National Institute of Environmental Health Sciences

Collective Bargaining Agreement

Between

National Institute of Environmental Health Sciences

and

American Federation of Government Employees Local 2923

AFGE

IN WITNESS WHEREOF THE PARTIES HERE TO HAVE ENTERED INTO THIS AGREEMENT

This first (1st) day of December, 2014.

FOR THE UNION

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President, Local 2923, AFGE

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Vice President, Local 2923, AFGE

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The effective date of this Agreement is December 2, 2014.

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Article 1: Preamble, Purpose and Parties to the Agreement and Definition of Unit

Preamble

WHEREAS the American Federation of Government Employees Local 2923, AFL-CIO (Union) and the United States Department of Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences (Agency; Employer; Management), also referred to as the Parties, recognize that the right of Employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between Employees and their employers involving conditions of employment; and,

WHEREAS the Parties recognize that the public interest demands the highest standards of Employee performance and implementation of modern progressive work practices to facilitate and improve Employee performance and the efficient accomplishment of the operations of the Government; and,

WHEREAS the Parties recognize that a mutual commitment to cooperation promotes both the efficiency of the Agency's operations and the well-being of its Employees; and,

WHEREAS the Parties agree that the dignity of Employees will be respected in the implementation and application of this Agreement as well as related personnel policies and practices;

NOW THEREFORE the Parties hereby further agree as follows:

Purpose

It is the intent and purpose of both Parties to this Agreement to:

1. Enhance the efficient administration of the National Institute of Environmental Health Sciences (NIEHS) and the major role it plays in the advancement of biomedical research and the fundamental well-being and health of the nation's citizenry;
2. Promote fair and reasonable working conditions; promote improved programs designed to aid Employees in achieving their acknowledged and recognized objectives as well as ensuring the opportunity for Employees to develop and succeed in their job or career;
3. Promote the highest degree of morale and responsibility in the Unit;
4. Adjust promptly all differences arising between the Parties related to matters covered by this Labor-Management Agreement;
5. Promote systematic cooperation between the Employer and the Employees in the Bargaining Unit and provide a safe and healthful work environment.

Parties to the Agreement and Definition of Unit

AFGE Local 2923 was certified as the exclusive representative of the Employees in the unit defined below by the Atlanta Area Administrator, LMSA, on August 31, 1971, Case No. 403094 (RO), the National Institute of Environmental Health Sciences, Department of Health and Human Services Research Triangle Park North Carolina (hereinafter referred to as the Employer or Agency or Management) and Local 2923 American Federation of Government Employees, AFL-CIO (hereinafter referred to as the Union). Bargaining Unit Employee(s) hereinafter will be referred to as Employee(s).

As based on the decision in WA-RP-09-0029 dated October 22, 2009 the definition of Unit is:

Included: All nonprofessional Employees of the National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, and Bethesda, Maryland.
Excluded: All professional Employees; management officials; supervisors; and Employees described in 5 U. S. C. §7112(b)(2), (3), (4), (6) and (7).

Article 2: Labor-Management Cooperation

Section 1.0 Policy

In the interest of performing the Agency's mission, providing efficient and effective service to the public, and morale and the quality of work life for Employees, the Parties will strive for engaging with each other in a cooperative, collaborative manner.

Section 2.0 Labor-Management Cooperation and Partnership Committee

Section 2.1 Purpose

A. Partnership involves the design, implementation, and maintenance of a cooperative working relationship between Labor and Management. The Parties agree that the Union shall have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. § 7106. Management and Union leadership must be committed to the principles upon which Partnership is based in order for this effort to be successful.

B. The Employer and the Union both agree to establish a joint Labor-Management committee. The structure, nature, scope, and operation of the Partnership Committee will be jointly determined by the Parties. The Committee would use consensus decision-making whenever possible.

Section 2.2 Organization

Each Party will designate three (3) members to serve on the Committee. The Committee will meet three (3) times each year during regular work hours. The Committee will meet during the months of March, June, and September at a convenient location agreed upon by the Parties. Agenda items will be exchanged by both Parties five (5) working days in advance of each meeting. Union members of the Committee will receive travel and per diem expenses to attend Committee meetings in accordance with law, regulation, and this Agreement. The Parties will determine jointly how long each meeting will be. Normally meetings will not last longer than ninety (90) minutes. Union representatives who are Employees will be allowed to attend on official time without charge to leave. Subject matter experts may attend to address specific agenda items and as mutually agreed to by the Parties.

Section 2.3 Principles

The Parties are committed to work at all appropriate levels to establish and improve effective Partnerships which are designed to ensure a quality work environment for Employees, more efficient administration of Agency programs, and improve service to the public. The principles which guide this effort include:

1. Pre-decisional involvement;
2. Shared responsibility;
3. Identification of problems;
4. Sharing of information;
5. Finding solutions;
6. Reaching joint agreements and making joint recommendations;
7. Use of alternative dispute resolution, interest-based problem-solving techniques, and facilitation;
8. Integration of interests;
9. Cooperation;
10. Mutual respect;

11. Open communication;
12. Trust;
13. Training for both Parties;
14. Minimizing or eliminating collective bargaining disputes; and,
15. Publicizing partnership successes at all levels.

Section 2.4 Partnership Training
To achieve optimal results from the Partnership, the best interests of both Parties are served by continual and joint Labor-Management training. The types of training that will best suit the needs of the Partnership will be determined by the Partnership Committee. The Agency will pay any costs for such training.

Section 2.5 Duty Status
While participating in Partnership activities, all Bargaining Unit Employees will be considered in duty status. In the event these activities are conducted beyond normal duty hours, Employees will be compensated in accordance with applicable law and this Agreement. Designated Union representatives will be on official time as defined in Article 11, Official Time.

Section 2.6
Nothing contained in this Agreement shall preclude the Parties from meeting as often as is mutually agreed to resolve urgent matters that may arise.

Section 2.7
It is agreed that individual Employee grievances will not be taken up during these meetings.

Article 3: Governing Laws and Regulations

Section 1.0 Purpose
This Article sets forth the effect of laws and regulations on this Agreement.

Section 2.0 Laws and Government-Wide Rules and Regulations
In the administration of this Agreement, the Parties shall be governed by all statutes and existing government-wide rules and regulations, as defined in 5 U.S.C. § 7100 *et seq*. , and by subsequently prescribed government-wide rules and regulations implementing 5 U.S.C. § 2302, Prohibited Personnel Practices.

Section 3.0 Waivers of Rights
Any lawful waivers of the rights given to Management or the Union by the Federal Labor Management Relations Statute, 5 U.S.C. 71, must be clearly and unmistakably set forth in this Agreement and understood to be waived by both the Union and the Agency.

Section 4.0 Past Practices
Any prior benefits, practices and/or memoranda of understanding which were in effect on the effective date of this Agreement at any level (national, council, regional and/or local), shall remain in effect unless superseded by the new Agreement or in accordance with 5 U.S.C. 71.

Section 5.0 Departmental Regulations
Where any Department regulation conflicts with this Agreement and /or a Supplemental Agreement, the Agreement shall govern.

Section 6.0 Statutory Requirements
Personnel management will be conducted in accordance with 5 U.S C. §2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.

Article 4: Management Rights

Section 1.0 Purpose

This Article shall be administered in accordance with 5 U.S.C. 71 and this Agreement. The purpose of this Article is to set forth the statutory Management rights.

Section 2.0 Statutory Rights

Section 2.1

Nothing in this Agreement shall affect the authority of any Management official:

1. To determine the mission, budget, organization, number of Employees and internal security practices of the Agency; and
2. In accordance with applicable laws
   a. To hire, assign, direct, layoff and retain Employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such Employees;
   b. To assign work, to make determinations with respect to contracting out and to determine the personnel by which Agency operations shall be conducted;
   c. With respect to filling positions, to make selections for appointments from
      i. Among properly ranked and certified candidates for promotion; or
      ii. Any other appropriate source; and,
   d. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

Section 2.2

Nothing in this Agreement shall preclude the Agency and the Union from negotiating:

1. At the election of the Agency, on the numbers, types and grades of Employees or positions assigned to any organizational subdivision;
2. Work project or tour of duty, or on the technology, methods and means of performing work;
3. Procedures which Management officials of the Agency will observe in exercising any authority under this section; or,
4. Appropriate arrangements for Employees adversely affected by the exercise of any authority under this section by such Management officials.

Article 5: Employee Rights

Preamble

The Parties agree that Employees shall have the protection of rights afforded to all Federal Employees. Additionally, both Parties agree to abide by all written understandings reached by the Parties with regard to such Employees.

Employees have the right to be treated with courtesy, dignity, and respect in all aspects of personnel management.

Employee privacy will be protected in all dealings with the Agency, unless prohibited by law. No Employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions, nor be used as an example to threaten other Employees.

Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion or discrimination at the worksite, and without imposition of discipline or adverse action unless such pursuit clearly impairs the efficiency of the service.

Section 1.0 Rights

In accordance with 5 U.S.C. § 7102, each Employee shall have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each Employee shall be protected in the exercise of such right. Such rights include:

1. The right 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. The right to engage in collective bargaining with respect to conditions of employment through representatives.

Section 2.0 Right to Representation

Employees have a right to the representation and assistance of the Union. Employees may contact and meet privately with a Union representative during duty hours for representational matters. The Employee will be released from duties when s/he requests to exercise this right, unless there is a pressing operational exigency.

Section 2.1

Employees have the right to be represented in investigatory interviews (questioning) or when the Employee reasonably believes the meeting may result in discipline. Prior to beginning any fact finding or formal discussion relating to potential misconduct, the supervisor or manager will notify the Employee of the right to request a Union representative to attend the meeting. If an Employee requests a representative, no further questioning will take place until the representative is present. In the event a representative is unavailable then the meeting will be rescheduled with the Union at the earliest possible availability.

When the Employer determines that a verbal counseling is necessary, the counseling will be accomplished during a private interview with the concerned Employee and the appropriate supervisor. Should the Employee request a Union representative, no further discussion will be taken until the Employee's Union's representative is present.

The Employee will be granted up to three (3) workdays to obtain representation. If there is to be more than one Management official involved in a counseling session with the Employee, the Employee will be so notified in advance and the Employee may have a Union representative at the session.

This section does not apply to routine work-related conversations.

Section 2.2 Surveys
As specified by the terms of Article 12, Mid-Term Bargaining, the Employer agrees to provide notice to the Union regarding any voluntary survey initiated by NIEHS and issued Institute-wide, or regarding any mandatory Institute-wide survey.

The Employer will notify the Union prior to distributing voluntary surveys directed by a higher authority (including NIH, HHS or Federal-wide surveys), or voluntary surveys provided to Employees on behalf of an outside organization or contractor (such as a local transit authority). Where the Employer has no prior notice of NIH, HHS or Federal Government surveys, and NIEHS has no control of distribution, this advance notification requirement will not apply.

The Agency will also provide the Union with an advance copy of survey results as soon as given to Management.

Section 3.0 Personal Rights
All Employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, gender, sexual orientation, Union affiliation, marital status, age, or disabling condition, and with proper regard and protection of their privacy and constitutional rights. Discrimination, retaliation, coercion, sexism, or other sort of unfair or improper treatment will not be tolerated. Such abuses will be dealt with in an impartial and prompt manner; ensuring that those responsible are held accountable and disciplined accordingly.

Section 3.1
The Agency will make every reasonable effort to conduct discussions between supervisors and Employees, other than run-of-the-mill work conversations, in private.

Section 3.2
If an Employee is to be served with a warrant or subpoena, it will be done in private to the extent that the Agency has knowledge of and can control the situation.

Section 3.3
Management may not discipline an Employee who refuses to obey an order that is found to be unlawful.

Section 3.4
In accordance with existing statutes and regulations, Employees have the right to present their personal views to Congress, the Executive Branch or other authorities without fear of penalty or reprisal.

Section 3.5
The Agency will provide lockable accommodations for the secure storage of appropriate personal belongings for Employees.

Upon request, the Agency will instruct Employees on filing a claim for reimbursement under 31 U.S.C. § 3721 and will be assisted in making a claim in case of loss.

Any search of personal belongings must be done for good reason and in compliance with applicable laws and regulations. At least two (2) people must be present at any search and one of these will be the affected Employee or his or her designated representative.

Section 3.6
Employees shall have the right to direct and fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination at the worksite, and without imposition of discipline or adverse action unless such pursuit clearly impairs the efficiency of the service.

All NIEHS Employees are expected to adhere to applicable Standards of Ethical Conduct for Employees of the Executive Branch found at 5 C.F.R. 2635. The Parties agree that Management and Employees shall adhere to relevant Federal laws and government-wide regulations.

Section 3.7
An Employee's decision to resign or retire, if eligible, shall be made freely and in accordance with prevailing regulations. Employees do not have to provide a specific amount of notice to Management or their supervisor of their retirement date. In addition, Employees do not need to have supervisory signatures and/or approval to retire.

If an Employee is facing termination, the Employee may resign, freely and in accordance with prevailing regulations any time prior to the effective date. The Employee may withdraw his or her resignation prior to the effective date.

Section 3.8
Upon request, the Agency will provide retirement planning information or referrals to Bargaining Unit Employees who are within twelve (12) months of retirement eligibility. Such information may include, but is not limited to, individual counseling, elder care assistance, retirement materials, legal services counseling, life and medical insurance counseling, etc.

Section 3.9 Non-Work Space
The Agency will provide Employees with access to clean break areas near their work location. Meal areas should include sinks, refrigerators, microwaves, space for making coffee and tea, etc. These areas should be away from customers, clients, and other non-Employees whenever possible.

In the rare cases in which it is impossible to provide onsite space for meals or break periods, the Agency will work with the Union to identify locations where Employees can spend these non-work periods.

The Agency will ensure that these break areas and accompanying appliances are clean and organized. All Agency Employees are expected to clean-up after using these areas or appliances.

At the earliest opportunity, the Agency agrees to pursue having a contractor clean government purchased refrigerators on a monthly basis. The Parties will work together on this effort. Reductions in other less frequently needed services may occur to offset costs.

Section 3.10 Employee Fitness Activities
Upon written request, the Agency will provide available space, such as conference rooms, training rooms, etc., for use by Employees for exercise classes, aerobics, and other physical fitness activities. This space may be made available during normal operating hours for use by Employees during their lunch hours or non-working hours, to the extent that these activities do not cause a disruption to the office. Where convenient facilities exist nearby, the Union and the Agency will explore a joint use program provided there is no cost incurred by the Agency.

Section 4.0 Official Records and Files
No personnel record may be collected, maintained, or retained except in accordance with law, government-wide regulation and this Agreement.

Section 4.1
Personnel records will be maintained in a secure, confidential file and shall be viewed only by officials with a legitimate administrative need to know.

Section 4.2
Employees shall be advised of the nature, purpose, and location of records that are maintained about them and of their right to access these records. This includes their Official Personnel Folder (OPF) or electronic Official Personnel Folder (eOPF) and any other folder related to their employment. In the event other personnel files are maintained on an Employee, such files will be made available to them for inspection upon request.

Section 4.3
Employees will have the right and be granted a reasonable amount of time to examine any of their personnel records, whether paper or electronic, on duty time.

Employees have the right, on duty time, to prepare and submit any response or statements they wish to make about information contained in their personnel records or to add additional information or documents that are appropriate, relevant, work related and that are not in violation of law or government-wide rules or regulations. If the Employee alleges incorrect or omitted information, the Agency will, upon verification, correct the record.

Upon request, Employees have the right to have a copy made of specific documents in their personnel records.

Access to personnel records by the Employee or his or her authorized representative will normally be granted within two (2) working days of the request. If the records are not immediately available, the Agency will initiate action to obtain the records from their location and will make them available to the Employee as soon as possible. Grievance time limits, if applicable, should be stayed in the event it takes more than four (4) days for the records to be provided to the Employee.

Access to personnel records to review them, add or correct information and receive copies will be without cost, charge to leave or loss of pay.

Section 4.4
Employees shall be notified of any material placed in their personnel records within three (3) working days. Other than records that are exempt, any records that have not been disclosed to an Employee on a

timely basis and placed in the personnel record file should not be used in any disciplinary, adverse action or performance-based action.

Section 4.5
Personal notes prepared by a manager pertaining to an Employee, but which do not qualify as a system of records under the Privacy Act of 1974, may only be kept and maintained by and for the personal use of that manager. They shall not be shown or released to anyone, including other manager(s), secretarial or administrative personnel. Personal notes shown or released to anyone must be maintained in accordance with this Agreement. These personal notes or memory joggers shall not be used to circumvent timely disclosure to an Employee, nor may they be used to retain information that should properly be contained in a system of records. They may not be used in any disciplinary, adverse or performance based actions unless they have been disclosed to the Employee on a timely basis and placed in a file authorized by law, government-wide regulation and this Agreement.

Section 4.6
Employees have the right to examine, and access, during duty time their eOPF. Employees will be afforded the opportunity to place in their eOPF an appropriate written statement they wish to make with regard to unfavorable information contained in these records in accordance with Office of Personnel Management (OPM) regulations.

In the event other personnel files are maintained on an Employee, such files will be made available to them for inspection upon request and be permitted to make copies of such files.

All official personnel records shall be purged and information disposed of in accordance with appropriate records control schedules and this CBA.

The Agency shall ensure that any written counseling, disciplinary, or similar action with a time limit on it is removed on the proper date and returned to the Employee.

If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the Employee.

Section 5.0 Timely and Accurate Compensation
Employees are entitled to timely receipt of all compensation earned by them for the applicable pay period. The Agency will make every effort to ensure that Employees receive their pay on the established payday and at the address or electronic site designated by the Employee, in accordance with Department of Treasury rules and regulations.

Section 5.1
The Employer will ensure that Employees' Leave and Earning Statements are maintained in a confidential manner.

Section 5.2
If, between the customary pay date and the established pay date, an Employee believes there is a discrepancy in his or her pay, the Employee may notify the NIEHS payroll liaison, who shall promptly investigate, request payment through the NIH payroll office by the established pay day, and advise the Employee of the results.

