's proposal(s) and answer questions regarding the proposal(s). Reasonable time shall be provided for the meeting of the parties for purposes of clarifying the proposal(s), and meetings should not be time restricted if the clarification meeting is being conducted in good faith

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

D. Negotiations shall commence as soon as practical, normally within one (1) week after the Union submits its counter proposal(s). The parties are also encouraged to conduct negotiations to the maximum extent possible by utilizing available technology to minimize costs associated with negotiations.

E. The parties may jointly agree to consolidate substantially related issues for bargaining to the greatest extent possible.

Section 3

Unless the parties agree otherwise, the ground rules for mid-term 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 four (4) representatives. Union representatives may identify National professionals in this number and participate while teleworking through remote means made available by the Office.

B. Negotiations shall take place Tuesday through Thursday during the hours of 10:00 a.m. to 4:00 p.m. Eastern time. For comprehensive changes involving signatory authority, performance appraisals, or automation, negotiations shall be extended to four (4) days a week. Negotiations (including caucuses) of at least three (3) hours are counted as one-half day, and negotiations (including caucuses) of at least six (6) hours are counted as one full day for purposes of constructive impasse.

C. The parties shall negotiate 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 signatory authority, performance appraisals, or automation. 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, either or both parties shall request the assistance of the Federal Mediation and Conciliation Service (FMCS) and shall meet with a mediator within one week of reaching impasse.

E. All agreements are tentative until full agreement is reached. However, the parties may mutually agree to sever portions of any agreement.

F. If mediation fails to resolve the impasse between the parties, either or both parties will seek the services of the Federal Service Impasses Panel (FSIP) and agree to follow the procedures of the FSIP.

G. Unless otherwise agreed, mid-term agreements reached will be reduced to writing in the form of a Memorandum of Understanding (MOU) and executed by both parties. In addition, oral agreements must be reduced to writing.

H. Agreements will set forth an "effective date." The effective date will be no later than thirty-one (31) days from execution (or upon agency head approval).

I. Agreements will set forth a "termination date" unless the parties agree otherwise.

J. In accordance with 5 U.S.C. Chapter 71, to the extent permitted by law, either party may initiate midterm bargaining.

K. Unless otherwise permitted by law, no changes will be implemented by the Office until notice has been provided to the Union, and all negotiations have been completed including any impasse proceedings.

L. The Office will provide responses to requests for information related to midterm bargaining pursuant to 5 U.S.C. § 7114 in an expeditious manner.

Section 4

A. The Office shall post all mid-term MOUs on the Trademark intranet site and notify impacted employees of new mid-term MOUs by email.

B. The Union may post mid-term MOUs on its SharePoint site (or equivalent) at its discretion. The Union may email bargaining unit employees a description of the MOU and a link to the MOU. At its discretion, the Union will send this email to the entire bargaining unit or only to certain employees.

Section 5

A. Pursuant to 5 U.S.C. § 7114(c) all agreements shall be subject to agency head review.

B. In the event the Office disapproves an executed midterm agreement reached between the parties, the Union shall have the option of renegotiating the disapproved provision(s) or the disapproved agreement, provided the parties have not agreed otherwise, for example, by inclusion of a severability provision. If the Union does not request bargaining over disapproved provisions or agreements within two weeks of receiving actual notice of the disapproval and there is no negotiability appeal pending before the FLRA, the provisions that were not disapproved will be implemented by the parties. The parties may also mutually agree to sever the disapproved provision(s) and the agreement will become effective without the severed provision.

Section 6

A. Absent mutual agreement of the parties, no part of a mid-term agreement may be severed and implemented during the pendency of a negotiability appeal.

B. Proposals declared non-negotiable and subsequently found negotiable will be timely negotiated, if requested by either party. To the extent practicable, any subsequent bargaining must commence within ten (10) workdays days of the negotiability decision.

Section 7

When the parties have engaged in substantive Labor Management Working Group discussions over a proposed change and cannot reach agreement, they agree that the formal bargaining, as required by law, may be initiated by a written submission invoking formal bargaining of the proposed change, including the proposals. There will be no clarification meeting(s). Either party will have seven (7) business days from its receipt of the written submission invoking formal bargaining to submit a counterproposal. Unless otherwise agreed, the parties will bargain the change in accordance with the ground rules in Section 3 above.

ARTICLE 29
TRIAL PERIOD EMPLOYEES

Section 1

The Office agrees to advise trial period employees of their performance on a continuous monthly basis.

Section 2

New employees will be in a trial period status for their first two (2) years of employment unless provided otherwise by applicable law or regulation.

Section 3

A. Nothing in this Agreement shall limit the Office's right to terminate trial period employees prior to the end of the trial period. Trial period employees are not entitled to be placed on performance improvement plans.

B. When the Office proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before their employment, the employee is entitled to all rights under 5 C.F.R. § 315.805.

C. Prior to removing an employee for insufficient performance, the Office will advise the employee that they may be terminated if their performance does not improve.

D. The Office will provide the Union President or designee sanitized copies of termination letters issued to trial period employees at the same time they are provided to the employee.

E. Trial period employees may choose, up to their termination date, to voluntarily resign. The Office will inform the Union of trial period employees who voluntarily resign.

F. A letter of termination will advise probationary employees of their statutory rights to appeal to the Merit Systems Protection Board (MSPB) and/or file complaints with the Equal Employment Opportunity Commission (EEOC) or the Office of Special Counsel (OSC). This does not limit any rights employees may have to file claims with other federal agencies with jurisdiction over the employee's claims.

ARTICLE 30
LABOR MANAGEMENT RELATIONSHIP

Section 1

The parties both desire a good Labor-Management relationship and recognize that communication is an effective means of establishing and furthering such a relationship.

The parties, therefore, agree to establish Labor Management Working Groups (LMWG) to build upon the relationship between the parties, exchange information, permit pre-decisional discussions on matters of interest or concern to either party, and resolve problems informally to the extent possible.

Section 2

A. The parties agree to continue the following LMWGs established by the Union and the Office:

1. The Trademark Work at Home (TWAH) and Trademark Trial and Appeal Board Work at Home (TTABWAH) Working Group regarding telework issues and initiatives;

2. The Electronic Commerce Working Group regarding issues and initiatives relating to Information Technology, equipment, and tools for performing bargaining unit work;

3. The Communications and Engagement Working Group regarding communications and engagement issues and initiatives;

4. Trademark Examining Operations Meeting Group to discuss broad issues and initiatives in the Trademarks business unit.

B. Either party may discontinue participation in any LMWG, except for the Operations Meeting Group, which can only be discontinued by mutual agreement. If either party wishes to discontinue a LMWG, the parties will first discuss the reasons and potential alternatives to address the issues generally covered in that LMWG (such as through the Operations Meeting workgroup provided in Section 2.A.4 directly above).