If payment cannot be assured by the established pay date, the Employee may complete an Employee Emergency Payment Request, requesting up to the allowable limit. The Agency shall use its best efforts to provide an emergency payment within three (3) workdays of receipt of the request.

Section 5.5
If an Employee receives an emergency payment, the Agency will obtain a promissory repayment agreement from the Employee. The repayment agreement will be NIH form 2676-1 (06/13).

Section 6.0 Whistleblower Protection
Employees are protected by the Whistleblower Protection Act, or other similar regulation, against reprisal for the lawful disclosure of information, which the Employee reasonably believes evidences a violation of law, rule or regulation, or evidences mismanagement, a waste of funds, an abuse of authority, or a danger to health or safety.

Section 7.0 Voluntary Activities
Employees are not required to contribute money in the Combined Federal Campaign, purchase U.S. bonds in any bond drive, or donate blood in any organized blood drive. Participation or nonparticipation will not advantage or disadvantage Employees.

Section 8.0 Statutory Requirements
Personnel management will be conducted in accordance with 5 U.S C. §2301, Merit System Principles, and 5 U.S.C. § 2302, Prohibited Personnel Practices.

Section 9.0
The Employer agrees to provide the specific web location of this Agreement to each Employee on duty as of the date of this Agreement, and to all Employees entering on duty after the date of this Agreement. Employees may print or request a hard copy.

Section 10.0
The Employer will inform each new Employee of the Union's exclusive recognition. During orientation, the Employer will also provide to each new Employee a Union Welcome Aboard package to be developed by the Union.

Section 11.0 Career Development
In the best interests of the Agency and its Employees, it is paramount that each person succeeds. The Agency will create a career development program that will help to ensure that Employees advance in their career. This program will take advantage of current career or job programs and further expand upon them. The Parties agree to create this program through the Labor-Management Committee and in accordance with the Article on training and career development.

Section 12.0
In accordance with applicable laws and government-wide regulations, Employees shall not have to frequent or visit any other Employee's residence to conduct work or assist with work-related matters unless there is no other reasonable alternative. Such issues should take place on government owned, leased, or operated property.

Section 13.0
Employees will be provided necessary and appropriate office supplies and equipment to adequately perform their jobs.

Article 6: Employee Orientation

Section 1.0 Goal of Employee Orientation
An effective Orientation Program is an important component in achieving goals to establish and maintain an effective, diverse and motivated work force by ensuring that all Employees receive training regarding their rights, benefits, roles and responsibilities as Employees of the Agency.

Section 2.0 Frequency of Employee Orientation
Employee orientation will be conducted by the Office of Human Resources on a recurring, scheduled basis at least once every quarter, and all new Employees will be required to attend.

Section 3.0 Notification and Information

Section 3.1
The Agency will determine the length, contents and agenda of the training. The Union will be included on the agenda for purposes of addressing new Bargaining Unit Employees.

Section 3.2
The Union will be notified as soon in advance as possible of the scheduled dates for Employee orientation; however, under no circumstances will the notification be less than ten (10) days prior to the orientation session.

Section 3.3
The Union will be provided with copies of all commitment letters sent to Bargaining Unit Employees at the same time the letters are mailed to the Employees but no later than five (5) days prior to the orientation session. The letters will contain, at a minimum:

1. Prospective Employee's name;
2. Entry on duty date;
3. New position title, grade and series;
4. Location of the position; and,
5. A statement that the position is in the Bargaining Unit and the name of the exclusive representative and council or local number.

Section 3.4
If the Agency does not utilize commitment letters, the Agency will provide the Union with a list of the information requested in Section 3.3 above no less than five (5) days prior to the orientation session.

Section 3.5
The Agency agrees that within five (5) days prior to the orientation session or included with the commitment letters, the Agency will include a Union-provided letter or brochure, welcoming the Employee and outlining the benefits of membership in the Union. The Union will be responsible for providing this material to the Agency for inclusion.

Section 3.6
The URL address of the online CBA will be included as part of any Employee orientation package that is distributed to Bargaining Unit Employees.

Section 4.0 Union Participation

Section 4.1
The Union will be entitled to address Bargaining Unit Employees during the orientation sessions. The Union will be provided thirty (30) minutes at the end of the orientation sessions to address BUEs.

Section 4.2
The Union official will be introduced by the Agency representative at each session of orientation. No Agency official or representative will be present during the period of time that the Union representative addresses the Bargaining Unit Employees.

Section 4.3
The Agency will make every effort to schedule Employee orientation during a regularly scheduled work week of Monday through Friday during core work hours as agreed to in Article 14, Hours of Work, of this Agreement. In the event the work schedule of the Union representative does not permit attendance at the orientation, the Agency will consider altering the representative's tour of duty or approving credit hours for the representative's attendance outside of a scheduled tour of duty.

Section 4.4
If a Bargaining Unit Employee is unable to attend a scheduled orientation session, the Union will be provided the opportunity to meet with the Employee for thirty (30) minutes during the Employee's first pay period of work with the Agency.

Article 7: Employee Notices

Section 1.0
The Employer and the Union agree that specified notices to all Bargaining Unit Employees (BUEs) will be released on an annual or as-needed basis.

Section 2.0
The Union will be provided copies of the notices prior to or upon release to the Bargaining Unit. Joint notices will be discussed, agreed upon and signed by both Parties prior to release to the Bargaining Unit.

Section 3.0
The notices will be posted on official bulletin boards in locations frequented by BUEs (e.g., break rooms, cafeterias, office buildings), and sent by e-mail to all Employees.

Section 4.0
Annual notices will be included as part of the new Employee orientation package provided during in-processing of Bargaining Unit Employees.

Section 5.0
Prior to implementation of any new policy or change to conditions of work to Bargaining Unit Employees, the Agency agrees that the Union will be notified and have a right to bargain in accordance with Article 12, Mid-Term Bargaining, of this Agreement.

Section 6.0 Representation Rights
In accordance with 5 U.S.C. § 7114 (a)(2)(B), Employees will be notified of their rights to Union representation on an annual basis. The notification will be sent to all Employees in January of each calendar year. The notice will contain the statutory reference and language as follows:

1. Any examination of an Employee in the unit by a representative of the Agency in connection with an investigation if
   a. the Employee reasonably believes that the examination may result in disciplinary action against the Employee; and,
   b. the Employee requests representation.
2. In addition, Employees will be notified of the right of the Union, in accordance with 5 U.S.C. § 7114 (a) (2) (A), to be present at any formal discussion between one or more representatives of the Agency and one or more Employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

Section 7.0 Standards of Conduct
On an annual basis, timeframe to be mutually agreed upon between the Agency and the Union, the Agency will notify Bargaining Unit Employees of the Agency's Standards of Conduct.

Section 7.1 Changes
When the Agency determines that changes are required to existing Standards of Conduct or elects to issue new Standards of Conduct, the Union will be notified and have a right to bargain these matters in accordance with Article 12, Mid-Term Bargaining, of this Agreement.

Section 8.0 Limited Use of Government Equipment
On an annual basis, timeframe to be mutually agreed upon between the Agency and the Union, the Agency will notify Bargaining Unit Employees of its policy regarding limited use of government equipment (e.g., computers, internet and email, telephones to include government issued cellular phones, facsimiles, government credit cards). This notice will comply with all applicable provisions in other articles of this Agreement.

Section 8.1
To the extent the Agency is authorized to adopt, implement or change such policies under 5 U.S.C. § 71 and this Agreement, the Agency will notify the Union and bargain over these matters in accordance with Article 12, Mid-Term Bargaining, of this Agreement.

Section 9.0 Agency Inspector General
On an annual basis, timeframe to be mutually agreed upon between the Agency and the Union, the Agency will notify Bargaining Unit Employees of their right to file a complaint with the Agency Inspector General when they have reason to believe there is fraud, waste and abuse.

Section 9.1
At a minimum, the notice will contain:

1. Telephone and facsimile numbers where complaints may be filed;
2. Hotline telephone and facsimile number, if applicable;
3. Mailing address where complaints may be sent to;
4. On-line email address and form to be completed, if applicable; and,
5. A statement informing the Employee of the right to remain anonymous and/or be designated as a confidential informant.

Article 8: Temporary Employees, Probationary Employees, and Other Appointments

Section 1.0 Temporary Employees
The provisions of this Agreement except where excluded by law or regulations are applicable to temporary Employees whose appointments are for more than ninety (90) days and who are reasonably expected to remain on the rolls for a majority of the year. The provisions do not apply to temporary Employees on excepted appointments.

Section 2.0 Probationary Employees
Consistent with regulation and Departmental policy, the Employer agrees to provide probationary Employees an opportunity to demonstrate their fitness or qualifications for continued Federal employment.

Before separation of probationary Employees for performance or conduct, the Employer agrees to follow the existing regulations and Departmental policy with regard to notification and counseling of Employees prior to termination. Specifically, the Employer agrees to:

1. Advise the Employees of their deficiencies in work performance or in conduct sufficiently in advance of the decision to terminate so as to allow the Employees reasonable time to improve;

2. Normally give these Employees at least two (2) weeks' advance written notice of the decision.

Section 3.0 Other Appointments: Part-Time Permanent Employment
The Parties recognize that personal circumstances may arise which preclude a permanent Employee from continuing to work a full-time schedule. The Employer agrees to consider a permanent Employee's request for a part-time assignment. The Parties agree that failure to assign a permanent full-time Employee to a permanent part-time schedule is not a matter covered under the grievance procedure.

Article 9: Union Rights and Representation

Section 1.0 Exclusive Representation
Pursuant to 5 U.S.C. § 7114 (a)(1), the Agency recognizes the Union as the exclusive representative of the Employees in the unit certified by the Federal Labor Relations Authority (FLRA) in Case No. WA-RP-09-0045, issued and clarified on May 22, 2009.

As such, the Union is entitled to act for and negotiate collective bargaining agreements covering all Employees in the unit. The Union is responsible for representing the interests of all Employees in the unit it represents without discrimination and without regard to labor organization membership.

Section 2.0 Union Representatives
The Union may designate its own representatives. The Union will notify the Agency, as appropriate, of the name of its representatives within three (3) business days of the change.

Section 2.1
Union representatives will receive official time for the performance of representational duties in accordance with Article 11, Official Time.

Section 3.0 Representation Requirements

Section 3.1 Formal Discussions and Counseling

A. Consistent with 5 U.S.C. § 71, the Agency will not communicate directly with Employees regarding conditions of employment in a manner that will improperly bypass the Union under law.

B. Pursuant to 5 U.S.C. § 7117(a) (2) (A), the Union shall be given the opportunity to be represented at any formal discussion between one or more Employees it represents and one or more representatives of the Agency concerning any grievance (to include settlement discussions and formal EEO complaint settlement discussions) or any personnel policy or practice or other condition of employment. This right to be represented does not extend to informal discussions between an Employee and a supervisor.

C. Consistent with 5 U.S.C. § 7117(a) (2) (A) the representative designated by the Union will be given advance notice of any formal discussion that is to be held. In situations involving a formal discussion with a large group of Employees (such as a meeting with a Branch, Division or Office) the Union will receive at least three (3) work days' notice of the formal discussion. This advance notice will be given unless Management has been prevented from doing so due to an emergency, in which case the Union will be given advance notice as early as possible. Emergencies can include facility, operational or administrative matters.

D. The Agency management representative will permit the Union representative to ask relevant questions, and to present any Union positions on the matter at any time during the meeting, and to have full participatory rights during the meeting to the extent accorded to other Employees. Normally these meetings will not involve negotiation. Both Parties agree to maintain a respectful decorum.

Section 3.2 Investigatory Examinations

A. As provided in 5 U.S.C. § 7114 (a) (2) (B) and Section 1.5 of Article 21, Disciplinary and Adverse Actions, the Union has the right to be present at any examination of an Employee in the Bargaining Unit by a representative of the Agency in connection with an investigation if:
    1. The Employee reasonably believes that the examination may result in disciplinary action against the Employee; and,
    2. The Employee requests representation.

B. The Union will determine which representative will be assigned to any particular investigatory examination.

C. The Union representative will be given a reasonable amount of time to arrive at the examination. Once the Employee requests representation, no further questioning will take place until the representative arrives. If the representative is not available due to work schedules or other representational business, the examination will be rescheduled at the earliest possible availability.

Section 4.0 Office Space, Furnishings and Equipment

The Parties agree that resources provided to the Union under this Article shall be administered under the Agency's equipment, information technology (IT), and property management regulations. This does not waive any of the Union's bargaining rights.

Section 4.1

A. The Agency recognizes the importance and value of the Union's mission and purpose. Accordingly, the Agency agrees to furnish office space to the Union appropriate for carrying out its representational and partnership in an effective manner.

B. The Agency will provide the Union with office space of approximately 160 square feet or more that allows the Union to effectively perform its representational functions, including maintaining its files; conducting private conversations with Employees, while still conducting other business; sharing this space with multiple Union representatives concurrently; and conducting meetings with up to four (4) people present at a time.

C. The Union's office space will be conveniently located to allow Employees easy access. The location of the Union office will be posted in Agency phonebooks and other handbooks or employee information where such information is usually publicized.

Section 4.2

A. Computer equipment will allow access to the Agency's network, e-mail, Intranet and internet. The Agency will provide computer support to the Union as it does for any other Agency employee.

B. The Agency will provide the onsite Union office with a telephone that has conference calling capability, long-distance and local calling, three (3) way calling, hands-free (speaker), 2nd line, mute, hold, voice mail, and caller ID. In addition, the Agency will provide the Union with a wireless hands-free headset to the phone. If enhancements to telecommunications technology are being made available to other employees the Agency will offer such enhancements to the Union. The Union will not be charged for the use of the phone or related services. The Agency will not intercept or listen to the Union's phone calls. The only exception would be for those issues beyond the control of the Agency such as criminal or federal investigations involving the Office of the Inspector General, Office

of Special Counsel, or the Federal Bureau of Investigation. The Union shall be notified of any such investigations as soon as practicable. The Union agrees that long-distance calls will be for representational purposes only. In addition, other occasional use for non-representational purposes is permitted.

C. The Agency will provide routine cleaning and maintenance service in Union occupied space where it is located in Agency facilities. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules.

D. The Union will be granted access to photocopiers, interoffice mail (for other than mass mailings), video equipment, conference rooms, and other office services routinely used in that work location. The Union will follow the same reservation and use procedures as all other users.

E. Where there are facilities they shall be made available for Union meetings and membership drives, before or after duty hours or during lunch periods if such space is not already committed. The Union will follow the same reservation and use procedures as all other users.

F. There will be no charge to the Union for this space, furnishings, support, and/or equipment.

G. The Union office will have a lockable door with a key (or keys) given only to Union representatives and other emergency employees. The Agency will provide a list to the Union President or designee of any/all employees or contractors who have a key to the Union's office space.

H. If the Union Office is moved, the details will be negotiated under Article 12, Mid-Term Bargaining of this Agreement.

Section 4.3 Webpages and Email for the Union
Dedicated email accounts:
The Employer agrees to provide a dedicated government email account (separate and distinct from their regular duty email account) for exclusive Union use for each officer and steward. This email account will be equivalent to a regular Employee account with the following exceptions: the email will have afge2923 and the Employee's last name in the account name, for example, afge2923jirles@niehs.nih.gov and the account will be accessible from the Employee's regular duty station computer or laptop.

Whenever there are any problems with the above email accounts, Union representatives will be permitted to use their regular duty email accounts until the dedicated email account for the Union is fixed. When using regular duty email accounts for Union use, the representative should use their Union representative role, e.g., "AFGE Local 2923 President," for identification purposes.

The Agency agrees that such Union dedicated accounts will not be monitored unless there is notification to the Union of such monitoring. See Article 9, Union Rights and Representation, regarding monitoring of Union email or computers.

The Agency will not monitor or audit the Union's email account content. The exceptions are (a) extreme situations involving an immediate personnel safety issue or imminent security matter, (b) the Union specifically requested such, (c) issues beyond the control of the Agency such as criminal or federal investigations involving the Office of the Inspector General, Office of Special Counsel, or the Federal Bureau of Investigation, or (d) normal automated system diagnostics, traffic and performance

monitoring or batch email filters used for all incoming or outgoing email at NIEHS. For directed monitoring or audit of the Union's email account or content regarding "a" or "c" above the Union shall be notified of such investigations as soon as practical. The Union agrees to abide by Agency policies on IT security that all other employees must use. The Union shall also abide by all applicable laws and government-wide regulations for use of government IT systems or property. Nothing in this section waives the right of the Union to file a grievance or complaint in regard to an unnecessary and/or unwarranted search or seizure or invasion of privacy. If problems occur, the Parties agree to negotiate a single, separate non-Agency internet access point for the Union office provided that such a solution is technically feasible at the office location.

Union Dedicated Web Page:
The Employer will provide a single web page on the NIEHS Intranet for the Union's use in providing information to the Bargaining Unit or to NIEHS employees. Content for this page shall be limited to text, links to official AFGE and Federal Government web pages or .pdf documents, and a total of no more than three (3) graphic images or photographs. The page may not exceed 2,000 words, and text shall be provided to the Employer in ready-to-use MS Word format. For any photographs, a text description of no more than fifty (50) characters shall be provided. Any .pdf files must be fully compliant with Section 508 of the Rehabilitation Act, as amended. The total number of web links and .pdf links may not exceed twenty (20). The text contained on this page will be informational in nature. The Agency agrees that no changes in information or content will occur without the Union's express written permission. Grammatical errors may be corrected without such permission but notification will be provided to the Union of any changes.

Union Contact Information:
The Agency agrees to provide a single web page separate from the one mentioned above that contains Union contact information including the name, position within the Union, location, email address, and telephone number of each Union officer or steward. The Union will provide up-to-date information to the Agency for this purpose. This web page with Union contact information will be easy to find and accessible for Employees.

Section 5.0 <u>Bulletin Boards</u>

Section 5.1
The Agency will provide the Union with three (3) lockable bulletin boards, no smaller than forty eight (48) inches by thirty six (36) inches in size, exclusively for its use. These bulletin boards will be placed in the following locations: one going into the NIEHS cafeteria; one near the F module first floor, where Employees are usually provided Management information; and one in the immediate vicinity outside the Union office. The keys will be provided only to the Union. The Union will be responsible for the upkeep of the information provided on such bulletin boards.

In addition, the Union may use public bulletin boards (unrestricted bulletin boards for general employee use) throughout NIEHS owned or lease space. The Agency will not be responsible for the care of any materials posted by the Union. Materials on these public boards will typically be limited in size to eleven (11) by seventeen (17) inches, will be informational in nature and will not serve as a forum. Information will also be dated so that postings older than thirty (30) days (or past the date of an announced event) may be removed by the Agency during routine maintenance.

Section 5.2 Electronic Bulletin Boards
The Union is permitted to use the Agency's electronic bulletin boards such as the "Trading Post" to post notices and communicate with Bargaining Unit Employees as appropriate for such e-boards.

Section 6.0 Communication
The use of government communication resources shall be subject to the following:

1. Shall not interfere with the mission or operation of the Agency;
2. May not be used for conducting internal Union business during duty hours but may be used to conduct internal Union business during non-duty hours;
3. May be used on either official time or non-duty time to lobby Congress on matters related to the conditions of employment of unit Employees;
4. While on approved official time, shall only be used for representational activities;
5. May not be used to promote partisan political activity, propaganda against or attacks against individuals regarding political matters.

Section 6.1 Electronic Communication

A. The Union may communicate with Agency officials, Bargaining Unit Employees, neutral third parties, members of the public, and others via the Agency's e-mail system. The Union will comply with all security measures enforced on other users.

B. The Union may send messages to multiple recipients as it deems necessary at a time in the same fashion permitted as other NIEHS employees.

C. The Union will be permitted to submit items for general distribution through NIEHS All-Hands email. Permissible emails shall consist of:
    1. Information of interest and applicability to the general NIEHS employee population, which includes but is not limited to holiday or special observances, and/or
    2. Information regarding events that are intended for the general employee population.

D. The Agency shall have the right to approve or deny All-Hands email content. If denied, the Agency shall promptly provide a summary of the reason for denial. The Union may edit and resubmit material for timely publication.

E. The Union will be permitted to use any/all other forms of approved NIH electronic communication as other NIEHS employees such as blogs, automatic reminders, Twitter, etc., as it deems appropriate to communicate with its membership and others.

F. Whenever the Agency sends an email to all employees mentioning the Union, the Agency shall first seek consensus from the Union. If disagreements arise a consensus shall be sought. In all cases, each Party agrees not to send disparaging emails to all employees regarding the other Party, i.e. All-Hands email.

Section 6.2 Distribution of Literature
Official publications of the Union, regarding internal Union business may be distributed on Agency property by Union representatives during non-duty time. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

Section 6.3 Telephone Directory

A. The Agency will provide a telephone directory with the work phone numbers of all unit Employees, and all Management representatives.

B. When printed, the NIEHS telephone directory will contain the name, position within the Union, location and telephone number of elected Union officers and stewards.

Section 6.4 Mail

A. The Union shall be provided an NIEHS mail code and mail drop for receipt of mail.

B. The Local and its representatives may use the interoffice mail system for regular representation communications (e.g., grievances correspondence or memos to Management). For internal mailings, it would be the Union's responsibility to identify the addressee, affix the correct mail drop, and place the mail in each recipient's mail stop or Agency mail drop location.

C. The Union may place outgoing U. S. Mail in outgoing NIEHS mail drops.

D. Consistent with postal regulations, the Union shall have use of Agency metered mail or "penalty mail" limited to labor relations representational matters but not matters relating to internal Union business. (Penalty mail is official mail, which is authorized by law to be transmitted in the mail without prepayment of postage)

E. The Union may use the Agency's express, overnight, registered, certified mail, etc. , when required or to meet time frames imposed by a third party (e.g., EEOC, arbitrator, FSIP, FLRA). Mass mailings would be excluded from such express services. It is expected that the use of such express services shall be rare.

F. The Agency bears no responsibility for lost, damaged or misplaced mail or express delivery packages outside of its operations or services.

Section 7.0 Access to Information

Upon establishment of the particularized need pursuant to 5 U.S.C. § 7114(b)(4), the Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:

1. Is normally maintained by the Agency in the regular course of business;
2. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining;
3. Does not constitute guidance, advice, counsel, or training provided for Management officials or supervisors, relating to collective bargaining;
4. The Employer agrees to furnish requested information, without charge, to Union in order to represent Employees provided that said requests are reasonable and in accordance with applicable laws and regulations; and,
5. The Agency will fully explain or specify why any information or data request is denied or refused.

Section 7.1 Routine Information

A. During the first month of each fiscal year, the Employer will furnish the Union with a list of names, position titles, grades, and organizational locations of all Unit Employees.

B. The Employer will provide the Union with the routine monthly report on gains and losses prepared by the Personnel Office.

Article 10: Dues Withholding

Section 1.0 Purpose
Dues withholding from Bargaining Unit Employees shall be administered in accordance with 5 U.S.C. § 71, the Federal Service Labor-Management Relations Statute, as amended, and this Agreement.

Section 1.1
This Article provides for a fair and equitable system by which Union dues may be collected from Bargaining Unit Employees in a timely and regular basis without having an adverse impact on the day to day operations of the organization.

Section 1.2 Union Dues
Bargaining Unit Employees may authorize the payment of labor organization dues to the Union by voluntarily completing a Standard Form (SF) 1187 "Request for Payroll Deductions for Labor Organization Dues" or its equivalent. Information as to which Employees elect to pay dues will only be used in conducting official business and will not be disseminated to any individual without a need for this information.

Section 1.3 Dues Subject To Withholding
The term "dues" includes regular and periodic dues, fees, and assessments of the exclusive representative of the unit. The Agency shall honor the assignment and make allotments pursuant to the assignment.

Section 1.4
Normally all regular and periodic dues allotments will be processed by the Agency within two (2) pay periods. In case of emergency, the Agency will notify the Union of any delays.

Section 1.5 Allotments (Payroll Deductions)
Union members who desire to make an allotment for payment of dues will request such allotments by completing SF 1187. The Union will procure the forms as needed and will make them available to the Union members.

Section 1.6
The Agency will specify an Agency employee or point of contact who is authorized to handle private and confidential information who will receive SF 1187's. The Union may contact the authorized Agency employee designated to receive SF 1187's for assistance in resolving discrepancies.

Section 1.7
Any allotment will be made at no cost to the Union or the Employee.

Section 1.8
Employees who temporarily cease dues allotment because of a temporary assignment to a position not in the Bargaining Unit will have their dues allotment automatically reinstated upon transfer back into a Bargaining Unit position.

Section 1.9 Payment and Union Dues Deduction Report
The Agency will make a remittance to the Union for amounts withheld on a biweekly basis. The remittance will be a single check or electronic funds transfer for the balance of the dues withheld and

will be made payable to the Union. The means of payment will be at the Union's option. The Union will provide the Agency with the appropriate U.S. Mail or electronic address.

If DFAS or other Agency is responsible for dues deductions, then Management will work cooperatively and in a timely fashion to help correct deficiencies or mistakes or any other problems related to this Article.

Section 1.10
The payment will be accompanied by a Union Dues Deduction Report and will be sent to the Union's designated representative containing:

1. Identification of the Agency
2. Identification of the Union Local;
3. Total amount of the remittance;
4. Name and last four digits of the Social Security Number of Employee, date, the amount deducted, and an indication if it is a new allotment;
5. Names and last four digits of the Social Security Numbers of Employees for whom deductions previously authorized were not taken with indication for reason; and,
6. Total number of members for whom dues are withheld.

Section 1.11 Changes in Dues Withholding Amounts
The Union may change the amount of the Union dues deducted per Employee. The Union President or other authorized Union officer shall forward a statement to the designated Agency point of contact indicating the dues change.

Section 1.12
Changes will be effective the first pay period after timely receipt by the designated Agency point of contact.

Section 1.13
Names or other information regarding Union members will be kept confidential and private. Such information will only be released on a need-to-know basis commensurate with Privacy Act restrictions.

Section 1.14 Dues Revocation
Members wishing to revoke their payroll deduction must submit an SF 1188, "Cancellation of Payroll Deductions for Labor Union Dues" or its equivalent to the appropriate Union official. The Union will procure the forms as needed and will make them available to the Union members.

Union members who have authorized Union dues withholding may revoke their payroll deduction of dues once a year on the anniversary date of the first withholding by submitting SF 1188 to the designated Agency point of contact.

Any SF 1188 submitted prior to the Employee's anniversary date of the first withholding will not be honored. The SF 1188 must be received in the payroll office after the anniversary date.

Section 1.15
Deduction of dues with respect to an Employee will terminate with the start of the first payroll period after which any of the following occurs:

1. Loss of exclusive recognition by the Union;

2. Separation of the Employee for any reason;
3. Notice to the Employer from the Union that the Employee has been suspended or expelled from the membership of the Union;
4. Transfer, reassignment, or promotion or demotion of an eligible member to a position excluded from the Union's recognition; or,
5. Activation of an Employee into active duty military status.

Section 1.16
If the Agency removes an Employee from dues withholding based on a belief that the Employee's position is outside the Bargaining Unit, and the Federal Labor Relations Authority determines that the Agency acted improperly, the Agency will promptly reinstate the Employee's dues withholding authorization and make the Union whole for all lost income including interest.

Section 1.17 Reinstatement of Separated Employee
If an Employee who has been separated by the Agency is reinstated by an arbitrator, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or a court of competent authority, and the Agency is required to make the Employee whole, dues withholding will be continued for that Employee without submitting a new SF 1187, provided that the Employee was a Union member at the time of his/her separation, and the Employee does not object to resuming dues withholding. Dues withholding will resume with the effective date of the reinstatement only.

Article 11: Official Time

Section 1.0 Purpose
Official time in the Agency shall be administered in accordance with 5 U.S.C. § 71, the Federal Service Labor-Management Relations Statute (the Statute) as amended and this Agreement. The Parties recognize that Unions are in the public's interest and consequently their representatives serve in the public's interest as well. The Agency agrees that granting of official time will be conducted in a fair and impartial manner. Denials will not be arbitrary or capricious or withheld in any inappropriate way. Any changes whatsoever involved in official time will be conducted under the Article 12, Mid-Term Bargaining. The Parties acknowledge that official time for Union representatives is critical to helping to improve the productivity and effectiveness of the Federal Government.

Section 1.1
The purpose of official time is to provide Bargaining Unit Employees time in which to perform Union representational activities during normal working hours, without loss of pay or charge to annual leave. This Article provides an equitable process for the allocation and approval of official time and recognizes that the appropriate use of official time benefits both Management and Labor.

Section 2.0 Representational Functions

Section 2.1
Elected or appointed Union representatives may use official time for representational purposes as provided by the Statute during such time as they are otherwise in a duty status. This time will be without charge to leave.

Section 2.2
Employees who are serving under a special appointment as Union representatives may be released from duty without charge to leave for appropriate representational purposes under the Statute. This time will not be charged against any amount of official time granted to the Union under Section 4.1.

Section 2.3
Official time is prohibited for any activities performed by any Employee relating to the internal business of the Union which is solicitation of membership, elections of Union officials, and collection of dues.

Section 2.4
Official time for Employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority and the Equal Employment Opportunity Commission. Such official time is not limited by this Article, and will not be charged against any amount of official time granted to the Union under Section 4.1.

Section 2.5 Credit Hours
Union representatives who work schedules that allow Employees to earn and use credit hours will earn credit hours for all time spent on representational business beyond eight (8) in a day.

Section 3.0 Release Procedures for Official Time Use

Section 3.1
When official time is necessary, Union representatives will notify their immediate supervisor or appropriate Management official and identify the general purpose of their activity, in relation to this Article. Union representatives will be granted official time as authorized under this Agreement. Union officials may also use their duty station for representational work and request official time as appropriate.

The representative will be released unless the granting of such official time would cause a substantial disruption to the Agency or Agency mission during that time. If the representative cannot be released at the time of the request, the representative and the supervisor will arrive at a mutually agreeable time for departure, normally within twenty four (24) hours. The Union representative will be given time to inform any Bargaining Unit Employees involved in the delay and any Agency actions that may be involved will be stayed for such time or time-related issues shall be extended for the period of delay. Any denials of official time (or reasons for delay) will contain the specific reasons for such and a compelling justification as to why the request is not being approved as submitted.

Exceptions may arise that involve an exigency, emergency, or major representational function and in such cases the representative shall be given official time unless it would cause a substantial Agency disruption.

Section 3.2
When the Union representative needs to leave the work area and the supervisor is unavailable, the representative will notify the supervisor by email notification, phone/voicemail, or in extenuating circumstances leave a note on the supervisor's desk indicating where the representative is going and approximate duration.

Section 3.3
On occasion, discussions between the Union representative and the Employee may take longer than originally anticipated. In these cases, both may contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time.

Section 4.0 Allocation of Official Time

Section 4.1
The Union shall be granted 1350 hours official time each calendar year (or portion thereof, on a pro rata basis). Official time shall be approved without charge to leave or loss of pay.

Hours not used during a calendar year may not be carried over to the next calendar year. All official time described above is nontransferable.

The Union may request additional hours for representational purposes. Such a request will be submitted in writing in writing by the Union President or designee to the Agency (the Executive Officer or designee) and will describe the circumstances which have created the need. Additional hours will typically be granted in blocks of 100 hours.

Official time will be requested in increments of fifteen (15) minutes or more. Any official time activity less than fifteen (15) minutes will be considered *de minimis* and not need approval. Such *de minimis* activities are expected to be generally unforeseen and occur infrequently.

Section 4.2
Time for the following activities will not be charged to the amount of official time in Section 4.1 above, but will be made available to properly designated representatives, who would otherwise be in a duty status. Consistent with 5 U.S.C. § 7131(a) and this Agreement, Union representatives will be granted reasonable and necessary time to carry out the following functions:

1. Term agreement bargaining in accordance with 5 U.S.C. § 7131(a) and this Agreement, and any related third party proceedings;
2. Mid-term bargaining on Management-initiated or Union-initiated changes in conditions of employment, and any related third party proceedings;
3. Management-initiated grievances;
4. Attending meetings of (Labor-Management Relations/Partnership, etc.) Committee(s);
5. Any unplanned Agency-related issues such as being available to a computer support specialist for work on the Union computer;
6. Travel time for any of the functions listed above.

Section 5.0 Labor Employee Relations (LER) Training

Section 5.1
The Employer agrees to grant official time to a minimum of three (3) Union representatives to attend labor relations training or other training related to Employees' conditions of employment per year. Forty (40) hours per individual shall be authorized annually for each Union representative. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances and information related to Federal personnel/labor relations laws, regulations, and procedures. Official time granted under this section is in addition to the hours granted in Section 4.1 and Section 4.2 above. This would exclude any training related to internal Union business.

Section 5.2
The Union shall forward written requests, including an agenda, to the appropriate Management official for action. The Agency will either approve or deny the request within three (3) workdays of receipt. The Agency will respond to the request no later than five (5) work days from the date it is made. If denied, the Agency will specify the reasons for the denial and include suggestions of when such training may be taken in the future. All reasonable requests will be approved unless such approval would infringe upon the Agency's mission. Upon prior approval by the employer, Union representatives will be entitled to travel expenses and per diem.

Section 5.3
Official time for training will be approved except in cases where the absence of the Employee or Employees will significantly adversely impact the Employer's work requirements. When a request for official time for training is disapproved for any reason, the explicit reasons for such disapproval will be furnished to the representative who made the request, and to the Union President at the time of disapproval.

Section 5.4
When a new Union representative is designated, the Employer will permit the representative up to four (4) hours of official time to receive a Union representative orientation on the administration of the Agreement, no later than one (1) month from the date of designation. This time is over and above the time authorized for training in Section 5.1 above.

Section 6.0 Allegations of Abuse
Alleged abuses of official time shall be brought by supervisors and Management officials on a timely basis to the attention of an appropriate Management official designated by the Agency.
The designated Management official will then discuss the matter with the President of the Union or designated representative.

Section 7.0 Procedures

Section 7.1
The Parties agree that procedures related to official time shall be simple, straightforward, and undemanding for both sides.

Section 7.2
Union representatives should make an effort to request official time to their supervisor via email. The request will provide a general description of the representational activity and will not include specifics. Union representatives should make an effort to request official time twenty four (24) hours in advance. In unusual circumstances, the Union representative shall request official time verbally or if the supervisor is unavailable the Union representative will request official time from their next-in-line supervisor.

Union representatives will not need to submit requests for the time spent on the preapproved regular or recurring Union office schedule, if applicable.

Section 7.3
At the beginning of each month the Union representative will submit a time report to their supervisor that contains a general accounting of the previous month's official time. This record will be provided to their immediate supervisor via email. The report should include the time the individual began official time and when they completed the official time, place visited, and a general description of the problem being considered and dealt with as part of their representative duties. The Employee will be required to sign the report and certify the following: The information presented on this report reflects all the representation time for the month of _____ 20___.

Any omissions or mistakes with the above report shall be communicated to the Union for resolution.

Appendix 1 contains an example of such a report.

Within six (6) months of the effective date of this Agreement, the Agency and Union agree to jointly develop an electronic method that will be simple and easy for both sides to use regarding official time requests, approvals, and reporting. The electronic agreement will be mutually agreeable. The Parties agree to review this electronic method periodically to ensure that it is best option agreeable to both Parties, and will pursue improvements or replacements when appropriate.

Section 7.4 <u>Stewards</u>
The Union will provide the Agency with a listing of Union Officers, Representatives, and Stewards. The Union will also provide a timely notice of any change in Union representatives. Additions or deletions to the recognized Stewards/officers will not be recognized until such time as the labor relations official (LRO) is notified of the change in writing by the Union President.

The Union retains its rights to designate its representatives without interference.

Appendix 1: Official Time Report

AFGE LOCAL 2923 OFFICIAL TIME REPORT

The information presented on this report reflects representation time granted for the month of XX, XXXX.

Date	Start Time	End Time	Place	Category	Time	Hours

Any mistakes or omissions on this report may be resolved by contacting the undersigned.