Section 3

A. A LMWG will meet semi-annually and at other times as agreed to by the parties.

B. Up to three (3) stewards shall receive official time to participate in meetings of the LMWG. However, the parties will agree to a number of participating representatives if modifying an existing LMWG or establishing a new LMWG. Either party may

propose no more than two additional silent observers to attend upon advance notice with the agenda. The Union's observers will receive official time to attend the meeting. The parties can mutually agree on a higher number of additional observers should circumstances warrant. Agenda items should be exchanged at least three (3) days in advance of the date mutually agreed upon by the parties for the meeting, unless otherwise agreed by the parties. Matters not on the agenda may be discussed by mutual consent. If either party timely forwards an appropriate agenda, the meeting will be held.

C. All LMWG meetings will be held telephonically or through Office provided collaboration tools unless otherwise agreed to by the parties

D. Any meeting conducted under this Article shall be conducted Monday-Friday between 9am-5pm Eastern Time, unless mutually agreed to by the parties.

Section 4

A. The parties recognize that the LMWG forum is an informal one and not a substitute for the negotiations process. Upon the Office providing the Union written notice of any changes in employment conditions, the parties may agree to discuss the change in an LMWG and to hold the deadlines for formal negotiations in abeyance until the parties reach agreement through an LMWG or determine that a satisfactory conclusion cannot be reached prior to formal negotiations.

B. If either party provides the other its written determination that satisfactory conclusion cannot be reached after discussing the changes in an LMWG, formal negotiations may be pursued to the extent required by law; however, the Union agrees to waive its rights to a formal clarification meeting (under Article 28 (Mid-term and Impact and Implementation Bargaining)).

ARTICLE 31
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 28 (Mid-term and Impact and Implementation Bargaining) unless otherwise mutually agreed. Article 28, Section 2.A, shall not be applicable to bargaining over RIFs.

ARTICLE 32
TELEWORK

Section 1

A. The parties recognize that telework programs are beneficial to the Office and employees, providing a continuity of operations, cost savings to both the Office and employees, maximizing Office space, lessened environmental impact, and flexible work hours that allow for the Office to better meet its goals and provide better nationwide customer service. Employees may elect to participate in the following telework programs throughout the term of this Agreement, including any rollover terms:

1. Hoteling - Alexandria Duty Station (H-ADS) is an option for Hoteling participants anywhere in the 50 United States, the District of Columbia, and Puerto Rico who regularly report to USPTO Headquarters twice per bi-week. This option is considered Routine Telework due to the regular reporting requirement and USPTO Headquarters being designated as the Official Duty Station.

2. Hoteling - 50-Mile Program (H-50MP) is an option for Hoteling participants whose primary alternate worksite is designated as their official duty station within a 50-mile radius of USPTO Headquarters. Hoteling participants who elect this option will not have to report to Headquarters except for mandatory in-person events and/or for equipment pick-up/exchange. This option is considered Remote Telework since there is no regular reporting requirement and the primary alternate worksite being designated as the Official Duty Station.

3. Hoteling - Telework Enhancement Act Program (H-TEAP) is a USPTO program only available to Hoteling participants that have a primary alternate worksite location outside of a 50-mile radius of USPTO Headquarters. Participants in this program are required to change the official duty station to their primary alternate worksite location, but do not have to report to Headquarters except for mandatory in-person events. This option is considered Remote Telework since there is no regular reporting requirement and the primary alternate worksite being designated as the Official Duty Station.

4. Hoteling - Part-Time Employee (H-PTE) is defined as the Hoteling program that is available for part-time employees who work less than 80 hours in a bi-week that allows participants to perform assigned duties at an alternate worksite except for any required reporting applicable to the hoteling option a participant chooses. H-PTE participants will choose an H-ADS, H-50MP, or H-TEAP option as set forth above (i.e., H-PTE-ADS, H-PTE-50MP, or H-PTE-TEAP).

5. Flex is a telework program that allows participants to perform assigned duties at an alternate worksite with an assigned office at Headquarters. The Flex program

is not available to part-time employees. Participants in a Flex program will have the USPTO Headquarters designated as their official duty station. Participants in Flex must commit to working at least 40 hours each biweek at Headquarters and will be provided a single office. This option is considered Routine Telework due the regular reporting requirement (i.e., specific hours per bi-week) and USPTO Headquarters being designated as the Official Duty Station.

B. Employees may choose not to participate in any telework program.

C. The Office's telework programs are conducted in partnership with the Union and administered by the Trademark Work at Home (TWAH) and Trademark Trial and Appeal Board Work at Home (TTABWAH) Partnership Working Groups.

D. An employee may submit a request to change their telework option to the TWAH and TTABWAH Coordinators. Such request will be granted if the employee is eligible for the requested option.

E. Participation in any telework program will not inhibit the employee's ability to earn any rating under any of the elements of the employee's performance appraisal.

F. There is no performance appraisal requirement to be eligible for the TWAH and TTABWAH Program, including any of its options, and there are no performance requirements to continue participation. Participants who are on a Performance Improvement Plan (PIP) will not be required to change their TWAH and TTABWAH participation or elected options due to the PIP.

G. The parties acknowledge that this Telework Article will be supplemented by bargained agreements that set forth in greater detail the nature and requirements of telework options for employees.

Section 2: Telework Eligibility

A. Position Eligibility. All bargaining unit member positions in NTEU 245 are eligible to participate in any of the telework programs identified in Section 1, subject to Section 2.B below.

B. Statutory Eligibility. An employee is not eligible to participate in the TWAH and TTABWAH Telework Program if they are ineligible by law. *See, e.g.*, 5 U.S.C. § 6502(a)(2) of the Telework Enhancement Act of 2010.

C. New employees may elect to telework upon beginning their employment.

D. Ending Participation in Telework. Participants will endeavor to notify their supervisor and the relevant Telework Coordinator via email at least 2 bi-weeks in advance of ending their participation in telework and choosing to return to working only at Headquarters.

Section 3: Alternate Worksites

A. Locations. Telework program participants will designate a primary alternate worksite as their work location while not at Headquarters. If a participant desires, they may designate an additional alternate worksite as a secondary alternate worksite. An alternate worksite may be the participant's home or other appropriate location. All alternate worksites must be located in the fifty states of the United States, the District of Columbia, or Puerto Rico.

B. Secondary Alternate Worksites. Remote teleworkers may utilize a secondary alternate worksite for up to six (6) months cumulatively in a calendar year. Remote teleworkers will not be required to report back to their designated Official Duty Station (i.e., primary alternate worksite) while utilizing a secondary alternate worksite.

C. Temporary Alternate Worksites. All teleworkers may request to work from a temporary alternate worksite in the United States for a limited duration due to exigency or emergency. The participant may begin work at the temporary alternate worksite pending approval once a request to work from a temporary alternate worksite has been submitted. If the participant has a regular bi-weekly reporting requirement at Headquarters, the requirement will be waived for the duration of the request by the participant's supervisor upon approval.

D. Reporting Requirement. When a participant's official duty station remains at Headquarters, the participant is required to regularly report to the Headquarters at least two (2) times per bi-week.

1. Reporting Requirement Exceptions: The supervisor, their designee, or a higher-level supervisor (e.g., Group Director) may make an exception to the reporting requirement in appropriate situations of a temporary nature.

2. All forms of approved leave, including compensatory time, may be used to meet the required hour(s) on a reporting day. Leave may not be used on a regular basis to avoid the requirements of this paragraph to report to Headquarters two (2) times per bi-week.

3. There is no requirement to routinely report to Headquarters when a participant has changed their duty station to the participant's primary alternate worksite.

E. Pay and Benefits. Changing the official duty station may impact a participant's pay and benefits because locality pay is based on the location of the official duty station.

F. Offices. The relevant Telework Coordinator will ensure that participants have hotel work space to use when working at Headquarters and will discuss with the TWAH

and TTABWAH Partnership Working Group an acceptable ratio of hoteling space to TWAH and TTABWAH Program participants.

G. Travel Expenses and Travel Time. Travel expenses and travel time are dependent on whether an employee is eligible for reimbursement in accordance with the Federal Travel Regulations.

Section 4: Equipment, Tools, and Supplies

A. Standard Equipment. All participants will be provided with one set of a standard suite of equipment necessary to perform official assigned duties remotely at an alternate worksite. Exceptions to the required use of equipment may be provided on a case-by-case basis and for good cause by the telework coordinator.

B. Additional equipment. A participant may request and obtain additional equipment from the standard list of available equipment if required by the employee's work. Participants should make requests for additional equipment in writing to the relevant Telework Coordinator and copying their direct supervisor.

C. Equipment may also be provided as a reasonable accommodation.

Section 5: In-person Events

A. Virtual First. When practicable, technologically feasible, and consistent with the purpose of the event, meetings will be held so that participants working remotely can participate fully via videoconferencing or by other means. Remote participation will be made available at training sessions, meetings and other events where a physical onsite appearance is not otherwise necessary.

The Office has provided collaboration tools to encourage remote participation in Office events that previously may have required the physical presence of the employee. Consequently, most Office events, meetings, and training will not require participants to physically come to headquarters.

B. Mandatory Attendance. Participants may be required to report to Headquarters by a supervisor, Deputy, or Director, to attend training, meetings, or for any other business purpose. Participants will be given as much notice as possible of any meeting that they must attend in person. Generally, the Office will endeavor to provide 3 weeks' notice or more of Office-wide events, training sessions, and meetings. Nevertheless, as long as employees are given notice 48 hours in advance and there is an exigent or emergency circumstance, employees may be required to attend meetings, legal lectures, etc., or to otherwise come to Headquarters on days normally scheduled for the alternate worksite.

Management will notify the Union in advance for any group event where less than two weeks' notice may be given. Management will consider any Union concerns.

When participants' physical onsite appearance is necessary, management will make it clear that attendance is required at Headquarters including the date, time and expected duration of the event. If physical presence is required and the employee lives beyond the local commuting area, management should use its best efforts to discuss the timing of the event with the employee and try to meet the needs of the employee if practicable.

Section 6: Miscellaneous Provisions

A. Dependent Care. Participants may telework at an alternate worksite where there are dependents or others. However, for any time that the employee claims as work time, their attention must be oriented to work activities and not dependent care.

B. Union Activities. NTEU, Chapter 245 stewards and Union officials may perform Union representational activities on official time while teleworking. The Office will attempt to make all meetings and events where Union participation is needed or desired to be available remotely as set forth in Trademark and TTAB Telework Guidelines at § I.H.

C. Unauthorized Work Locations. Employees may not telework from unauthorized locations. However, in an exigent circumstance, such as a loss of electrical power or internet access due to a storm, or where such an event is predicted in the employee's area and the employee needs to leave due to safety concerns, the employee may request approval to work at a temporary alternate worksite.

D. Mandatory Telework - Pandemics or Other Emergencies. In the event of pandemics, widespread health hazards, or other similar emergencies, the Office may require all employees, including TWAH and TTABWAH Program participants, to work at an alternate worksite, suspending all reporting requirements, unless pre-approval is obtained. This situation will be designated as "mandatory telework" and the Office will provide the standard telework equipment to employees who are not TWAH and TTABWAH participants as soon as possible. Employees who only work at Headquarters will sign an ad hoc telework agreement that sets forth the applicable provisions of these Guidelines.

E. Termination of Participation. In no event will employees be terminated or suspended from telework without at least one month of advanced notice unless exigent circumstances exist. In the event an employee's participation is terminated or suspended because the employee is not able to secure an alternate worksite with the required Internet service levels or connectivity, or does not meet the security and safety requirements, the employee may be reinstated when the employee obtains such internet service and/or meets the security and safety requirements. Additionally, supervisors may temporarily restrict or suspend an employee's participation in the TWAH and TTABWAH Program if they find it necessary to

meet operational needs after consultation with NTEU Chapter 245 through the TWAH and TTABWAH Partnership Working Group.

Section 7: Temporary Medical Exception and Emergency Circumstances

Trademarks and TTAB will consider requests from all NTEU 245 bargaining unit employees that are not participants in a telework program to telework from a temporary alternate worksite based on a serious temporary medical need and/or emergency circumstances of the employee, or a family member of the employee, which would:

A. Significantly impair or preclude the employee from working at (or traveling to) Headquarters;

B. Ordinarily require the employee to use leave to be away from Headquarters without the ability to telework; and

C. Allow the employee to continue working (full or part time telework) from an alternate worksite, while keeping their designated office space at Headquarters.