_____ _____

Name of Union Representative Date

1. **Term Negotiations** - This category for reporting official time hours refers to time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.

2. **Mid Term Negotiations** - This category for reporting official time hours refers to time used to bargain over issues raised during the life of the agreement.

3. **Dispute Resolution** - This category for reporting official time hours refers to time used to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the MSPB, FLRA, and EEOC and, as necessary, to the courts.

4. **General Labor-Management Relations** - This category for reporting official time hours refers to time used for activities not included in the above three categories. Examples of such activities include meetings between labor and management officials to discuss general conditions of employment; labor-management committee meetings; labor relations training for union representatives; and union participation in formal meetings and investigative interviews.

Article 12: Mid-Term Bargaining

Section 1.0 Purpose

Section 1.1
This Article shall be administered in accordance with 5 U.S.C. § 71 and this Agreement. The purpose of this Article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations during the term of the Agreement.

Section 1.2
Matters appropriate for mid-term bargaining shall include those issues within the scope of bargaining, as proposed by either Party which are either newly formulated, or changes to established personnel policies and practices during the term of this Agreement, which affect the working conditions of unit Employees.

Section 1.3
The Parties agree to adhere to Executive Order 13522 regarding pre-decisional involvement in all workplace matters to the fullest extent practicable. The pre-decisional process does not expand the topics which are mandatorily negotiable under the Federal Service Labor-Management Relations Statute (Statute). Pre-decisional involvement does not waive Management's statutory right to make decisions under Section 7106 of the Statute, nor does it waive a labor organization's right to engage in bargaining prior to implementation to the extent required by the Statute. Rather, pre-decisional involvement is a process to provide for Union input as stakeholders into the decision-making process in order "to design and implement comprehensive changes necessary to reform Government" (Executive Order 12871) and "to champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality service to the American people" (Executive Order 10988).

Section 1.4
Parties shall always consider using Interest Based Bargaining (IBB) and shall use IBB whenever mutually agreed. The Parties recognize that IBB assumes that mutual gain is possible, that solutions that satisfy mutual interests are more durable, and that the Parties should help each other achieve a positive result. Some IBB principles that should be used as appropriate include but are not limited to:

1. Sharing relevant information is critical for effective solutions.
2. Focus on issues, not personalities.
3. Focus on the present and future, not the past.
4. Focus on the interests underlying the issues.
5. Focus on mutual interests, and helping to satisfy the other party's interests as well as your own.
6. Options developed to satisfy those interests should be evaluated by objective criteria, rather than power or leverage.

As necessary, the Parties will work with an FMCS or other trained IBB facilitator during IBB.

Section 2.0 Procedures for Negotiating During the Term of the Agreement

Section 2.1 Notice of Proposed Change
The Agency may propose changes in conditions of employment during the life of the Agreement which are not already specifically covered by this Agreement and as permitted by law. The Agency will provide

the Union with reasonable advance written notice, not less than fifteen (15) days prior to the proposed implementation date, of any change affecting conditions of employment. The notice will, at a minimum, contain the following information, when available:

1. The nature and scope of the proposed change;
2. A description of the change;
3. An explanation of the Agency's plans for implementing this change;
4. An explanation of why the proposed change is necessary; and,
5. The proposed implementation date.

Section 2.2
Within fifteen (15) calendar days of the receipt of the proposed change outlined in Section 2.1 above, the Union will review the proposal and may respond to the initiating party in one of the following ways:

1. If the Union wishes additional information or an explanation of the proposal, it may make a written request for a briefing by the initiating Party, and/or for additional information, in writing, in order to clarify or determine the impact of the proposed change; or
2. If the Union wishes to negotiate over any aspect of the proposed change, it shall notify the Agency by submitting a demand to bargain within fifteen (15) working days of receipt of the notice (or receipt of any requested briefing or information, whichever is later).
3. If the Union has not responded to the Agency within the prescribed time frames, the proposed changes in conditions of employment may be implemented on the proposed effective date.

Section 2.3 Agreement to Negotiate

A. Upon request by the Union, the Parties will meet and negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this Agreement. Following this request to negotiate, the Parties will schedule a meeting to begin negotiations as soon as possible. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law.

B. The Union will not be required to submit written proposals in advance of the start of the bargaining period, but will make good faith efforts to submit proposals, in part or in whole, prior to arriving at the bargaining site, whenever practicable.

Section 3.0 Ground Rules for Mid-term Bargaining

Section 3.1
The following ground rules apply to all mid-term bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 U.S.C. § 71. These ground rules are intended to supplement the procedure set forth in this Agreement, and may only be changed by mutual consent.

A. *Briefing Sessions.* Either Party may request a briefing session to explore or explain the change and its impact on unit Employees. This session may be scheduled in advance of the start of actual negotiations, or as a part of the time allotted for bargaining.

B. *Arrangements.* Negotiations will be held in a suitable meeting room provided by the Agency at a mutually agreed upon site. The Agency will furnish the Union negotiating team with a caucus room,

such as a conference room or other private meeting space which is in close proximity to the negotiation room.

C. The Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet access, telephone(s), desks and/or tables and chairs, office supplies, and easy access to at least one printer and one photocopier.

D. The starting date and the daily schedule for negotiations will be established by the Chief Negotiators.

E. Alternates may substitute for committee members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.

F. During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.

G. It is agreed that either team may request a caucus, and may leave the negotiation room to caucus at a suitable site provided by the Agency. There is no limit on the number of caucuses which may be held, but each party will make every effort to restrict the number and length of caucuses.

H. The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent with 5 U.S.C. § 71and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

I. Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.

J. Pursuant to 5 U.S.C. § 7131, the number of Union representatives authorized official time for bargaining shall not exceed the number of individuals designated by the Agency for such purposes. The designated Union negotiators will be on official time for all time spent during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals. This does not preclude the attendance of technical advisors and subject matter experts (SMEs) by mutual agreement. The requesting party will be responsible for all costs associated with the attendance of technical advisor(s) and/or subject matter expert(s). Agency Employees who are advisors or SMEs shall be on duty time during such negotiations or procedures.

K. If any proposal is claimed to be nonnegotiable by either Party and subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within ten (10) calendar days from when the proposal is declared to be negotiable or the claim that the proposal is nonnegotiable is withdrawn. Nothing in this section will preclude the right of judicial appeal.

L. This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.

M. Any provisions disapproved by the Agency head review may be referred to the Fair Labor Relations Authority (FLRA) by the Union. Any provision held negotiable will be incorporated into the Agreement. The Parties will commence negotiations within a reasonable period after receipt of an FLRA decision sustaining the Agency's determination of non-negotiability.

N. All timeframes in these ground rules may be modified by mutual consent.

O. The Agency will pay travel and per diem expenses for Union negotiators when applicable.

P. By mutual agreement, alternate work schedules and flexi-place schedules of the Parties will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed-upon hours of negotiations.

Q. No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the sessions.

R. Observers shall be permitted in negotiating sessions only by the mutual consent of the Parties.

S. The Parties may, by mutual agreement, determine that expedited negotiation can occur via email for issues which lend themselves to such a forum, e.g., items that can be easily and quickly resolved.

Section 4.0 <u>Waivers</u>
Nothing in this Agreement shall be deemed to waive either Party’s statutory rights unless such waiver is clear and unmistakable.

Article 13: Leave

Section 1.0 Purpose
The purpose of this Article is to prescribe the policies covering the different types of leave pertinent to all Employees in accordance with applicable law and regulation. This Article shall be administered in accordance with 5 U.S.C. § 63, 5 C.F.R. 630, and this Agreement.

Section 1.1
The purpose of leave is to allow Employees a vacation of extended leave for rest and recreation and to provide periods of time off for personal, medical, family, emergency, and/or other purposes.

Section 1.2 Accrual and Use of Leave
Employees will be entitled to accrue and use leave in accordance with applicable laws, regulations, and this Agreement. The Parties agree that the use of accrued annual leave is the right of the Employee and not a privilege and should be used by Employees.

Section 2.0 Definitions
A. *Accrued Leave* means the leave earned by an Employee during the current leave year that is unused at any given time in that year.

B. *Accumulated leave* means the unused leave remaining to the credit of an Employee at the beginning of a leave year.

C. *Family member* means the following relatives of the Employee:
1. Spouse and parents thereof;
2. Children, including adopted children and spouses thereof;
3. Parents;
4. Brothers and sisters, and spouses thereof; and
5. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship.

D. *Leave year* means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

E. *Medical certificate* means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Section 3.0 Leave Earnings
A. A full-time Employee earns leave during each full bi-weekly pay period while in a pay status or in a combination of a pay status and a non-pay status.

B. For part-time Employees, the hours in a pay status in excess of an Agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time Employee.

Section 4.1 Annual Leave
Annual leave is a benefit provided by law. To the extent practical, Employees will apply in advance for approval of anticipated leave. Leave requests and approval or denial will be made in writing through written memorandum, the NIH Integrated Time and Attendance System (ITAS) system, or e-mail. The leave approving official, normally the supervisor, will respond to all requests for leave in a timely manner. Employees may, upon request and with the approval of their supervisor, change previously authorized annual leave to sick leave in accordance with 5 C.F.R. 630.404.

Section 4.2
Annual Leave may be used for any reason. Supervisors and Employees should work together to ensure that annual leave is scheduled for use as to prevent an unintended loss of annual leave. Employees may utilize annual leave in fifteen (15) minute increments. Annual leave may not be charged in increments of less than fifteen (15) minutes.

Section 4.3
Annual leave will be granted, subject to workload demands, in a manner which permits each Employee who wishes to take at least two (2) consecutive weeks of annual leave each year. Upon request, any denial of annual leave must be accompanied by a written statement of the specific reasons for the denial. If workload permits, Employees may request and supervisors may approve periods of annual leave that exceed two (2) consecutive weeks. Extended periods of annual leave should be requested as far as advance as possible so that over all consideration can be given to workload and staffing.

Section 4.4
When scheduling conflicts occur, an effort should be made to resolve the conflict between the Employees involved. Unresolved conflicts will be settled by use of seniority, as measured by 1) Enter on Duty date (EOD), and 2) Service Computation Date (SCD). An Employee's approved annual leave will not be disapproved solely if an Employee with an earlier seniority date subsequently requests leave for the same period. In case of a tie, the conflict will be resolved by a toss of a coin.

Section 4.5
Employees will be informed of whether their requests for leave have been approved in a timely manner, normally within one (1) work day. When requests are made to use leave on the following day, the response will be made as soon as possible, but no later than the end of the Employee's work shift.

Employees will not normally be asked for an explanation for a request for annual leave. The Agency timekeeper or supervisor will show in writing compelling justification for requesting a reason or explanation related to annual leave. Reasons for annual leave have been described in Section 4.2 of this Article and should not be undervalued in any way. Every reasonable effort will be made to approve annual leave. The specific reason(s) for disapproving annual leave must be given to the Employee in writing.

Section 4.6 Cancellation of Pre-Approved Leave
In instances where Employees have received advanced approval for leave which is later rescinded and results in the loss of personal expenses to the Employee, the Agency has determined that it will make every reasonable effort to accomplish the Employee's work prior to rescinding the approval. If leave is approved and subsequently disapproved, the Agency will reimburse the Employee for any costs associated with the disapproval if permitted by law or Government-wide regulation.

Section 4.7
The Agency agrees to notify all Employees normally no later than October 15 of each year that Employees must submit leave requests by the date set in the regulations in order to avoid forfeiture of use/lose leave. If scheduled leave is cancelled by the Agency, and an Employee will exceed his or her annual leave ceiling, the Employee should request reinstatement of the annual leave that would be lost.

Section 4.8 Advancing Annual Leave
The Agency will grant an Employee's request for advanced annual leave in situations where the Employee lacks sufficient leave to cover the period being requested, but will earn enough leave to cover the amount of the advance by the end of the leave year, provided that workload permits a granting of leave and that the Agency would have approved a request for leave without pay to cover the requested period of absence.

Section 4.9 Annual Leave for Union Representatives
An Employee who is a steward or other Union official will be granted annual leave or leave without pay (LWOP) to attend internal Union functions which are not covered by Official Time as set forth in Article 11, Official Time. Normally, advance notice of five (5) work days will be required and will be approved subject to workload considerations.

Section 5.0 Timely Arrival for Work
Employees are expected to report to duty on time. When an Employee knows he/she will be tardy, the Employee is required to notify the immediate supervisor (or designee) as soon as possible. Only the supervisor or designee shall excuse infrequent tardiness of an Employee. Reasonable delays due to traffic or other factors beyond the Employee's control will not require the use of leave. Exceptions may be for an Employee under a Special Leave Procedure. An Employee who is absent from duty without authorization shall have their absence recorded as absence without official leave (AWOL) on the Employee's time and attendance report.

Consistent with applicable regulations, the supervisor may excuse tardiness of less than sixty minutes when in his or her opinion excused tardiness is appropriate. If leave is charged, the Employee will not be required to perform duty until leave time charged has expired. The Agency will treat Employees fairly and consistent in exercising its discretion to approve brief periods of tardiness without charge to leave

Section 6.0 Emergency Leave
Emergency leave is annual, or sick leave, or LWOP, requested by an Employee to deal with a sudden or unanticipated situation. If the need for leave cannot be anticipated, the Employee shall attempt to contact the immediate supervisor or designated official to request approval of unscheduled/emergency leave by telephone or email within two (2) hours after the start of the Employee's normal work day, or as soon as practical thereafter. In the event that either the supervisor or other designated official is not available, the Employee may utilize voice mail or e-mail to leave a message for their leave approving official for unscheduled leave. If the leave cannot be granted, the supervisor will attempt to notify the Employee within two (2) hours of the Employee's request that it cannot be granted, and provide specific reasons for the denial.

Section 7.0 Sick Leave

Section 7.1 Accrual
Employees will earn and accrue sick leave in accordance with applicable law and regulations. Employees may utilize sick leave in fifteen (15) minute increments.

Section 7.2 Approval
The Agency will approve an Employee's request for sick leave when the Employee:

1. Receives medical, dental, or optical examination or treatment;
2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
3. a. Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or
   b. Provides care for a family member with a serious health condition;
4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or
6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
7. Participates in drug or alcohol counseling or rehabilitation programs.

Section 7.3
The Merit Systems Protection Board (MSPB) and the courts have determined that placing an Employee on sick leave against his or her will is tantamount to a suspension. Therefore, the Agency will not place an Employee on enforced sick leave without following the procedures contained in Article 21, Disciplinary and Adverse Actions.

Section 8.0 Scheduling

Section 8.1
Employees should schedule non-emergency medical, dental, optical, psychological, or alcohol/drug counseling appointments as soon in advance as practicable and should request sick leave in advance for such appointments.

Section 8.2
If the need for leave cannot be anticipated, the Employee shall attempt to contact the immediate supervisor or designated official to request approval of unscheduled or emergency sick leave by telephone within two (2) hours after the start of the Employee's normal work day, or as soon as possible thereafter.

In the event that neither the supervisor nor other designated official is available, the Employee may leave a voice mail message or e-mail to notify the supervisor of the need for unscheduled sick leave. Failure to report and give notice of anticipated need for sick leave within two hours of the time established to report for duty will not, in itself, be a reason to deny sick leave. When the Employee has

failed to notify the supervisor of need for sick leave, the Employee may be placed on AWOL. However, the AWOL may be changed once the Employee provides notice of sick leave. If an Employee who reports to work late is required to use sick leave, the Agency may not require him or her to perform any work during the period that leave is charged.

Section 9.0 Medical Evidence

Normally, Employees will not be required to furnish administratively acceptable evidence to substantiate a request for approval of sick leave for three (3) consecutive workdays or less. In cases where the nature of the illness is such that the Employee would not be expected to see a medical practitioner, the Employee's written statement concerning the illness will ordinarily be acceptable. Employees who, because of illness, are released from duty on advice of the appropriate health facility shall not be required to furnish a medical certificate to substantiate the instance of sick leave.

Section 10.0 Sick Leave Abuse

Section 10.1

Where the Agency has reasonable grounds to believe that an Employee is abusing the use of sick leave (for example, when sick leave is used very frequently or in unusual patterns or circumstances), the Agency may inquire further into the matter and ask the Employee to explain. An Employee may choose to provide medical information such as diagnosis and prognosis only to Agency representatives who are medically certified. Absent a reasonably acceptable explanation, the Employee should be counseled that continued and frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation for duty, regardless of duration.

Section 10.2

If reasonable grounds continue to exist for questioning an Employee's use of sick leave, the Employee may be placed on leave restriction. The notification will be in writing and inform the Employee that no request for sick leave, or other leave in lieu of sick leave, will be approved for a stated period (not to exceed six (6) months) unless supported by a doctor's certificate. Any such written notice will describe the frequency, patterns or circumstances which led to its issuance, and will specify the termination date of the letter. At the end of the stated period, the Agency will review the Employee's situation and will notify the Employee in writing if the leave restriction is no longer in effect. Restrictions may be renewed if there are reasonable grounds to believe that the abuse is continuing.

Section 10.3

Except for Employees on leave restriction, Employees who are released from duty because of illness will not be required to furnish a medical certificate to substantiate sick leave for the day they were released from duty. Subsequent days of absence will be subject to the provisions of Section 10.1 above. Except for Employees on leave restriction, Employees suffering from a chronic medical condition which requires occasional absence from work, but does not necessarily require medical treatment, and who have previously furnished medical certification of the chronic condition, shall not be required to furnish a medical certificate to substantiate sick leave for subsequent occurrences of the same condition.

Section 11.0 Advanced Sick Leave

Section 11.1
Employees who are incapacitated for the performance of duties because of serious disability or ailment may request advanced sick leave to a full-time Employee not to exceed thirty (30) calendar days. A maximum of thirty (30) days of sick leave may be advanced to an Employee with a medical emergency related to the adoption of a child, for family care or bereavement purposes, or to care for a family member with a serious health condition. Requests will be submitted to the immediate supervisor.