ARTICLE 33
TRANSPORTATION

Section 1: Public Transport Subsidy

The Office will provide employees public transportation subsidies in accordance with the USPTO Public Transportation Subsidy-Program (Effective October 2018). which is attached for reference as Appendix B. Should either party propose changes to the Program, they will provide notice and bargain to the extent required by law in accordance with Article 28 (Mid-term and Impact and Implementation Bargaining).

Section 2: Parking

The Office shall maintain adequate parking facilities for employees working on campus. In accordance with Article 28 (Mid-term and Impact and Implementation Bargaining) the Union will be provided notice and the opportunity to bargain over changes to employee parking in accordance with law, including any proposed or actual change in parking fees.

Section 3: Support for Clean Air Commuting Options

The Office shall maintain adequate facilities for employees who regularly use bicycles or electric vehicles (to include electric bicycles and electric scooters) to commute to campus to securely store and charge bicycles and electric vehicles. In accordance with Article 28 (Mid-term and Impact and Implementation Bargaining), the Union will be provided notice and the opportunity to bargain over changes to bicycle or electric vehicle storage or charging in accordance with law, including any proposed or actual change in parking fees.

ARTICLE 34
DICIPLINARY ACTIONS

Section 1: General

A. A disciplinary action for the purposes of this Article is defined as a written reprimand or a suspension of fourteen (14) calendar 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. Disciplinary actions are intended to encourage employee conduct so that it is compatible with the appropriate and lawful goals, practices, policies and procedures of the Office and the efficiency of the service. Discipline need not follow any specific sequence. Major offenses may be cause for severe action, including removal, irrespective of whether previous discipline had been taken against the offending employee.

C. 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 disciplinary action. Counseling or warnings, whether they are oral or written, may be grieved in accordance with Article 11 (Grievance and Arbitration Procedures).

Section 2: Notice of Disciplinary Action

A. The parties recognize that it is in the interest of both employees and the Office to address matters that could result in discipline promptly to mitigate the circumstances. Therefore, the Office shall notify employees of any counseling, warning, written reprimand, or suspension of fourteen (14) calendar days or less as soon as practicable upon becoming aware of the basis for the action.

B. Any notice of disciplinary action shall identify the specific laws, regulations, policies, and/or other rules the employee is alleged to have violated.

C. The employee shall receive copies of all documents which contain evidence relied upon by the Office to support the charges. If an investigation report, or portion thereof, is used as evidence then the entire report used as evidence shall be sanitized as appropriate (to protect the privacy of individuals) and provided unless their identity is relevant to the charge or response, to the employee.

D. At the time the Office issues its proposal letter and its decision letter to an employee, it shall include a statement which outlines the employee's right to representation by the Union or private counsel and their appeal rights. Failure to include such a letter shall be grievable but shall not constitute a basis for overturning the disciplinary action.

E. The Office shall provide a sanitized copy of all notices of proposed disciplinary action and decision letters to the Union simultaneous to their issuance to employees. Where the Union has provided the Office with a signed designation of representation, the Office shall provide the Union an unsanitized copy of all decision letters simultaneous to their issuance to employees.

F. The Office will provide the Union with a semi-annual report showing disciplinary, adverse, and unacceptable performance actions.

G. Employees shall have the right to Union representation in accordance with Article 7 (Employee Rights).

Section 3

A. Disciplinary actions will normally be progressive in nature. However, major offenses may be cause for severe action, including removal, even if no previous discipline has been taken against the employee. In deciding what discipline is appropriate, the Office will give due consideration to the relevance of mitigating and/or aggravating circumstances. Disciplinary actions shall be calibrated to the specific facts and circumstances of each individual employee's situation.

B. 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:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

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

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

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

7. The notoriety of the offense or its impact upon the reputation of the Office;

8. 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;

9. Potential for the employee's rehabilitation;

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

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

C. Nothing in this Section precludes an employee or their representative from challenging, in the appropriate forum, consistent with this Agreement, the Office's decision not to use progressive discipline.

Section 4: Employee Rights

A. An employee facing proposed discipline shall receive a written notice of proposed action stating the specific reasons for the proposed suspension. The notice and documents identified in Section 2 above shall be provided at least thirty (30) calendar days in advance of the proposed discipline

B. All notices of proposed discipline shall inform employees of their right to make an oral and/or written reply and to be represented by the Union, or an attorney or other representative of their own choosing, in connection with oral and/or written replies. The Union shall have at least three (3) business days' advance notice of all such discussions. Whenever the employee has designated the Union as their representative, the employee shall have the right to have the Union present at any discussion regarding a disciplinary action and for the Union to receive advance notice of the discussion.

C. The notice of proposed discipline shall provide the employee with reasonable time (no less than thirty (30) days after the employee's receipt of the notice and documents identified in Section 2) from receipt of the notice to reply orally and/or in writing. The reply period may be extended by mutual agreement of the parties upon written request by the employee and/or their designated representative.

D. Information requests that are not relevant to the stated offense will not serve as a basis to request a reply period be extended. Normally, requests for information related to disciplinary actions will be limited to a period of three (3) years prior to the request. If an information request is denied and the employee or their

representative challenges that denial, upon mutual agreement between the parties**,** timeframes may be tolled until the information dispute is resolved

E. The Office may only modify a proposal to discipline an employee or the information relied upon in support of that proposal by rescinding and reissuing the proposal.

F. The employee will be granted a reasonable amount of time to make their reply (replies) not to exceed two (2) hours.

Section 5

A. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and their designated representative. Any corrections must be provided within three (3) week days of the date the Office provided the summary. One (1) set of combined corrections may be provided by the employee and/or Union. Corrections normally should be limited to information and arguments provided at the oral reply and usually should not include new information or arguments. The Office shall consider submitted corrections before any decision is made concerning the proposed disciplinary action.

B. The Office agrees that when a record of an oral/written reply is made, it will always contain as an attachment, all documents submitted by the employee and their representative. Any documents not submitted at the oral reply, but received within five (5) workdays of the date of the oral reply, where practicable, will be included in the reply record;

C. Oral/written replies will be heard/considered by a higher or equivalent level management official than the management official that proposed the action. The management official who hears the oral reply/and or receives the written reply and makes the decision on the proposed action will rely on the evidence relied upon by the proposing official and the evidence presented in the written and/or oral reply.

D. **Issuance of final decision:**

1. A final decision letter will be issued and delivered to the employee and their representative, if the employee is represented.

2. The final decision letter will be issued and delivered, as soon as practicable, from the date of the employee's written and/or oral response, if one was provided, whichever is later.

3. 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 be addressed. Copies of the decision shall be served simultaneously on the employee and their designated representative.

E. If the conduct that led to the discipline involves a possible determination of an overpayment to the employee, the final decision must inform the employee of that possibility. Consistent with National Finance Center (NFC) instruction, employees may seek waivers of indebtedness.

F. In circumstances in which a grievance or arbitration is initiated, the Office may stay the imposition of any suspension until the grievance and arbitration process is completed.

G. In the event the Office imposes a suspension on an employee, the Office will consider an employee's request to delay the suspension based on the employee's circumstances and timing as it relates to the rating period.

H. When an employee has been advised that they are/were the subject of an investigation and a determination is made not to propose a disciplinary action, the Office will inform the employee that the matter has been closed. Such notice normally be provided within fifteen (15) days of when the case involving the employee is closed.

Section 6: Retention in electronic Official Personnel Folder (eOPF)

Letters of reprimand shall be placed in an employee's eOPF for not more than twelve (12) months from the date of issuance.

Section 7: Employee Records

If any disciplinary action against the employee is overturned or rescinded all reference to such action will be removed from the employee's official personnel file (OPF and eOPF) within one (1) week, or as soon as practicable.

Section 8

Without waiving any rights granted under this Agreement or the law, whenever an employee has designated the Union as their representative, the employee shall have the right to have the Union present at any discussion regarding an 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 which will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service. The Office may only change this nexus statement by rescinding and reissuing the proposal to discipline an employee.

Section 10

Nothing in this Article 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.

The Union reserves its rights under Article 9 (Union Rights) and the FSLRMS.

ARTICLE 35
ADVERSE ACTIONS

Section 1: General

A. An adverse action for the purposes of this Article is defined as a removal, a suspension for more than fourteen (14) days, a reduction in grade or pay, or a furlough 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.

B. No bargaining unit employee will be the subject of an adverse action except for such cause as will promote the efficiency of the service. The imposition of adverse actions shall be in accordance with this Agreement, law, rule, and regulation.

Section 2: Notice of Adverse Action

A. When it is determined by the Office that an adverse action may be necessary, the employee will be given thirty (30) calendar days' advance written notice of the proposed action which includes the reasons the action is being proposed.

B. Any notice of adverse action shall identify the specific laws, regulations, policies, and/or other rules the employee is alleged to have violated.

C. 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 entire report shall be sanitized as appropriate (to protect the privacy of individuals) unless their identity is relevant to the charge or response and provided to the employee.

D. At the time the Office issues its proposal letter and its decision letter to an employee, it shall include a statement which outlines the employee's right to representation by the Union or private counsel and their appeal rights.

E. The Office shall provide the Union a sanitized copy of all notices of proposed adverse actions and decision letters simultaneous to their issuance to employees. Where the Union has provided the Office with a signed designation of representation, the Office shall provide the Union an unsanitized copy of all decision letters simultaneous to their issuance to employees.

F. Information requests that are not relevant to the stated offense will not serve as a basis to request a reply period be extended. Normally, requests for information related to the proposed adverse action will be limited to a period of three (3) years prior to the request. If an information request is denied and the employee or their representative challenges that denial, upon mutual agreement between the parties, timeframes may be tolled until the information dispute is resolved.

Section 3: Factors

A. Adverse actions taken against an employee will be for such cause as will promote the efficiency of the service**.** Disciplinary actions will normally be progressive in nature. Major offenses may be cause for severe action, including removal, irrespective of whether previous discipline had been taken against the offending employee. In deciding what action is appropriate in adverse actions, the Office will give due consideration to the relevance of any mitigating and/or aggravating circumstances. Adverse actions shall be calibrated to the specific facts and circumstances of each individual employee's situation. 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:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

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

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

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

7. The notoriety of the offense or its impact upon the reputation of the Office;

8. 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;

9. Potential for the employee's rehabilitation;

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

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

B. Nothing in this Section precludes an employee or their representative from challenging, in the appropriate forum, consistent with this Agreement, the Office's decision not to use progressive discipline.

Section 4: Employee Rights

A. For matters not involving a crime for which an employee could serve a year or more in prison, an employee against whom is proposed a suspension of fifteen (15) calendar days or more up to and including removal, a reduction in grade, or a reduction in pay is entitled to:

1. Thirty (30) calendar days' advance written notice stating the specific reasons for the proposed action, including the information contained in Section 2 above.

2. The employee shall have an opportunity to respond to a proposed disciplinary action either orally, in writing, or both. The employee's response shall be made within thirty (30) calendar days from the issuance of the proposed notice. The thirty (30) calendar day period may be extended upon mutual agreement of the parties. Employees are to use collaboration tools to expedite the scheduling of the oral reply.

3. Be represented by the Union, an attorney or other representative during the reply period. Without waiving any rights granted under this Agreement or the law, whenever the employee has designated the Union as their representative, the employee shall have the right to have the Union present at any discussion regarding an adverse action and the Union shall have a right to receive advance notice of any planned discussion with the employee. However, the availability of a particular Union representative is not justification for extending the oral reply period.

B. For matters involving a crime for which an employee could serve a year or more in prison, an employee against whom a proposal is issued is entitled to:

1. Fourteen (14) calendar days' advance written notice stating the specific reasons for the proposed action, a statement that the employee has the right to a representative, and a right to respond orally or in writing to the proposed action.

2. The employee shall have an opportunity to respond to a proposed disciplinary action either orally, in writing, or both. The employee's response shall be made within seven (7) week days of the proposed notice being issued. The seven (7) week day period may be extended upon mutual agreement of the parties. Employees are to use collaboration tools to expedite the scheduling of the oral reply. This reply period does not limit the Office's right to place an employee on

administrative leave during its consideration of the adverse action.

3. Be represented by the Union, an attorney or other representative during the reply period. Without waiving any rights granted under this Agreement or the law, whenever the employee has designated the Union as their representative, the employee shall have the right to have the Union present at any discussion regarding an adverse action and the Union shall have a right to receive advance notice of any planned discussion with the employee. However, the availability of a particular Union representative is not justification for extending the oral reply period.

C. The Office may only modify a proposal to discipline an employee or the information relied upon in support of that proposal by rescinding and reissuing the proposal.

D. The employee will be granted a reasonable amount of time to make their oral reply not to exceed two (2) hours.

E. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and their designated representative. Any corrections must be provided within three (3) weekdays of the date the Office provided the summary. One (1) set of combined corrections may be provided by the employee and/or Union. Corrections normally should be limited to information and arguments provided at the oral reply and usually should not include new information or arguments. The Office shall consider submitted corrections before any decision is made concerning the proposed adverse action.