Section 11.2
Requests for advanced sick leave will normally be granted in accordance with governing regulations when all of the following conditions are met:

1. The Employee is eligible to earn sick leave;
2. The Employee's request does not exceed thirty (30) days (240 hours) or for temporary Employees only the amount to be earned during the period of temporary employment if appropriate;
3. The Employee has provided acceptable medical documentation of the need for advanced sick leave;
4. The Employee is not on a leave restriction.
5. There is reason to believe that the Employee will return to duty and accrue enough sick leave to repay the advance.

Section 12.0 Leave Balances

A. Employees will not be denied leave usage solely because of their leave balances.

B. Employees will not be denied overtime or credit hours solely because of their leave balances.

C. Employees will not be adversely affected in any employment decision solely because of their leave balances.

Section 13.0 Leave Without Pay
LWOP is an approved leave status which may be requested and granted to an Employee in accordance with applicable laws, rules, and regulations. LWOP may be requested in the same manner and for the same purposes as annual leave, sick leave and for Employees who have applied for disability retirement when a removal action is involved.

Requests for LWOP will be considered promptly and in an equitable and objective manner. Denials will normally include reasons for the denial and, when requested, the reasons will be provided to the Employee in writing. If denial is related to a need for correction, the Agency will work with the Employee so that the Employee may promptly make the correction.

LWOP will be granted at the discretion of Management, and the Employees may be requested to provide explanations for their LWOP requests. In the following cases, however, LWOP will be approved upon request:

1. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave (38 U.S.C. § 4316(d));
2. Medical treatment for disabled veterans under Executive Order 5396;
3. Employees exercising LWOP rights under the Family and Medical Leave Act;

4. Employees to fulfill certain family obligations (up to 24 hours of LWOP each year), see Section 17.0; and,
5. Employees who have suffered an incapacitating job-related injury or illness and are awaiting adjudication of their claims for Employee compensation by the Office of Workers' Compensation Program.

Section 13.1
An Employee may be granted leave without pay to engage in Union activities on the national, district or local level, to work in programs sponsored by the Union or the AFL-CIO, upon written request by the designated Union representative. Such requests will be referred to the appropriate Management official and will normally be approved. Such Employees shall continue to accrue benefits in accordance with applicable Office of Personnel Management (OPM) regulations. The amount of LWOP will be determined based upon the type and duration of activity in which the Employee is engaged, and through discussions with the Employee and supervisor. Employees accepting full time positions with AFGE or the AFL-CIO shall be granted leave without pay for one (1) year and consideration will be given for a one (1) year extension.

Section 14.0 Court Leave

A. In accordance with law and regulations, an Employee with a regular scheduled tour of duty is entitled to court leave during normal duty hours for:
    1. Jury duty (including time spent waiting to be called or selected, and related travel time) with a Federal, District of Columbia, State or local court in any State, territory, or possession of the United States; or
    2. Serving as a witness (including time spent waiting to testify and related travel time) in an official capacity required by subpoena or directed to appear by any Federal, District of Columbia, State or local court, in any State, territory, or possession of the United States.

B. Court leave is not granted to an Employee who appears in court either as a plaintiff or defendant on his/her own behalf.

C. Employees who are normally assigned to evening shift, night shift or other work schedules and are required to appear in court, whether on jury duty or as a witness during the day may be granted an adjustment in their regular schedule in order to coincide with the court day(s), at their request. In the alternative, if the Employee chooses not to adjust their schedule to coincide with the court day(s), the Employee may request leave to allow sufficient rest to perform their court or official duties. In such cases, the Employee will not suffer any loss of pay and will continue to be entitled to night differential or other regularly scheduled premium payments in accordance with applicable payroll policies. Requests for annual leave to allow for sufficient rest for court or official duties should be granted unless there is a staffing or operational need.

D. If an Employee on court leave is excused from court with sufficient time to enable that Employee to return to duty for at least two (2) hours of the scheduled workday, including travel time, the Employee shall return to duty unless granted appropriate leave by the Agency. Employees will request and receive approval prior to going on leave to the extent practicable, using procedures as set forth above.

E. Employees may keep any expense money received for mileage, parking, or required overnight stay, to the extent consistent with law. (See Appendix 2).

F. Employees who are summoned as witnesses in an official capacity on behalf of the Federal Government are on official duty, not court leave.

Section 15.0 Leave for Maternity, Paternity and Adoption Reasons

A. The Employer will be liberal when granting leave for maternity/paternity/ adoption reasons and will apply its policies fairly. Such leave may include LWOP, sick leave (when appropriate), or annual leave.

B. The following conditions apply to the granting of leave to cover a period of absence for maternity/paternity/adoption reasons. Sick leave will be granted for the period of incapacitation due to pregnancy and confinement and also when the employer cannot accommodate a pregnant Employee's request for modification of duties when supported by acceptable medical evidence. Additional periods of annual leave and leave without pay may be granted in whatever order the Employee requests for a non-incapacitated period. Once requested and approved, the order of leave may be changed only on approval by the proper supervisory authority.

   The Employee also may request and be granted annual leave or leave without pay instead of sick leave for the period of incapacitation. When requested by the Employee and upon consultation with the supervisor, the total absence for maternity/paternity/adoption reasons will be authorized for a period up to 225 consecutive days. Requests for additional leave following the end of the period of maternity leave will be handled in accordance with applicable regulations and this agreement.

   In considering requests for sick leave, annual leave, and/or leave without pay for maternity/paternity/adoption reasons, the proper supervisory authority will apply pertinent laws, regulations, and this Agreement in the same way they would apply them in any other cases. No arbitrary cutoff date requiring an Employee to cease work or prevent an Employee from returning to work will be established. If cutoff dates are established, they must be based on physical capability of the Employee to perform the duties of the job after a determination by a competent medical authority.

   Sick leave will be granted for the period of incapacitation due to pregnancy and confinement for the mother. Furthermore, annual leave or LWOP may be requested in lieu of sick leave. A male Employee may be absent on annual leave, LWOP, or sick leave for the purpose of aiding, assisting, or caring for the mother of his child or minor children while she is incapacitated for maternity reasons. Additional periods of annual leave and LWOP may be granted in whatever order the Employee requests for an additional period.

   The Employee should submit notice, as far in advance as practicable of the prospective need for leave for maternity/paternity/adoption reasons.

C. All other leave for maternity/paternity/adoption purposes will be granted in accordance with the provisions of 5 U.S.C. § 6307 and 5 C.F.R. 630, Subpart D, (Family Friendly Leave Act). Requests for advanced leave will be handled on a case-by-case basis.

Section 16.0 General Leave Policies and Practices

A. Normally, leave requests, approvals and denials will be made in writing via ITAS or OPM-71, or equivalent.

B. NIEHS agrees to respond to all leave requests in a timely manner.

C. Every effort will be made to accommodate Employees who are arranging for and/or attending funerals and similar emergencies for immediate relatives, "significant others" or their dependents.

D. Use of leave will not be the sole basis for denial of overtime or credit hours.

E. The Employer will provide Employees with its written reasons for any denial of leave.

F. Leave will not be denied as a disciplinary measure.

G. Employees, upon request and with the approval of the supervisor, may change previously authorized annual leave to sick leave in accordance with Section 4.1 of this Article.

Section 17.0 Leave for Family Purposes

The Parties agree that the Agency should consider the needs of a diverse workforce and provide Employees with the broadest support possible to help them balance their work, personal, and family obligations. Practices in regard to leave shall be conducted in a fair and objective manner. The Agency shall ensure that its leave practices are free from discrimination, which includes sexual orientation.

Section 17.1 Family Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993 entitles Employees to a total of twelve (12) administrative workweeks of unpaid leave (LWOP) during any twelve (12) month period for:

1. 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. Serious health condition of the Employee that makes the Employee unable to perform any one or more of the essential functions of his or her position.

An Employee must invoke his or her entitlement to family and medical leave under this section. As long as the Employee has described one of the above qualifying criteria, they will be considered to have invoked FMLA. Requests for approval of leave under FMLA shall be requested thirty (30) days in advance, or as soon as practicable.

An Employee may elect to substitute annual leave, sick leave, compensatory time off, or credit hours for unpaid family or medical leave for any part of the applicable period consistent with governing laws and regulations. Employees may also combine annual leave, compensatory time, sick leave, or credit hours with unpaid family or medical leave for any period of approved leave. An Employee may not retroactively substitute paid time off for unpaid family and medical leave.

While an Employee is off work using FMLA, the duties and responsibilities of the position may be covered temporarily by other means. However, the Employee may not be replaced permanently as a result of using FMLA. Upon return to duty after a period of FMLA, the Agency, to the extent it has authority, will restore the Employee to the position which the Employee held prior to the leave or to an equivalent position at the same grade and pay within the commuting area.

An Employee may not be disciplined or removed from Federal service (absent a reduction in force) for absences that qualify as FMLA approved absences.

Section 17.3 Notice of Leave

An Employee must invoke his or her entitlement to family and medical leave. An Employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an Employee and his or her personal representative are physically or mentally incapable of invoking the Employee's entitlement to FMLA leave *during the entire period* in which the Employee is absent from work for an FMLA-qualifying purpose this section, the Employee may retroactively invoke his or her entitlement to FMLA leave within two (2) workdays after returning to work. In such cases, the incapacity of the Employee must be documented by a written medical certification from a health care provider.

In addition, the Employee must provide documentation acceptable to the Agency explaining the inability of his or her personal representative to contact the Agency and invoke the Employee's entitlement to FMLA leave during the entire period in which the Employee was absent from work for a FMLA-qualifying purpose. An Employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under this section.

The Agency may not put an Employee on family and medical leave and may not subtract leave from an Employee's entitlement to leave unless the Agency has obtained confirmation from the Employee of his or her intent to invoke entitlement to leave under FMLA. An Employee's notice of his or her intent to take leave under FMLA may suffice as the Employee's confirmation.

Section 17.4 Intermittent leave and Reduced Schedule

Leave under FMLA may be taken intermittently or on a reduced leave schedule when medically necessary. If an Employee takes leave under this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the Agency may place the Employee temporarily in an available alternative position for which the Employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the Employee shall be entitled to be returned to his or her permanent position or an equivalent position.

Section 17.5 Medical Certification

Employees must submit medical certification of a serious health condition no later than fifteen (15) calendar days after the date the supervisor requests it. However, if Employees are unable to submit the certification within the prescribed period because of circumstances beyond their control, supervisors may extend the timeframe to thirty (30) calendar days. Employees may find it helpful to submit Department of Labor form WH-380-E or WH-380-F for family and medical leave for serious health conditions. However, Employees are not required to use this form.

The request for leave under FMLA shall be supported by written medical certification issued by the health care provider of the Employee or the health care provider of the spouse, son, daughter, or parent of the Employee, as appropriate. This requirement may be waived for an initial medical certificate in a subsequent twelve (12) month period if the leave under this section is for the same chronic or continuing condition.

The written medical certification shall be provided directly to the Agency's designated physician. Personal medical information shall be protected as described in Article 32, Medical Determinations. The written medical certification shall include:

1. The date the serious health condition commenced;
2. The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
3. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;
4. For the purpose of leave taken for the care of a family member:
   a. A statement from the health care provider that the spouse, son, daughter, or parent of the Employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the Employee's care or presence; and
   b. A statement from the Employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;
5. For the purpose of leave taken for the Employee, a statement that the Employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the Agency on the essential functions of the Employee's position or, if not provided, discussion with the Employee about the essential functions of his or her position; and
6. In the case of certification for intermittent leave or leave on a reduced leave schedule for the Employee on behalf of a family member for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.
7. The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The Agency may not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this Section. If an Employee submits a completed medical certification signed by the health care provider, the Agency may not request new information from the health care provider. However, a health care provider representing the Agency, including a health care provider employed by the Agency or under administrative oversight of the Agency, may contact the health care provider who completed the medical certification, with the Employee's permission, for purposes of clarifying the medical certification.

Section 17.6 <u>Protection of Employment and Benefits</u>

Upon return from family and medical leave, the Employee will be restored to the same position as occupied before the leave or to an equivalent position in the same commuting area with equivalent benefits, pay, status, and other terms and conditions of employment.

1. The Agency shall inform its Employees of their entitlements and responsibilities under FMLA, including the requirements and obligations of Employees.
2. An Employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual or sick leave, as appropriate.

Section 17.7 Military
The Family and Medical Leave Act regulations provide eligible Federal Employees up to twelve (12) administrative workweeks of unpaid leave under the FMLA for qualifying exigency purposes. The regulations are available from OPM.

Qualifying exigencies arise when the spouse, son, daughter, or parent of an Employee is on covered active duty in the Armed Forces, or has been notified of an impending call or order to covered active duty status. These regulations will help Employees manage family affairs when their family members are on covered active duty.

The regulations provide for eight (8) categories of qualifying exigencies: short-notice deployments, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities not encompassed in the other categories when the Agency and Employee agree they qualify as exigencies and agree to the timing and duration of the leave.

Section 18.0 Voluntary Leave Transfer Program

Section 18.1
The Agency will use the voluntary leave transfer program (VLTP) within NIEHS to the maximum extent practical. The Agency will ensure that any procedures for Employees to request such leave will be simple and easy. Requests will be processed promptly. Normally, approval and requests to the broader NIEHS community will take less than two (2) weeks.

The Agency will assist Employees through the process and will work with the Employee to correct any errors quickly to help ensure the Employee has completed the necessary paperwork completely. The Agency may require additional information to process the request, and, if so, will communicate that need promptly to the Employee.

Any denials will be quickly returned to the Employee with specific reasons for the denial. Employees may correct any mistakes or errors and re-request VLTP.

Section 18.2
The Agency agrees to maximize the use of the NIH voluntary leave transfer program. Whenever possible, NIEHS will request VLTP requests from other ICs for any Employee who has been approved for VLTP when requested by the Employee.

Section 18.3
Twice a year the NIEHS Director shall send a notice to all Employees reminding them of the option to donate to the VLTP, and encouraging all who may have unused annual leave that would otherwise be lost to consider donating it to NIEHS Employees in VLTP.

Section 18.4 Leave Bank
The Agency shall make its best efforts to implement a Leave Bank by January 2014.

Section 18.5
The Agency shall post instructions to Employees for Becoming a VLTP Recipient on their website in an easy to find location.

Section 19.0 Excused Absences (Administrative Leave)

Section 19.1
Administrative leave is an approved absence from duty without loss of pay and without charge to leave. Administrative leave is treated as time worked for all purposes except that the Employee is excused from his/her regular assigned duties. Workload permitting, administrative leave may be granted to an Employee in accordance with the following sections.

Section 19.2 Funeral Leave
An Employee shall be granted up to three (3) work days of leave without loss of or reduction in pay to make arrangements for or attend the funeral or memorial service of an immediate relative who died as a result of a wound, disease, or injury occurred while serving as a member of the armed forces in a combat zone. The leave need not be consecutive, but the Employee shall provide the supervisor justification for the requested non-consecutive days.

Section 19.3 Brief Absences or Tardiness
The immediate supervisor will normally excuse nonrecurring brief periods of absence or tardiness of less than one hour due to circumstances beyond the Employee's control. Depending on circumstances, the Agency may also grant longer periods of excused absence. Such circumstances may include, for example, adverse weather conditions, floods, earthquakes, traffic and transportation issues and similar situations which, based upon experience, cannot reasonably be foreseen or prevented. Normally, the Employee's word will be accepted for such justification.

Section 19.4 Blood Donations and Tissue Tests
When the Agency offers blood donations onsite, an Employee will be granted up to two (2) hours administrative leave for purposes of travel, testing, and recuperation associated with donating blood. Additional administrative leave for this purpose may be approved in such circumstances where the Employee needed additional time for recuperation, for example. However, the total administrative leave will be limited to the remaining scheduled hours of duty on that day. An Employee who is not accepted for donating blood/blood platelets is only entitled to the time necessary to travel to and from the donation site and the time needed to make the determination. Absence for onsite blood/platelet donations should be approved in advance.

When the Employee donates blood, is involved in tests for bone marrow or other similar tests, or donates other bodily fluid at a nearby blood or health center they shall be granted up to four hours administrative leave for purposes of travel, testing, and recuperation associated with such donation or testing. Supervisors may ask for evidence of each donation. In the event blood cannot be donated, the Employee is required to immediately return to work. Absence for such testing or donations must be approved in advance.

Section 19.5 Leave for Bone Marrow and Organ Donation
Upon request, leave approving officials will approve excused absence for Employees who serve as donors for bone marrow, organ and tissue donation and transplantation. Employees may use up to seven (7) days of paid leave each year, in addition to annual and sick leave, to serve as a bone marrow donor. Employees shall provide a letter from their physician or health practitioner supporting their request.

Section 19.6
Employees may use up to thirty (30) workdays of paid leave each year, in addition to annual and sick leave, to serve as an organ donor to cover time off for activities such as donor screening, the actual medical procedure, and recovery time. The length of absence from work can vary depending on the medical procedure involved in the donation. Therefore, for longer periods of incapacitation, leave approving officials should approve annual and/or sick leave or LWOP for any additional period, as requested by the Employee.

Section 19.7 Workplace Closings

A. All Agency employees are to presume that the office is open each regular workday unless specifically announced otherwise (see Article 34, Temporary Indoor Environmental Conditions and Inclement Weather Procedures). Emergency Employees are expected to report to work on time in the event of an unscheduled leave, delayed arrival or closure announcement. If emergency Employees are already at work when notification of an early dismissal is received, they are to remain at work through the end of their tour. These Employees receive annual notification of their emergency status.

B. A decision may be made to close a workplace because of inclement weather or any other emergency situation. Such situations include, but are not limited to, heavy snow or severe icing conditions, floods, earthquakes, hurricanes or other natural disasters, severe pollution, massive power failure, terrorist attacks, major fires or serious interruptions to public transportation caused by incidents such as strikes of local transit employees or mass demonstrations.

C. When a decision is made to close a work place for a full day due to emergency conditions, Employees previously authorized paid leave shall be addressed in accordance with the law.

D. If the emergency conditions described above prevent an Employee, including emergency Employees, from timely arrival at work, even though the workplace is not closed, the Employee may be granted administrative leave for absence from work for a part or all of the Employee's workday. Employees are obligated to contact their supervisors as early as practicable to explain the circumstances and provide an estimated time of arrival at work. Normally, the Employee's statement of the emergency condition shall be sufficient.

   In determining whether to grant administrative leave and the duration of the leave, the Agency shall consider the following factors, and shall uniformly and fairly apply them to all Employees within the area affected by the emergency:
   1. The fact that the Employee lives beyond the normal commuting area;
   2. The mode of transportation normally used by the Employee;
   3. Efforts by the Employee to come to work;
   4. The circumstances that hindered or prevented travel (e.g., adverse weather conditions, road closures);
   5. Any physical disability of the Employee; and/or
   6. Any local travel restrictions.

E. When an emergency condition forces the closure of a workplace and Employees thereof are granted administrative leave as a result of the closure, an Employee of that same facility who is on an approved telework program and prevented from accomplishing work because of the same emergency (e.g., a power outage affects Employees both at home and in the office), should be provided the same amount of administrative leave as Employees working in the office. A telework

Employee is responsible for providing appropriate documentation in support of a request for such administrative leave.

F. If the President, OPM, or other appropriate authority declares a natural disaster area, Employees who are faced with a personal emergency caused by that natural disaster will be eligible for a reasonable amount of administrative leave, based on the facts and circumstances of the personal emergency. An Employee requesting administrative leave under this Section may be required to provide an explanation in support of his or her claim.

G. If, for whatever reason, an Employee that reported to duty or attempted to report to duty is not granted administrative leave in accordance with this Article then that Employee shall request any appropriate leave, e.g., annual leave, sick leave, or LWOP, for only the time the Agency was open.

H. During emergency conditions, Employees with disabilities (either temporary or permanent) who are unable to report to work due to the conditions and their disability shall be granted excused absences even when their respective office is open, unless they are approved to telework. Employees may be requested to provide documentation in relation to such conditions.

Section 19.8 Voting and Voter Registration

An Employee will not be denied the opportunity to vote. As a general rule, when the voting polls are not open at least three (3) hours either before or after an Employee's regular hours of work, Employees may be granted an amount of excused leave to vote which will permit the Employee to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser time. In those instances of unusual circumstances, an Employee may be excused from duty for up to one duty day to allow the Employee to vote. An Employee may be excused to register to vote on the same basis as for voting.

Section 19.9 Other Circumstances

The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time; the employer may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests. Such requests will be granted or denied fairly and with an eye toward a “family-friendly” atmosphere.

Section 20.0 Military Leave

Military Leave will be granted in accordance with law and appropriate regulations. The Agency will provide a link on applicable Military Leave on appropriate Agency web pages.

1. As provided in 5 U.S.C. § 6323(a), eligible Employees may earn fifteen (15) calendar days of military leave per fiscal year for active duty, active duty training, and inactive duty training. An Employee can carry over a maximum of fifteen (15) days into the next fiscal year.
2. Military leave shall be granted without any loss of pay. Military leave shall be credited to a full time Employee on the basis of an eight (8) hour workday. The minimum charge to leave is one (1) hour as required by law. An Employee may be charged military leave only for hours that the Employee would otherwise have worked and received pay. Employees who request military leave for inactive duty training (which is generally two (2), four (4), or six (6) hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves and National Guard will not be

charged military leave for weekends and holidays that occur within the period of military service.

3. Inactive Duty Training (IDT) is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods and equivalent training.
4. Emergency Military Leave, as authorized by 5 U.S.C. § 6323(b), provides twenty-two (22) workdays per calendar year for emergency military duty for Employees who perform military duties in support of civil authorities in the protection of life and property, when ordered by the President or a State Governor.
5. Members of the National Guard of the District of Columbia may be authorized unlimited military leave under 5 U.S.C. § 6323(c), for certain types of duty ordered or authorized under Title 39 of the District of Columbia Code.
6. Reserve and National Guard Technicians may be authorized up to forty-four (44) workdays of military leave for duties overseas under certain conditions, as provided by 5 U.S.C. § 6323(d).
7. Employees requesting approval of military leave as set forth herein shall provide a copy of the orders directing the Employee to active duty and/or a copy of the certificate on completion of such duty.
8. The Agency will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301, *et al*, which applies to persons who perform duty, voluntarily or involuntarily, in the uniformed services, including the Army, Air Force, Navy, Marine Corps, Coast Guard, and Public Health Service Commissioned Corps, as well as the reserve components of each of these services. Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.
9. Service members returning from a period of service in the uniformed services must be reemployed by the "pre-service" employer if they meet all five (5) eligibility criteria as set forth in USERRA.
   a. The person must have held a civilian job;
   b. The person must have given notice to the Agency that he or she was leaving the job for service in the uniformed services unless giving notice is precluded by military necessity or otherwise impossible or unreasonable;
   c. The period of service must not have exceeded five (5) years;
   d. The person must not have been released from service under dishonorable or other punitive conditions; and
   e. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

Section 21.0 Absence without Leave (AWOL)

AWOL is a non-pay status for an absence from duty not authorized by the proper leave approving official. When the Agency determines that it will charge an Employee AWOL, it will notify the Employee in writing of the intention to do so. The notification will be issued to the Employee as soon as possible but no later than the end of the pay period for which the AWOL is recorded. Such notice will include the specific reason(s) for charging AWOL and include the date and time period in question. The notice will be delivered to the Employee in person if the Employee is present in the workplace. If the Employee is not present and/or is not expected to be present within a reasonable period of time, the notice will be

mailed to the Employee's last known address. There may be instances when an Employee's leave status may not be known by the supervisor and necessitates the charge of AWOL. The AWOL will be changed to an appropriate leave category if it is later determined that the absence was excusable.

Appendix 2: Examples of Sick Leave

Examples of Sick Leave Situations ***Applies to the Employee and to provide care to a family member for:***	**Family and Medical Leave Act**	**Legal or Regulatory Reference**
Physical or mental illness, injury, pregnancy, childbirth, or medical, dental or optical examination or treatment.	Yes (Must be related to a serious medical condition if using for medical, dental, or optical exams/ treatments.)	Subpart D 5 C.F.R. 630. 401(a)(1), (a)(2) and (a)(3)(i) and (a)(3)(ii)
Communicable disease that would jeopardize the health of others by the Employee's presence on the job.	Yes	Subpart D 5 C.F.R. 630. 401(a)(5)
To make arrangements necessitated by the death of a family member or attend the funeral of a family member.	N/A	Subpart D 5 C.F.R. 630. 401(a)(4)
Make arrangements or to attend a funeral for a family member.	N/A	Subpart H 5 C.F.R. 630. 801
For adoption-related activities.	Yes	5 U.S.C. § 6307(c) 5 C.F.R. 630. 401(a)(6)
For childbirth (Mother), i.e., incapacitation for delivery and recuperation.	Yes	5 U.S.C. § 6381-6387 Subpart L 5 C.F.R. 630. 1203
Bone marrow/organ donation	N/A	5 U.S.C. § 6327

Each law and regulation has qualifying requirements which must be reviewed to ascertain whether the Employee meets requirements.

Article 14: Hours of Work

Section 1.0 Purpose

The purpose of this Article is to prescribe the policies covering hours of work for all Employees in accordance with applicable law and regulation.

Section 2.0 Definitions

A. *Administrative workweek* means any period of seven (7) consecutive twenty four (24) hour periods designated in advance by the head of the Agency under 5 U.S.C. § 6101.

B. *Adverse Agency Impact* is the condition for which the Agency may cancel an alternative work schedule, or exclude some positions or Employees from any particular alternative work schedule. Adverse Agency impact means a reduction of the productivity of the Agency, a diminished level of services furnished to the public by the Agency, or an increase in the cost of Agency operations (other than reasonable administrative costs relating to the process of establishing a flexible or compressed schedule).

C. *Alternative work schedule (AWS)* means both flexible and compressed work schedules.

D. *Basic work requirement* means the number of hours, excluding overtime hours that an Employee is required to work or is require to account for by leave or otherwise, i.e. credit hours, excused absence, holiday hours, compensatory time off or time off as an award. For full-time Employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time Employee's basic work requirement is the number of hours the Employee is scheduled to work in a biweekly pay period.

E. *Biweekly pay period* means the two (2) week period for which an Employee is scheduled to perform work.

F. *Compressed work schedule (CWS)* means:
   1. In the case of a full-time Employee, an eighty (80) hour biweekly basic work requirement that is scheduled by the Agency for less than ten (10) workdays; and
   2. In the case of a part-time Employee, a biweekly basic work requirement of less than eighty (80) hours that is scheduled by the Agency for less than ten (10) workdays and that may require the Employee to work more than eight hours in a day.

G. *Core hours* means the time periods during the workday, workweek or pay period that are within the tour of duty during which an Employee is required to be present for work.

H. *Credit hours* means any hours within a flexible work schedule which are in excess of an Employee's basic work requirement and which the Employee on a flexible work schedule requests to work so as to vary the length of a succeeding workweek or a workday.

I. *Flexible hours (or "flexible time bands")* means the times during the workday, workweek or pay period within the tour of duty during which an Employee covered by a flexible work schedule may choose to vary his or her times of arrival to and departure from the work site consistent with the duties and requirements of the position.

J. *Flexible work schedule (FWS)* means a work schedule established under 5 U.S.C. § 6122, that:
   1. In the case of a full-time Employee, has an eighty (80) hour biweekly basic work requirement that allows an Employee to determine his or her own schedule within the limits set by this Agreement; and
   2. In the case of a part-time Employee, has a biweekly basic work requirement of less than eighty (80) hours that allows an Employee to determine his or her own schedule within the limits set by this Agreement.

K. *Flexi-tour* means a type of flexible schedule in which an Employee is allowed to select starting and stopping times within the flexible hours. Once selected, the hours are fixed until the next opportunity to select different starting and stopping times under this Agreement.

L. *Gliding Schedule* means a type of flexible work schedule in which a full-time Employee has a basic work requirement of eight (8) hours in each day and forty (40) hours in each week, may select a starting and stopping time each day, and may change starting and stopping times daily within the established flexible hours.

M. *Maxi-flex Schedule* means a type of flexible work schedule that contains core hours in fewer than ten (10) workdays in the biweekly pay, and in which a full-time Employee has a basic work requirement of eighty (80) hours for the biweekly pay period, but in which an Employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established by this Agreement.

N. *Tour of duty* means the hours of a day and the days of an administrative workweek that constitute an Employee's regularly scheduled administrative workweek. *Tour of duty* under a *flexible work schedule* means the limits set by this Agreement within which an Employee must complete his or her basic work requirement. Under a *compressed work schedule* or other *fixed schedule*, *tour of duty* is synonymous with basic work requirement.

O. *Variable Day Schedule* means a type of flexible work schedule containing core hours on each workday in the week, and in which a full-time Employee has a basic work requirement of forty (40) hours each week of the biweekly pay period, but in which an Employee may vary the number of hours worked on a given workday within the week within the limits established in this Agreement.

Section 3.0 General Provisions

Section 3.1
The administrative workweek will be a period of seven (7) consecutive calendar days beginning on Sunday.

Section 3.2
The basic workweek shall be Monday through Friday. Exceptions may occur when mission requirements make it necessary to temporarily include Saturdays or Sundays as part of the basic workweek for certain Employees. This subsection is not intended to preclude regular Saturday/Sunday scheduling for special functions that require seven (7)-day-a-week operations.

Section 3.3
Normally, an Employee's workweek shall not extend over more than five (5) days of the period Sunday through Saturday.

Section 3.4
Core hours shall be Wednesdays from 10:00 a.m. to 12:00 p.m. These core hours will be considered first for mandatory meetings or other required work-related matters. When scheduling cannot occur during this time Management agrees that another time will be chosen during the normal operating hours Monday through Friday. It is expected that mangers will, to the extent practicable, work with their Employees to determine the best time for the group in accordance with the need to meet the Agency's mission.

Section 3.5
If Congress makes changes in the law concerning the hours of work of Federal Employees, allowing changes in the number of days a week worked or number of hours a day to be worked, the Employer agrees to negotiate such changes prior to implementation

Section 4.0 Shift Work
Currently there is no shift work; however, if that changes, it will be negotiates through Article 12, Mid-Term Bargaining.

Section 5.0 Notification of Schedules
Employees will be notified of any changes to their work schedules as soon as possible, normally no less than seven (7) calendar days in advance of the administrative workweek unless for an emergency or unforeseen situation.

Section 5.1
Every effort will be made to assure that work schedules will not be for more than six (6) consecutive days for eight-hour tours, three (3) consecutive days for twelve (12) hour tours, and four (4) consecutive days for ten (10) hour tours, and will include not fewer than two (2) consecutive days off.

Section 5.2
A copy of any work schedule changes will be provided to the Union as early as possible prior to the proposed implementation date. The Union will notify the Agency if it wishes to bargain regarding such change in accordance with Article 12, Mid-Term Bargaining.

Section 6.0 Voluntary Schedule Adjustments (Employee Initiated)
Adjustment of Work Schedules for Religious Observances

A. An Employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative hours so that the Employee can meet the religious obligation, unless it would interfere with the efficient accomplishment of the Agency's mission. The Employee should give notice of the schedule adjustment as far in advance as practicable.

B. When deciding whether an Employee's request for an adjusted work schedule should be approved, a supervisor shall not make any judgment about the Employee's religious beliefs or his or her affiliation with a religious organization. Disapprovals will normally be given to the Employee in writing within two (2) workdays of the request.

Section 7.0 Relief Breaks

Section 7.1
Two (2) fifteen (15) minute rest periods will be observed. Normally, the rest periods will be granted during the middle of the first and last half of each basic work day. There will be no charge to leave for such breaks. Employees may leave the work area during breaks.

Section 7.2
Employees performing high repetition tasks (such as the extended use of computers, typing, pipetting, etc.) or tasks that require long periods of static posture will be permitted to take rest breaks up to ten (10) minutes each hour to stand, stretch, and move around. (See Article 30, Safety, Health, and Wellness, Section 12.0)

Section 7.3
A rest period of ten (10) minutes duration will be allowed each Employee during each period of extended shift or overtime of at least two (2) hours. Management, at their discretion, may provide additional or more frequent breaks as necessary. See Article 15, Overtime.

Section 7.4
Except where the immediate work requirement of an Employee's position requires the Employee's constant presence, the Agency will not restrict Employee mobility during rest breaks.

Section 8.0 Time Keeping
Employees will not be required to use either automatic time recording equipment, or sign-in/sign-out sheets. Normally Employees will not need to sign-in/sign-out, unless they are on a FWS, e.g. gliding schedule or is currently on a special leave procedure.

Employees will self-certify their arrival and departure times, as well as any other exceptions to the normal work day, through the electronic ITAS system.

Section 9.0 Alternative Work Schedules

Section 9.1
A. The Parties recognize that the use of alternative work schedules can improve productivity and morale and provide greater service to the public. Therefore, all alternative work schedules in this Agreement will be made generally available to all Employees in the Bargaining Unit.

B. Working under a telework agreement under Article 16, Telework, will not in and of itself disqualify an Employee from working an alternative work schedule.

C. If the Agency determines that certain positions and/or Employees in certain organizational units are not eligible for some or all of the alternative work schedule options, the Agency will provide the Union with a list of those positions and organizational units and indicate which schedules are inappropriate, along with the reasons for the determination, for each within sixty (60) days of the effective date of this Agreement. If during the life of the Agreement, the Agency determines to remove a position(s) or Employee(s) from eligibility to work an alternative work schedule, the Union shall be notified in accordance with Article 12, Mid-Term Bargaining. Exclusion from participation will normally be the exception rather than the rule and will be done only in accordance with law.

D. At the Union's request, the Parties will negotiate over the Agency's proposed exclusions, if any, under the provisions of Article 12, Mid-Term Bargaining. If the Parties are unable to agree, the impasse will be resolved under the provisions of law. Pending a final decision on an impasse, the Employee(s) or positions(s) will remain eligible for the AWS option in question.

Section 9.2

All eligible Employees may work one of the following alternative work schedule options (flexible and compressed) to fulfill their basic work requirement:

1. Flexi-tour. Employees working a flexi-tour are required to work during the core hours established in Section 3.4 of this Article each day. This is the same fixed schedule every day. They may choose starting and quitting times within the period stated in Section 3.4 of this Article. They will work eight (8) hours each work day, for a total of eighty (80) hours each biweekly pay period, exclusive of the meal period. An example of a flexi-tour is when one Employee works 8:00 a.m. to 5:00 p.m. each day, while a coworker works 8:15 to 5:15 each day.

2. Gliding schedule. Employees working the gliding schedule are required to work 8 hours per day, 40 hours a week and must be present during the core hours established in Section 3.4 of this Article each day or on approved leave, exclusive of the meal period. They may choose starting and quitting times within the period stated in Section 3.4 of this Article. They may choose different starting and quitting times for each day in their tour of duty. An example of a Gliding Schedule is:

First Monday	8:30 a.m. – 5:00 p.m.
First Tuesday	9:00 a.m. – 5:30 p.m.
First Wednesday	8:45 a.m. – 5:15 p.m.
First Thursday	8:00 a.m. – 4:30 p.m.
First Friday	7:00 a.m. – 3:30 p.m.
Second Monday	8:15 a.m. – 4:45 p.m.
Second Tuesday	9:00 a.m. – 5:30 p.m.
Second Wednesday	9:00 a.m. – 5:30 p.m.
Second Thursday	8:30 a.m. – 5:00 p.m.
Second Friday	7:00 a.m. – 3:30 p.m.