F. The Office agrees that when a record of an oral/written reply is made, it will always contain as an attachment all documents submitted by the employee and their representative. Any documents not submitted at the oral reply, but received within five (5) weekdays of the date of the oral reply, where practicable, will be included in the reply record;

G. Oral/written replies will be heard/considered by a higher or equivalent level management official than the management official that proposed the action. The management official who hears the oral reply and/or receives the written reply and makes the decision on the proposed action will rely on the evidence relied upon by the proposing official and the evidence presented in the written and/or oral reply.

H. Issuance of final decision:

1. The final decision letter will be issued and delivered to the employee and their representative, if the employee is represented.

2. 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 be addressed. Copies of the decision shall be served simultaneously on the

employee and their designated representative.

3. If the conduct that led to the discipline involves a possible determination of an overpayment to the employee, the final decision must inform the employee of that possibility. Consistent with National Finance Center (NFC) instruction, employees may seek waivers of indebtedness.

I. When an employee has been advised that they are/were the subject of an investigation and a determination is made not to propose a disciplinary action, the Office will inform the employee that the matter has been closed. Such notice will normally be provided within fifteen (15) days of when the case involving the employee is closed.

J. Employees with the right to appeal an adverse action to the Merit Systems Protection Board may appeal adverse action decisions to the Merit Systems Protection Board or (with the consent of the Union) to arbitration, but not both.

Section 5: Employee Records

If any adverse action against the employee is overturned or rescinded, all reference to such action will be removed from the employee's Official Personnel File (OPF) within one (1) week or as soon as practicable.

Section 6

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, which will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service. The Office may only change this nexus statement by rescinding and reissuing the proposal to discipline an employee.

Section 7

Nothing in this Article 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.

The Union reserves its rights under Article 9 (Union Rights) and the FSLRMS.

ARTICLE 36
EMPLOYEE ASSISTANCE PROGRAM

Section 1

The Office will continue to offer an Employee Assistance Program (EAP), cost-free to employees, to help employees effectively address and overcome problems such as alcohol and drug abuse, work and family pressures, and job stress which can adversely affect performance, conduct, reliability, and personal health. The Office will issue an annual notice to employees advising of the existence and benefits of this and other USPTO wellness programs. While Employees have the right to seek assistance from EAP, their choice to do so is completely voluntary.

Section 2

When using EAP services, an employee's privacy is protected by confidentiality laws and regulations and by professional ethical standards for counselors. Consistent with these laws, regulations, and standards, an employee's discussions with a counselor may not be released to anyone, including the Office, without the employee's written consent.

Section 3

An employee's job security or promotion opportunities will not be jeopardized by a request for counseling or referral assistance through the EAP except as limited by applicable laws, rules, and regulations.

Section 4

The Office shall not consider the fact of whether or not someone has used EAP as a factor in making any determination regarding an employee.

Section 5

When counseling offered through EAP is provided, an employee may receive up to six (6) hours of administrative leave per fiscal year for attending such counseling.

For the Office:

Portia Robinson 10/11/24

Portia Robinson, Date
Chief Negotiator

Users, Berk, Steven
Digitally signed by Users, Berk, Steven
Date: 2024.10.11 11:17:18 -04'00'

Steven Berk Date
Negotiator

Users, Wahlberg, Stacy
Digitally signed by Users, Wahlberg, Stacy
Date: 2024.10.11 11:09:18 -04'00'

Stacy Wahlberg Date
Negotiator

Users, Kaufman, Laurie
Digitally signed by Users, Kaufman, Laurie
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Laurie Kaufman Date
Negotiator

For the Union:

Jack B. Jarrett **10/9/2024**

Jack Jarrett Date
Chief Negotiator

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APPENDICES

Appendix A: Memorandum of Understanding Between the USPTO and NTEU, Chapter 245 Regarding the Implementation of Trademarks TM Exam Center ("TM Exam Implementation MOU"),

Appendix B: USPTO Public Transportation Subsidy-Program (Effective October 2018).

APPENDIX A

Memorandum of Understanding
Between the United States Patent and Trademark Office
And the National Treasury Employees Union, Chapter 245
Regarding the Implementation of Trademarks TM Exam Center ("TM Exam Implementation MOU")

The United States Patent and Trademark Office ("USPTO" or "Office") and National Treasury Employees Union, Chapter 245 ("NTEU 245" or "Union") (collectively the "Parties") hereby enter into this Memorandum of Understanding ("MOU") concerning the transition from Trademarks electronic legacy examination systems to the new Trademarks next generation system, TM Exam Center (TM Exam).

I. Implementation of TM Exam as the exclusive examination system and system of record, took place December 1, 2022. All examining attorneys are using TM Exam as the exclusive examination system and system of record as of December 1, 2022.

A. This MOU will be in effect for two years from the date of the agreement. The Parties may agree to modify or extend the MOU. No later than 90 days prior to the termination, either party may reopen this MOU and bargain to the extent required by law and pursuant to the parties' midterm bargaining article in the CBA. This MOU shall remain effective until the parties conclude such bargaining, including any impasse proceedings.

B. Unless specifically modified by this MOU, all past policies, agreements and collective bargaining agreement provisions remain in effect.

C. The parties shall meet at the request of either party to discuss any issues that may arise from the implementation of TM Exam. The parties agree to work together to address issues raised by either party with a goal of reaching resolution within a reasonable period of time. Either party may invoke formal bargaining at any time, as provided for in the CBA, and the parties will bargain to the extent required by law.

II. System Unavailable Time Guidance

A. The parties agree that the timely, efficient and accurate reporting of system and application issues is in the interest of the parties to identify, rectify, and improve such systems and applications.

B. The parties agree that the attached System Unavailable Time Management Implementation Guidelines ("System Downtime MIG") as Appendix A are applicable to TM Exam and examination systems and applications relied upon to do work-related tasks for bargaining unit employees.

C. The parties agree to meet regarding issues and concerns with implementation of the System Downtime MIG, reporting of system and application issues, information

resources about system and application issues, how to improve the system and applications, and development efforts related to TM Exam.

D. In connection with the negotiation of the CBA resulting from the Agency's September 19, 2019 notice of reopening, the parties agree not to propose any terms inconsistent with this section relating to System Unavailable Time Guidance or the System Downtime MIG.