3. Variable Day Schedule. Employees working the variable day schedule have a basic work requirement of forty (40) hours in each week of the biweekly pay period. They are required to work during the core hours, established in Section 3.4 of this Article each work day. They may choose a different starting time and quitting time for each workday within the period established in Section 3.4 of this Article, and they may vary the number of hours worked each workday, working between six (6) and twelve (12) hours on any given workday, exclusive of the meal period. An example of a Variable Day Schedule is:

First Monday	8:00 a.m. – 5:00 p.m.	(8 hours)
First Tuesday	8:00 a.m. – 7:00 p.m.	(10 hours)
First Wednesday	8:15 a.m. – 6:15 p.m.	(9 hours)
First Thursday	8:30 a.m. – 4:00 p.m.	(6.5 hours)
First Friday	7:00 a.m. – 2:30 p.m.	(6.5 hours)

40 hours

Second Monday	8:30 a.m. – 5:30 p.m.	(8 hours)
Second Tuesday	10:00 a.m. – 5:00 p.m.	(6 hours)
Second Wednesday	7:00 a.m. – 6:00 p.m.	(10 hours)
Second Thursday	7:15 a.m. – 4:30 p.m.	(8.25 hours)
Second Friday	8:00 a.m. – 5:45 p.m.	(7.75 hours)
		40 hours

4. Maxi-flex
   a. Introduction

      Maxiflex work schedule is a flexible work schedule authorized by the Federal Employees Flexible and Compressed Work Schedules Act. A Maxiflex schedule allows Employees to vary the number of hours worked each day and the number of days worked each week as long as the basic workweek requirement is met. The Maxiflex schedule, like other types of AWS, helps to reduce Employee tardiness, an overall decrease in the use of leave, increased Employee morale, and an accompanying increase in Employee productivity, and helps the Agency meet requirements under HHS sustainability goals. With their supervisor's concurrence, Employees are permitted to design their work day/week so that it allows them to be more flexible in scheduling their work and personal activities.

      The availability of non-standard work schedules is not intended to change regular hours of operation or to alter the responsibility of the Agency to establish and adjust work schedules to meet business needs.

   b. Purpose and Description

      This section covers the general provisions to implement a non-standard work schedule, Maxi-flex, under the NIEHS alternative work schedule program.

      Maxi-flex work schedules are available to Employees subject to Management approval. The basic Maxi-flex work requirement for a full time Employee is eighty (80) hours in a biweekly pay period. Full time Employees must work at least twenty (20) hours and no more than sixty (60) hours in a work week. For part-time Employees, the number of hours to be worked in a given pay period will be determined by the Employee and supervisor.

      Employees may work a minimum of two (2) hours per day and a maximum of thirteen (13) hours per day.

      Employees may request to establish a schedule and may request to change the schedule as often as each pay period.

      Daily schedules for onsite Maxi-flex may be between 6:00 a.m. and 10:00 p.m.

      Employees must work an eighty (80) hour pay period of ten (10) or fewer workdays per pay period (Monday - Saturday).

      Employees who are approved to work outside normal operating hours at the Agency's facilities must understand that some services may be limited, such as heat, cooling, security and computer support.

Employees may combine approved telework with an approved Maxi-flex schedule.

c. Scheduling

Employees must complete a request for their Maxi-flex tour of duty by submitting to their supervisors a proposed schedule under the Maxi-flex program. Requests to establish or change a Maxi-flex schedule must be submitted at least one pay period in advance.

The schedule should be considered as somewhat flexible, with coordination between the Employee and supervisor. The Employee will be permitted to modify this schedule as circumstances arise, with advance supervisory approval, as long as the definition of Maxi-flex is met.

While supervisors are encouraged to provide maximum flexibility for all Employees, due to specific job requirements, the same degree of flexibility may not be available to all Employees. Supervisors at each organizational level have the authority to approve or disapprove a Maxi-flex work schedule appropriate for their organization.

d. Temporary Change in an Existing Tour of Duty

Employees may alter schedules during the pay period, with supervisory approval and in compliance with the Agency timekeeping system.

e. Holidays

Full-time Employees excused or prevented from working on a day designated as a Federal holiday are entitled to their rate of basic pay on that day for eight (8) hours. Therefore, during all federal holidays Employees will be considered to be on an eight (8) hour work day regardless of their schedule.

f. Attendance at training/conferences/temporary duty travel

Employees scheduled to attend training, conferences or on temporary duty assignment outside their duty station will follow a traditional fixed schedule of eight (8) hours a day, forty (40) hours a week, during any pay period the Employee is in training/conference attendance or in an official travel status.

g. Overtime, Compensatory Time and Night Pay

Overtime (OT), compensatory time (CT), and night pay (NP) are covered elsewhere in this Article. Hours elected by the Employee that are outside the daily or weekly hour limits for OT, CT and NP are not subject to OT, CT and NP provisions. Hours directed by Management beyond the elected daily or weekly tour elected by the Employee are subject to OT, CT and NP provisions.

h. Credit Hours

Credit hours may be earned and used with Maxi-flex and are covered elsewhere in this Article. Employees may work no more than thirteen (13) hours on any work day, including credit hours.

i. Implementation
The Parties agree that Bargaining Unit Employees shall be permitted to begin scheduling Maxi-flex in accordance with this Article and CBA within thirty (30) calendar days beginning with the first regular workday that it is available in the Agency's time keeping system, expectantly April 1, 2013. If the Agency cannot implement Maxi-flex in this timeframe they will provide the Union with status reports every pay period until it is implemented. The status reports shall include, at a minimum, the problems or difficulties encountered regarding implementation of the Maxi-flex program, how the Agency is working to address these problems, difficulties, or delays, and the expected implementation date.

In addition, the Parties agree to continue discussions regarding the Maxi-flex program to determine best practices for NIEHS Employees. It is expected that during the life of this program that both Parties will collaborate and work to resolve problems as they occur. If after ninety (90) days of participation in the Maxi-flex program, (or July 1, 2013, if the Agency's timekeeping system is not implemented), either party decides that significant problems have arisen that cannot be resolved easily then the specific problems will be addressed by re-opening this Article for negotiation under the ground rules set for the CBA.

5. 5/4-9 schedule is a type of compressed work schedule in which a full-time Employee works eight (8) nine (9) hour days and one (1) eight (8) hour day for a total of eighty (80) hours in a biweekly pay period, exclusive of the meal period. Part time Employees will fulfill their work requirement, as established in their appointment, over nine (9) days in a biweekly pay period.

6. 4-10 schedule is a type of compressed work schedule in which a full time Employee works ten (10) hours a day, forty (40) hours a week and eighty (80) hours a biweekly pay period, exclusive of the meal period. Part time Employees will fulfill their work requirement, as established in their appointment, over eight (8) days in a biweekly pay period.

Section 9.3 Requests for alternative work schedules

A. Employees may request to change their schedules as needed.

B. An Employee who requests a new work schedule must indicate which schedule he or she is requesting.

C. Once the schedule has been selected and approved, the Employee will not be allowed to vary these times until a new request is submitted and approved.

D. Supervisory approval or disapproval shall be provided in a timely fashion.

Section 9.5

Employees on a FWS may be ordered to work hours that are in excess of the number of hours planned to work on a specific day. If the hours ordered to be worked are in excess of eight (8) hours in a day or forty (40) hours in a week at the time they are performed, the Employee may, at his or her choosing:

1. Take time off from work on a subsequent workday for a period of time equal to the number of extra hours of work ordered;

2. Complete his or her basic work requirement as scheduled and count the extra hours of work ordered as credit hours, in accordance with Section 9.0 of this Article; or,
3. Complete his or her basic work requirement as scheduled. This will result in the Employee being entitled to be compensated at the rate of basic pay for any hours of work equal to or less than eight (8) hours in a day or forty (40) hours in a week. The Employee also would be entitled to overtime pay for hours of work ordered in excess of eight (8) hours in a day or forty (40) hours in a week, in accordance with Article 15, Overtime.

Section 9.6
If a supervisor denies a request for an established alternative work schedule or proposes to terminate an individual Employee's participation in an alternative work schedule, he or she will promptly notify the Employee in writing, provide the basis for the denial or termination and provide an alternate schedule to the Employee. The supervisor may deny an Employee's request for or propose to terminate an Employee's participation in a particular alternative work schedule if the supervisor determines that the Employee's participation could negatively impact the work unit's coverage requirements or the need to respond to the public. Denials of requests to work alternative work schedules will not be arbitrary or capricious. An Employee may challenge a supervisor's denial as set forth in Article 22, Grievances.

Section 10.0 Temporary Suspension of Alternative Work Schedules
Occasions may arise when alternative work schedules must be temporarily suspended as a result of unusual workload or operational demands. The Agency shall make every reasonable effort to avoid suspension of an Employee's participation in these work schedules. If the circumstances requiring a suspension permit, the Agency will provide the Employee with advance notice of at least one pay period. The Agency will limit the suspension to as short a time frame as necessary to meet the workload or operational demands. If an Employee's flexible work arrangement is suspended, it will automatically be restored as soon as possible after the reason for the suspension needs have been met. For the purposes of this Agreement, "temporarily suspend" is defined as a period of one pay period or less. Alternative work schedules cannot be suspended for an indefinite period. Decisions on temporary suspension of AWS for any Employee will not be arbitrary or capricious.

Section 11.0 Terminating Alternative Work Schedules
If the head of the Agency finds that a particular AWS schedule has had an "adverse Agency impact," as defined in 5 U.S.C. § 6131 (b), the Agency must promptly provide notice to the Union of its desire to reopen the Agreement to seek its termination. Upon demand by the Union, the Parties will then negotiate over the Agency's proposal. If an impasse results, the dispute will go to the Federal Service Impasses Panel, which will determine within sixty (60) days whether the Agency's determination is supported by evidence. The AWS schedule may not be terminated until agreement is reached or the Panel acts.

Section 12.0 Credit Hours

Section 12.1
Employees who work flexible schedules (e.g., gliding schedule or variable day schedule), may earn credit hours.

Section 12.2
Employees must request to work credit hours in advance. The request will be approved or denied by the supervisor as soon as possible. Upon request of the Employee, the earning of credit hours may be

approved retroactively where the circumstances warrant (e.g., where it was difficult for the Employee to obtain advance approval).

Section 12.3
If credit hours are approved and overtime is subsequently made available prior to the working of the credit hours, the Employee will be afforded the opportunity to elect to work the overtime.

Section 12.4
Eligible Employees will be authorized to earn up to five (5) credit hours per day, provided that there is work available for the Employee, it can be performed at the requested time(s), and approved in advance by supervisor. The number of credit hours used on any day may not exceed the number of hours in the Employee's tour of duty for that day.

Section 12.5
Credit hours may be earned and used in fifteen (15) minute increments.

Section 12.6
Full-time Employees may accumulate and carry over from one pay period to another a total of no more than twenty four (24) credit hours. Part-time Employees may accumulate and carry over from one pay period to another a total of no more than 25% of the hours in the biweekly basic work requirement. A full-time Employee who has accumulated more than twenty four (24) credit hours (or a part-time Employee who has accumulated more than the maximum allowed) is subject to forfeiture of the excess credit hours if they are not used prior to the end of the pay period.

Section 12.7
The use of credit hours will be subject to the same criteria as annual or sick leave. An Employee may use earned credit hours for all or any part of any approved leave. Credit hours must be earned before they may be used.

Section 13.0 Temporary Assignments and AWS Schedules
Employees temporarily assigned to other parts of the organization within the Bargaining Unit will continue working under their AWS schedule.

Section 14.0 Holidays
All Employees will be entitled to all Federal holidays, declared by law or Executive Order.

A. For full time Employees working a Monday-Friday schedule, if a holiday falls on a Saturday, it will be observed the preceding Friday. If a holiday falls on a Sunday, it will be observed the following Monday. This is referred to as an "in lieu of" holiday.

6. For full time Employees working other than a Monday-Friday schedule, if a holiday falls on a regular weekly non-work day, other than the day administratively scheduled for the Employee instead of Sunday, the holiday will be observed the workday immediately before that regular weekly non-work day. If a holiday falls on the day administratively scheduled for the Employee instead of Sunday, the holiday will be observed the workday immediately after that regular weekly non-work day. This is referred to as an "in lieu of" holiday.

7. When a holiday falls on a non-work day of a part time Employee, that Employee is not entitled to an "in lieu of" day for that holiday.

Section 14.1 <u>Regular Schedule</u>

A. Full-time Employees working a regular schedule (neither flexible nor compressed) who are relieved or prevented from working on a day designated as a holiday will receive their regular rate of basic pay for eight (8) hours on that day.

B. A full-time Employee working a regular schedule who performs non-overtime work on a holiday is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for that holiday work. Holiday premium pay is limited to a maximum of eight (8) hours.

C. A part-time Employee working a regular schedule (neither flexible nor compressed) who is relieved or prevented from working on a holiday will receive his or her regular rate of basic pay for the hours the Employee is scheduled to work that day, not to exceed eight (8) hours.

Section 14.2 <u>Flexible Schedule</u>

A. Full-time Employees working a flexible schedule under this Article who are relieved or prevented from working on a day designated as a holiday will receive their regular rate of basic pay for eight (8) hours on that day.

B. A full-time Employee working a regular schedule who performs non-overtime work on a holiday is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for that holiday work. Holiday premium pay is limited to maximum of (8) hours.

C. The eight (8) hours applicable to each Employee working a flexible schedule will be the first eight (8) hours that Employee is scheduled to work on that day.

D. A part time Employee working a flexible schedule that is relieved or prevented from working on a holiday will receive his or her regular rate of basic pay for the hours the Employee is scheduled to work that day, not to exceed eight (8) hours.

E. A full time Employee working a flexible schedule, who works during non-overtime and non-holiday hours that are part of the Employee's basic work requirement on a holiday, is paid his or her rate of basic pay for those hours of work.

   Example: An Employee who works ten (10) hours on a holiday (including one (1) hour of overtime work ordered by a supervisor) and who has a nine (9) hour basic work requirement on that day would earn holiday premium pay for the eight (8) holiday hours, his or her regular rate of basic pay for one (1) hour within the basic work requirement), and one (1) hour of overtime pay.

F. A part-time Employee working a flexible schedule who performs work on a holiday is entitled to holiday premium pay only for work performed during his or her basic work requirement.

Section 14.3 <u>Compressed Work Schedule</u>

A. Full-time Employees working a compressed schedule in accordance with this Article, who are relieved or prevented from working on a day designated as a holiday, will receive their regular rate of basic pay for the number of hours of their compressed work schedule on that day.

B. A full-time Employee working a compressed schedule, who performs non-overtime work on a holiday, is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay (double time) for the work that is not in excess of the Employee's compressed work schedule for that day.

C. A part time Employee working a compressed schedule who performs work on a holiday is entitled to holiday premium pay only for work performed during his or her compressed work schedule.

D. Employees must not be required to move their regularly scheduled days off solely to avoid payment of holiday premium pay or reduce the number of holiday hours included in the basic work requirement.

Section 15.0 Night Work
Currently there is no night work, however if that changes, it will be negotiated through Article 12, Mid-Term Bargaining.

Section 16.0 Sunday Work
A full-time Employee working a regular, flexible, or compressed schedule under this Article, who performs regularly scheduled non-overtime work, a part of which is performed on a Sunday, is entitled to pay at their regular rate of pay plus premium pay at a rate equal to a minimum of 25% of their rate of basic pay for the entire daily tour of duty, not to exceed eight (8) hours, in accordance with applicable law.

Section 16.1
A full-time Employee working a flexible schedule under this Article is entitled to Sunday premium pay for the entire daily tour of duty, up to eight (8) hours, based upon electing to work any flexible hours on a Sunday.

Section 16.2
Part time Employees are not entitled to Sunday premium pay.

Section 16.3
Whenever possible, Employees will work a Monday through Friday schedule. When such a schedule is unfeasible then qualified volunteers will be taken for such work. Such work will be given fairly and equitably. If the Agency changes work schedules for an entire group of Employees they will notify the Union in accordance with Article 12, Mid-Term Bargaining, in advance of any such changes.

Article 15: Overtime

Section 1.0 General

Section 1.1
Overtime for "non-exempt" Employees is governed by the Fair Labor Standards Act (FLSA) and this Agreement. Overtime for "exempt" Employees is governed by 5 U.S.C. § 5542 (Title 5 Overtime) and this Agreement.

Section 1.2
All Bargaining Unit positions will be determined to be FLSA "exempt" or "non-exempt" at the time the position is classified. When classification actions are performed and results in a change to the FLSA determination, the changed FLSA determination for the affected Employees will be made available to the Employees and the Union within ten (10) days of the classification decision.

Section 1.3
When overtime work is directed, approved, or voluntarily accepted, it is the responsibility of the Employee to perform the overtime. If due to exigencies, personal emergencies, or factors outside the Employee's control the overtime is not completed it won't be held against the Employee. However, an Employee who volunteers for overtime work and fails to report as scheduled without good cause may have his or her name placed at the end of any overtime roster.

Personnel will be compensated for overtime hours worked in accordance with the provisions of the FLSA, 5 U.S.C. § 5542, and other applicable statutes, and government-wide regulations, and provisions of this Agreement. When a given work situation is covered by the FLSA and another statutory procedure, the Employee will receive the more favorable treatment.

Section 1.4
Overtime will not be distributed, or withheld as a reward or penalty.

Section 1.5
When Employees in a voluntary situation indicate in advance that they will work overtime, the Employer has an expectation that they will keep their commitment.

Section 2.0 Overtime Pay

Section 2.1
Overtime pay for FLSA non-exempt Employees is equal to one and one-half times the Employee's hourly rate of pay.

Section 2.2
Overtime pay for FLSA exempt Employees is equal to one and one half times the Employee's hourly rate of pay. However, if the Employee's rate of pay exceeds the minimum applicable rate for a GS-10 (i.e., GS-10, step 1), including a locality-based comparability payment or any applicable special rate of pay, the overtime rate is the greater of:

1. One and a half (1 ½) times the applicable minimum hourly rate of basic pay for GS-10; or,
2. The Employee's hourly rate of basic pay.

Section 3.0 Types of Overtime

Section 3.1 Regular Overtime
Any overtime work scheduled in advance of the administrative workweek as part of an Employee's regularly scheduled workweek is considered regular overtime. An Employee shall be compensated for every minute of regular overtime work in accordance with the provisions of Office of Personnel Management (OPM) regulations.

A. Any Employee covered under a flexible work schedule program established under Article 14, Hours of Work, may request compensatory time off in lieu of overtime premium pay for regular overtime work. Employees not covered by a flexible work schedule program must receive overtime pay for regular overtime work and cannot receive compensatory time. Additional provisions for earning and receiving compensatory time are found in Section 11.0 of this Article.