III. Data Integrity and Performance Standards

A. The Office recognizes that data integrity in TM Exam and automated processing capabilities may result in errors in examination of trademark applications that are no fault of examining attorneys. The examining attorney must exercise due diligence, as required in the normal course of examination, including checking the database for inaccuracies prior to approving an application or sending an Office action. Where due diligence is exercised, but such an error is assigned, examining attorneys will request and supervisors will consider such requests for withdrawing TM Exam errors on a case-by-case basis.

1. Where there is a question as to whether TM Exam was the cause of the error, supervisors should withdraw the error unless:

    i. the cause of the error was avoidable due to prior notice to the examining attorney; and/or

    ii. the examining attorney was notified of the issue without assessing an error on an earlier reviewed application(s).

2. Supervisors will consider the circumstances of known issues and work-arounds in making determinations on whether to assess an error.

B. Known issues with TM Exam that may result in data integrity and automated processing issues will be noticed to examining attorneys on a timely basis in a centralized TM Exam Intranet page, and/or in communications to inform examining attorneys of these issues.

C. The parties recognize that work-arounds to system and application functionality are not optimal. To that end, the Office will provide notice, as soon as practicable, when such work-arounds are required and work with the Union through the E-Commerce Working Group or another appropriate channel with the Union to mitigate the impacts of such workarounds, including any or all of the following: sharing information on the nature of the issue, the prospects for resolution, examining attorney testing of possible solutions, and discussing potential adjustments to examining attorney performance criteria when the nature of the impact is significant to performance (including widespread impacts).

It is also recognized that employees not trained on the use of legacy applications/systems will receive training in the use of the specific legacy application(s)/system(s) they are directed to use before they are required to use them. These hours of training will be

adjusted ("bucket 1") with respect to the Production Element of the Performance Appraisal Plan ("PAP") for Examining Attorneys that is separate and apart of an allotment in any Agreement regarding modifications to the PAP.

IV. Pre-Decisional Involvement and Prioritization

A. The parties recognize the importance of the Union's and employees' pre-decisional involvement with respect to information technology that impacts examining attorneys. The parties will work on the following through the eCommerce Working Group, where practicable:

1. the joint prioritization of fixes for issues within TM Exam and any other systems and applications that examining attorneys rely upon to do their work;

2. the joint prioritization of new features and tools within TM Exam and any other systems and applications that examining attorneys rely upon to do their work;

3. beta-testing, and user-centric design and development to inform decision-making that considers the direct input of the end-users and that promotes examination efficiency and better user experiences; and

4. when warranted jointly contacting or requesting the assistance of the Chief Information Officer's office to obtain insight into the technical considerations.

FOR THE UNION:

1-20-2023

Jay Besch Date
President, NTEU 245

FOR THE OFFICE:

Users, Cooper, Christine H.
Digitally signed by Users, Cooper, Christine H.
Date: 2023.01.20 12:37:07 -05'00'

Christine Cooper Date
Group Director, Trademark Operations

APPENDIX B

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) PUBLIC TRANSPORTATION SUBSIDY (PTS) PROGRAM (Effective October 2018)

1. **Authority and Purpose.** This Program is established pursuant to 5 U.S.C. § 7905 [Title 5, Part III of the U.S. Government Organization and Employees code] which provides for "programs to encourage commuting by means other than single-occupancy motor vehicles."

2. **Basic Benefit.** Beginning in October of each fiscal year, the USPTO (or designated external service provider) will provide, to any employee who elects to participate and qualifies for the PTS program, payments limited to the current maximum of $260.00 per month, per employee, or as adjusted due to changes to the PTS program budget pursuant to Section 10 or for inflation pursuant to Section 13 of the following guidelines. The amount cannot exceed the actual public transportation expenses of the eligible employee. Benefits are to be provided using registered WMATA SmarTrip Cards, approved transportation debit cards, commuter checks (until such time as they are no longer available) or any other form of payment at the Agency's discretion. Use of this benefit is limited solely to the costs of commuting to and/or from work via public transportation systems recognized and approved by the Agency

3. **Eligibility.** All USPTO federal employees are eligible to participate in the PTS program, provided that the employee:

    a. Commutes or will commute to and/or from work on recognized and approved transportation systems.

    b. Does not use a monthly parking space at or near the workplace, except for designated vanpool drivers.

    c. Does not have a monthly parking permit for a USPTO parking space, except for designated vanpool drivers. Employees may participate in the program if they pay daily to park (does not hold a monthly permit).

4. **Misuse and Availability of Benefits**.

    a. The benefits provided by SmarTrip card, debit card, commuter checks/vouchers, or other distribution modes are not transferable and are only to be used for the commute to and/or from work. Misuse of the subsidy, such as, giving, selling, trading, or transferring the subsidies to other individuals, or purchasing the same from another individual is prohibited, even if the other individual is eligible to receive the subsidy.

b. Benefits are provided on a monthly basis. For employees receiving debit cards or commuter checks, all unused portions including the card itself must be returned to the Office of Finance at Headquarters or designated USPTO regional office administrator upon withdrawal from the program or at the time of separation. All employees who wish to cancel participation must officially do so using the online website by selecting the option to withdraw from the program.

c. Should the Office decide to investigate any employee's eligibility for participation in the PTS program, the amount of benefits claimed, or failure to timely return unused subsidies where applicable, the employee will continue to receive benefits pending the Office's determination concerning eligibility. The Office may, however reduce or stop benefits once it makes a determination of ineligibility or reduced eligibility. Employees may be required to repay benefits improperly claimed, and may be subject to disciplinary or collection action.

5. Employee Obligation to Report to Work. Receipt or non-receipt of the transit subsidy benefit does not alter an employee's responsibility to report to work

6. **Procedures**.

a. Social Security numbers will not be used or required for the application process or for any other purpose related to the PTS program.

b. Employees who want to participate in the PTS program must do so by submitting an online application through the agency specified system prior to the annual certification deadline date. Employees can file one application per fiscal year to receive uninterrupted benefits for the fiscal year. Employees can also submit an application update, withdraw, or re-apply for benefits as needed. Each employee must complete the online training, certify eligibility, and provide a detailed description of commuting costs to be covered by this program. All change requests must be submitted via the agency specified PTS program online system, as needed.

There are no exceptions for the mode of application submission; an online application is required annually to recertify benefits by the 1st business day of September.

c. A copy of this document and all forms used in the PTS program are maintained on the USPTO Intranet webpage entitled Transit Subsidy under the Employees heading on the Office of Human Resources (OHR) web page in addition to the Chief Financial Officer (CFO) Travel and Transportation SharePoint site, and additional sites maintained by an agency specified provider. Participants can access current information using the site links below

a. USPTO Office of Human Resources (see support services section to access PTS program information): http://ptoweb.uspto.gov/ptointranet/ohr/employees/transit_subsidy/transit.htm

b. USPTO Office of Finance/Travel and Transportation Resources SharePoint site (see commuter information section to access PTS program information: https://usptogov.sharepoint.com/sites/0782646c/Pages/Transit-Program-Commuters.aspx

d. Employees will be notified of the PTS program application deadline each fiscal year by announcements in the "USPTO Weekly" or successor means (in all issues published during the eight weeks before the PTS program application form is due). These messages will provide electronic access to the PTS program application form and include the availability and specific location of information concerning this program.

e. Employees must notify the TSC or internal USPTO designee via the PTS program online system to withdraw his/her participation in the PTS program and return all unused subsidies if applicable. Employees must submit a new PTS program application form (including any address/commute updates) using the PTS program online system to resume participation. The delivery of reinstated subsidies may be expected within seven business days of an approved application.

f. The Transit Subsidy Coordinator (TSC) or internal USPTO designee notifies the employee if a timely filed application has been reviewed and rejected due to incomplete or inaccurate information provided by the employee within seven business days. The employee must correct and resubmit the application within seven business days for approval. Corrections are processed in the order they are received within seven business days.

h. Applications will be accepted on an ongoing basis. If an employee does not submit their application for benefits by the annual certification deadline, the application will be processed in the order received. If the employee submits an online PTS Program application after the annual certification deadline, the employee may not receive the full transit subsidy for the current full calendar month. The employee will receive a pro-rated amount based on the date of the approved application. Employees will receive their benefits within seven business days of an approved application

7. Delivery of Transit Subsidy benefits.

a. Transit subsidy benefits are issued electronically through a SmarTrip card (for program participants in the National Capital Region (NCR) using vendors that accept the Washington Metropolitan Area Transit Authority (WMATA) SmarTrip card) or through a debit card (for use with transportation providers that do not offer or accept a WMATA SmarTrip card). Use of commuter checks are not anticipated as most vendors accept electronic forms of payment, however, they are available to participants if they commute using a transportation provider that does not accept electronic fare media such as the WMATA SmarTrip card or a debit card.

b. Transit subsidy benefits are made available on a monthly basis through one of the following fare media:

   i. Debit cards are mailed within seven business days of the annual benefit certification deadline or an approved application (for submissions after the deadline).

   ii. SmarTrip Cards must be purchased by the employee directly from a WMATA vendor. Cards must be registered to the employee and the card number provided on the application for benefits. (National Capital Region area participants)

   iii. Commuter checks/vouchers (paper fare media) are mailed within seven business days of the annual benefit certification deadline or approved application (for late submissions after the deadline)

   iv. Debit cards and commuter checks (paper fare media) are also made available for pick-up at the Office of Finance (for Headquarters program participants) or an internal USPTO designee at each of the USPTO regional offices. In cases where no USPTO office exists, the TSC will mail the subsidy to an internal USPTO designee near the employee's location. The employee will be required to produce a USPTO identification card to receive the fare media

8. Employee claims of non-receipt.

a. If transit subsidy benefits are not received, the employee must notify the TSC within the same month the employee was expecting to receive the benefit. Employees should send an e-mail to the TSC at transitsubsidycoordinator@uspto.gov for assistance

b. Employees expecting to receive electronic subsidies will receive the benefits within seven business days of a valid claim of non-receipt. The benefits will be issued electronically via the SmarTrip or transportation debit card.

c. If an employee does not receive fare media delivered by mail (e.g. debit cards or paper fare media) as a result of an error on the part of the USPTO (or designated external agent) through no fault on the part of the employee, the benefits will be replaced. To request replacement, an employee must provide the following information, in writing to the TSC (an e-mail is acceptable):

    i. Certify that their subsidy was not received;

    ii. Provide their name, employee identification number, amount of the subsidy, and distribution mode (e.g. debit card/paper fare media);

    iii. State whether he/she is representing himself/herself, or is represented by a union representative; and iv. Provide a specific account of why the subsidy was not received

    iv. Provide a specific account of why the subsidy was not received.

9. Grievances Concerning the PTS Program. Any participant who is aggrieved over policies and procedures related to the PTS program may:

a. Request representation by a union representative. NOTE: Representation may be requested by either party within 5 business days of filing a grievance. This meeting shall be scheduled by mutual agreement for a time between 9:30 a.m. and 3:00 p.m. during the next 6 business days. A written decision will be rendered 10 business days following the filing of the concern or 5 business days after the meeting, whichever is later. This decision will be considered the equivalent of a USPTO decision at the first or informal stage of the grievance procedure.

b. Decide to continue with the grievance process if unsatisfied with the results of a written decision at the first or informal stage of the grievance procedure.

c. File a grievance within the time period required in the applicable collective bargaining agreement (CBA). The grievance must contain the information required by the CBA. A meeting may be requested by either party as is provided for in the applicable CBA.

NOTE: The union may appeal the final Agency decision to arbitration.

10. **Changes to the PTS Program Budget.** If management determines it to be necessary to reduce or terminate funding for the PTS program, no USPTO employee will receive a greater reduction in their individual maximum subsidies than any other person in the USPTO. When the program funding is reduced or terminated, it will be reinstated when such action is no longer necessary.

11. **Meaning of Dates Provided in these Program Guidelines.** Deadlines established in this program are automatically extended to the next business day when they fall on a Saturday, Sunday, Federal holiday, or other office closures.

12. **Reinstatement of Parking:** Employees who forfeit a parking space controlled by the USPTO to participate in this program shall be eligible for reinstatement of their parking permit on a priority basis when:

    a. They suffer a ten percent or greater reduction in benefits resulting from funding cutbacks to the PTS program.

    Priority basis means that the employee's names are placed ahead of all other names on the applicable waiting list except those who also have priority status.

13. **Increases in Maximum Monthly Amounts for the Transit Subsidy Program.** If the maximum monthly transit subsidy amount increases in the future, the maximum amount paid under this program will also increase, with the other provisions set forth above remaining unchanged, unless the Agency or any of the unions request to bargain before the effective date of the new amount. So long as there are no other changes to law, rule, or regulation (including Executive Orders) pertaining to the PTS program, IRS adjustments to the maximum benefit, as set out in 26 U.S.C. § 132 (f)(6), shall be automatically applied to this program.

14. **Effective Date.** The provisions of the revised program are to become effective for benefit months beginning on and after October 1, 2018