B. When work is planned in advance to be performed on an overtime basis on a day other than the basic workweek, the Agency agrees to make a reasonable effort so as to provide at least four (4) hours of work for each Employee.

Section 3.2 Irregular or Occasional Overtime
Overtime work that was not scheduled in advance of the administrative workweek and made a part of an Employee's regularly scheduled workweek is considered irregular or occasional overtime. Irregular or occasional overtime work is paid in the same manner as regular overtime work, except that, at the Employee's option, the Employee may receive compensatory time off in lieu of overtime premium pay in accordance with Section 11.0 of this Article. When an Employee, whether covered by the Fair Labor Standards Act or exempt, works irregular overtime, such overtime will be paid in increments of fifteen (15) minutes. Daily increments of less than fifteen (15) minutes, if such occur, will be accumulated during the workweek. At the end of the workweek, any increments of seven (7) minutes or fewer will be rounded down and any increments of eight (8) minutes or more will be rounded up to the next fifteen (15) minutes.

Employees who are required to work overtime will be allowed to call at no cost to them to make necessary arrangements. This shall include but is not limited to dependent care arrangements and updates, medical appointments, classes and self-improvement commitments, etc.

Section 4.0 Call Back
Call-back overtime is a form of irregular or occasional overtime work performed by an Employee on a day when work was not scheduled for the Employee or for which he or she is required to return to the place of employment after having already concluded his or her tour of duty and departed the work site. In all callback situations, the Employee will be paid a minimum of two (2) hours of overtime, as provided for by government-wide regulation. If requested by the Employee, and if work is available, the Agency will consider providing a minimum of four (4) hours of overtime work.

Employees required to work through their non-duty meal period shall be paid for such time.

In the event of an extension of a regular work shift into an evening or night work shift for more than a three hour overtime work period, reasonable time will be allowed, when possible, for procurement and eating of food. This will occur no later than three (3) hours after the overtime starts.

Employees are not required to hold themselves in readiness for return to work when overtime was not previously scheduled. If contacted to return for overtime work, an Employee will be excused if not in a condition to work.

Section 5.0 Distribution

Section 5.1
Employees within an organizational unit will be offered overtime on a rotating basis in accordance with their particular skills. This will not necessarily result in everyone having the same number of overtime hours worked. Employees willing to work voluntary overtime may post their name on a roster for that purpose. These rosters may be used to assist Employees who wish to obtain a qualified replacement for overtime work. Replacement is subject to approval of the supervisor and is to be at no additional cost to the Agency.

In the absence of sufficient qualified volunteers for overtime work, the Agency has the right to direct overtime. Individual Employees will not be forced to work overtime against their expressed desires as long as full requirements can reasonably be met by other qualified Employees willing to work. The supervisor may not require Employees to work involuntarily in order to provide relief for Employees scheduled to perform the overtime.

Section 5.2
Overtime will be offered equitably among Employees that the Agency finds to be qualified for the assignment within a particular trade or occupation within an organizational element. Qualified volunteers will be considered first. The Agency will make every effort to rotate overtime among Employees in an impartial fashion.

Section 6.0 Records
Records of overtime offered, worked and refused will be kept by the Agency and may be reviewed by the Union upon request.

Section 7.0 Disputes
The negotiated grievance procedure is the exclusive remedy for the resolution of disputes concerning overtime. Nothing in this Article precludes or impairs FLSA exempt Employees from filing a claim for "induced" overtime or FLSA nonexempt Employees from filing a claim for "suffered or permitted" overtime. When an Employee is denied overtime work in violation of the provisions of this collective bargaining agreement, the Employee may receive back pay plus interest for the overtime work not performed.

Section 8.0 Notice
In the assignment of planned overtime, the Employer agrees to provide the Employee(s) with advance notice. Any Employee designated to work overtime on days outside his/her basic workweek will be notified no later than the start of his/her scheduled lunch period on the next-to the last day of the basic workweek. When work is to be performed on a holiday, every effort will be made by the supervisor to provide at least two working days advance notice to the Employees affected. Management has the right to assign overtime without prior notice during emergency situations.

Section 9.0 Impact on Leave

Section 9.1
Leave usage or balance will not be a factor in offering or assigning Employees overtime. However, Employees in a leave status will not be offered or assigned overtime until they return to duty, unless they are needed for unforeseen mission requirements. Overtime in conjunction with leave usage in the same pay period is permitted.

Section 10.0 Pre and Post Shift Activities
Pre and post-shift activities totaling more than ten (10) minutes per daily tour of duty and are related to the principal activities of the position of an Employee are considered compensable for the purposes of this Article.

Section 11.0 Compensatory Time in Lieu of Overtime Pay

Section 11.1
Compensatory time is time off from work that may be granted to an Employee in lieu of payment for irregular and occasional overtime. Compensatory time earned is equal to the amount of time spent in overtime work, e.g., one (1) hour and fifteen (15) minutes of overtime work yields one (1) hour and fifteen (15) minutes of compensatory time. The following pertain to such compensation for overtime work:

A. FLSA Non-Exempt Employees: The Agency will normally provide overtime pay for all overtime work performed by nonexempt Employees. After considering mission requirements, the Agency may grant compensatory time off for overtime work performed, but non-exempt Employees may not be required to accept compensatory time off in lieu of payment for overtime work performed. The Agency will consider Employee requests for compensatory time off in lieu of overtime pay.

B. FLSA Exempt Employees:
    1. Employees whose rate of pay does not exceed the maximum rate for GS-10 (i.e. Step 10) may request to receive compensatory time off in lieu of overtime pay for irregular or occasional overtime. Such requests will normally be granted, subject to mission requirements. If the Employee does not make such a request, or if the Agency does not approve that request, the Employee is entitled to compensation in accordance with Section 3.2 above.
    2. The Agency may require that Employees whose rate of pay exceeds the maximum rate for GS-10 (i.e. Step 10) be compensated for irregular or occasional overtime with compensatory time in lieu of overtime pay.

Section 11.2
The Agency may announce in advance of offering overtime that it will only compensate Employees with compensatory time and that overtime pay will not be available. In that case, an FLSA non-exempt Employee may decline the offer of overtime. Such declination will not be held against the Employee and the declination will not affect eligibility for future offers of overtime.

Section 11.3
Compensatory time earned shall normally be used within twenty six (26) pay periods. In rare exceptions, any compensatory time not scheduled and used by the Employee by the end of the year will be converted to overtime pay, computed using the Employee's rate of pay as of the when the overtime pay

was earned. The supervisor in conjunction with the Employee will attempt to ensure all compensatory time is scheduled and used within twenty six (26) pay periods.

Section 12.0 Standby Duty

An Employee will be considered on duty and time spent on standby shall be considered hours of work if:

1. The Employee is restricted to the Agency's premises, or so close thereto that the Employee cannot use the time effectively for his/her own purposes; or
2. The Employee, although not restricted to the Agency's premises:
   a. Is restricted to his/her living quarters or designated post of duty;
   b. Has his/her activities substantially limited; or,
   c. Is required to remain in a state of readiness to perform work.

Section 12.1

Employees are compensated on an annual basis for being in a standby status in accordance with OPM regulations.

Section 13.0 On-Call

An Employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

1. The Employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the Employee is required to remain within reasonable call-back radius.
2. The Employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

Section 13.1

Employees are not entitled to any additional compensation for time spent in an on-call status.

Section 14.0 Compensatory Time for Travel

Section 14.1

The Agency shall credit an Employee, on an hour-for-hour basis, with compensatory time off for time in a travel status if:

1. The Employee is required to travel away from the official worksite; and,
2. The travel time is not otherwise compensable hours of work.

Section 14.2

Time in a travel status includes the time an Employee actually spends traveling between the official worksite and a temporary worksite, or between two temporary worksites, and the usual waiting time that precedes or interrupts such travel. Time spent at a temporary worksite between arrival and departure is not time in a travel status. A delay between actual periods of continuous travel that includes overnight lodging during which the Employee is free to rest, sleep, or otherwise use the time for his or her own purposes, is not creditable as time in a travel status.

Section 14.3

If an Employee is required to travel directly between his or her home and a temporary worksite outside the limits of the Employee's official worksite, the travel time is creditable as time in a travel status. However, the time that Employee normally would spend in home-to-work or work-to-home travel is

deducted from that amount. The travel time outside regular working hours directly to or from a temporary worksite or transportation terminal (e.g., airport or train station) is creditable as time in a travel status. However, if the travel occurs on a day that the Employee is regularly scheduled to work, the time the Employee would have spent in normal home-to-work or work-to-home commuting must be deducted.

Section 14.4
Only travel from home to the temporary duty station on the first day and travel from the temporary worksite to home on the last day must be considered as creditable in the case of an Employee who is on a multiple-day travel assignment and who chooses not to use temporary lodging at the temporary worksite, but to return home at night or on a weekend. Travel to and from home on other days is not creditable travel time unless the authorized Management official determines that credit should be given based on the net savings to the Agency from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. For cost comparison purposes, the dollar value of an hour of compensatory time off for travel equals the Employee's hourly adjusted rate of pay.

Section 14.5
In the case of an Employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or who travels at a time or by a route other than that selected by the Agency, the Agency must determine the estimated amount of time in a travel status the Employee would have had if the Employee had used the mode of transportation offered by the Agency or traveled at the time or by the route selected by the Agency.

Section 14.6
A. Employees should file requests for credit of compensatory time off for travel within five (5) workdays after returning to the official duty station, or within (five) 5 workdays of returning from the temporary duty station or approved leave which immediately follows the temporary duty during which the compensatory time off for travel was earned, by submitting a travel itinerary, or any other documentation acceptable to the Employee's supervisor, in support of the request. If not submitted within this time, the Agency may deny the request for credit of compensatory time off, unless the Employee can show good cause for the delay. The Agency will authorize credit in increments of one-quarter of an hour and will track and manage compensatory time off for travel separately from other forms of compensatory time off.

B. An Employee must use accrued compensatory time off for travel by the end of the twenty sixth (26^{th}) pay period after the pay period during which it was credited. If an Employee fails to use the compensatory time off within twenty six (26) pay periods after it was credited, he or she will forfeit such compensatory time off.

C. The Agency may extend the time limit for using such compensatory time off for travel for up to an additional twenty six (26) pay periods. If the Employee was unable to use the compensatory time due to an exigency of the service beyond the Employee's control. The Agency retains complete discretion in expanding this time period, and it is not subject to review under the grievance or arbitration procedure.

Section 15.0 Compensatory Time for Religious Observances

Section 15.1
An Employee whose personal religious beliefs require the abstention from work during certain periods of the work day or work week, the Employee may elect to engage in alternative work, when available, for time lost for meeting those religious requirements.

Section 15.2
To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Agency's mission, the Agency will afford the Employee the opportunity to work compensatory time and will grant compensatory time off to an Employee requesting such time off for religious observances.

Section 15.3
The Employee may work such compensatory time before or after the grant of compensatory time off. Compensatory time will be credited to an Employee on an hour to hour basis or authorized fractions thereof (fifteen (15) minutes)).

Section 15.4
The premium pay provisions for overtime work in Section 2.0 do not apply for compensatory time work performed by an Employee for this purpose.

Article 16: Telework

Preamble

The National Institute of Environmental Health Sciences (NIEHS) regards Employees' health and welfare as critically related to their ability to contribute to the Institute's mission. The Agency recognizes that telework can help NIEHS achieve its mission by reducing facility and energy costs, promoting operational efficiencies, reducing pollution, saving resources, increasing Employee morale, enhancing retention and recruitment, and improving the quality of life for our Employees.

Significant reasons for teleworking are to promote the NIEHS as an employer of choice; enhance the Agency's efforts to employ and accommodate people with disabilities, including Employees who have temporary or continuing health problems, or who might otherwise have to retire on disability; reduce office space, parking facilities, and transportation costs, including costs associated with payment of the transit subsidy; and improve the recruitment and retention of high-quality Employees through enhancements to their quality of life.

The Parties agree that the NIEHS telework program is intended to promote and maximize the effective use of telework. The Agency agrees that telework requests and approvals will be handled in a fair, equitable, and consistent manner.

Section 1.0 Policy

A. For purposes of this Agreement, telework refers to an Employee's performing assigned duties at a location other than the official duty station. Such an alternative duty station (ADS) can include a government or private telework center, or the Employee's home, to name a few.

B. Employees of the Agency may participate in telework to the maximum extent possible without diminished Employee performance. Optimizing telework to suit the needs of the Employee and Agency are expected and should be in compliance with this Article.

C. Telework is a voluntary activity and Employees shall not be forced to telework.

D. Eligible Employees, who have been approved to telework, may work a maximum of full-time or nearly full-time work schedule via telework. Employees may be allowed to work full or partial days on telework.

E. When teleworking, the Agency shall treat Employees no differently than when they are working onsite.

F. Any denials whatsoever of telework requests must be based on good business reasons and will be provided to the Employee and Union in writing with explicit reasons for their exclusion.

G. The Union may dispute any Management determination under this agreement through grievance, ULP, EEO, or other appropriate methods.

H. The Government will not be liable for damages to an Employee's personal or real property during the course of performance of official duties or while using Government equipment at the Employee's

ADS, except to the extent the Government is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claims Act.

I. The Employee is covered under the Federal Employees' Compensation Act if injured in the course of actually performing official duties at the ADS. Any accident or injury occurring at the ADS must be brought to the immediate attention of the manager. Because an employment-related accident sustained by an Employee during a Telework Program assignment will occur outside the premises of the official duty station, the Agency must investigate all reports immediately following notification. The provisions of Section 6.0 of Article 30, Workers' Compensation, of the Collective Bargaining Agreement (CBA), apply to all ADS-related on-the-job injuries.

Section 1.1 Eligibility

The Parties agree that an eligibility determination is a prerequisite for telework. Employees deemed eligible may apply for telework and, with Agency approval, may participate. The terms of participation are covered below in Section 2.0.

All positions will be considered eligible to telework unless:

1. The Employee has been officially disciplined within the past two years for being absent without permission for more than five (5) days in any calendar year. The Agency may remove this restriction for an Employee if the terms of the discipline have been satisfied.
2. The Employee has been officially disciplined for violations of Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

The Agency shall notify Employees of their eligibility status. For any position deemed ineligible, the supervisor shall provide a clear explanation in writing. Any positions in dispute shall be assessed as soon as possible and any changes will be made promptly and communicated to the Employee. Upon request, the Agency shall provide the Union with the current list of ineligible Employees.

Section 1.2 Definitions

A. *Alternate Duty Station (ADS)* is the established and documented site from which the Employee will work remotely.

B. *Approving Official* refers to an official within an institute/center (IC) who has delegated authority to approve (or deny) telework requests (may be someone other than the Employee's supervisor).

C. *Ad Hoc-Situational-Episodic-Non-Regular-Intermittent Telework* refers to non-routine, non-regular arrangements. These telework periods occur on an as-needed basis or may involve tasks that are short-term or temporary in nature or may also involve recurring tasks that may not lend themselves to a regular telework schedule. . They may involve projects or infrequent, sporadic tasks. Special reports or analyses, one-time research projects, etc., are common examples.

D. *Hoteling* refers to office space that has been designed to support multiple, transient workers who are not present in the office enough to require dedicated individual or shared office space.

E. *Medical Telework* is regular, episodic, or ad hoc-situational telework done on a temporary basis while an Employee is recovering from an injury or illness.

F. *Official Duty Station* is the Employee's desk or the place where the Employee normally performs his or her duties.

G. *Portable Work* is defined as official duties that may be done in a telework status without diminished performance. Portable work may involve partial or full day work.

H. *Reasonable Accommodation Telework* may be regular, episodic, or ad hoc-situational telework, as appropriate.

I. *Regular Telework* is the traditional arrangement where a regular, consistent number of days (for example, two days per week) are set for performing work at a location other than the Employee's official duty station. Routine tasks are accomplished at the alternate worksite and an established schedule of telework days allows for predictability.

J. *Supervisor* is the immediate supervisor of record for the Employee.

K. *Telework* is a voluntary program that enables Employees to perform their duties at an alternative work location (not their regular duty station) through an approved agreement.

L. *Telework Coordinators* at the IC level are individuals responsible in each IC for keeping telework records and reports and gathering data to report back as requested by the IC and as required to the NIH Telework Coordinator. At the NIH level, the individual responsible for gathering information from the IC coordinators for reporting to HHS, OPM, and other entities as necessary; coordinating NIH-wide communications and outreach efforts, and acting as a consultant to the IC coordinators.

M. *Telework Schedule* is the actual days of the week and/or hours of the day that the Employee will be performing his/her official duties at the alternate worksite.

N. *Work Supplies* are defined as property the IC provides to an Employee to enable him/her to perform his/her official duties. These supplies may include, but are not limited to, computer and related items, printers, pens, pencils, paper, printer cartridges, diskettes, etc.

Section 2.0 Participation

All Employees who meet the following criteria are eligible to participate in Telework.

1. The Employee is not on a Performance Improvement Plan (PIP).
2. The Employee is not on leave restriction.
3. The Employee occupies a position that meets the eligibility criterion in Section 1.1 of this Article.
4. The Employee has the work space, utilities, and equipment suitable for the work to be performed at the designated ADS as specified in the Telework Application and Agreement (see Appendix 3).
5. The Employee is willing to sign and abide by the Telework Program Application and Agreement "terms and conditions" except where there is conflict or confusion with this Article or CBA, in those cases the CBA language would take precedence.
6. Some parts of the work must be portable, i.e., it must be work that the Employee can reasonably complete at an alternate site.

7. Does not involve continuous, direct handling of secure materials determined to be inappropriate for telework by the Agency head.
8. Does not require frequent and continuous supervision from a supervisor.
9. Does not require frequent and continuous face-to-face interaction with coworkers and/or customers.

Section 2.1 Probationary Employees

Employees serving in a probationary period or formal training period may be limited in participating in the telework program. In such cases, they may participate in telework subject to supervisory approval on a case-by-case basis. They may telework a maximum of two (2) days per pay period.

Section 3.0 Application and Approval

A. Employees may request to perform telework at any time. Agreements will be renewed every year, and renewal will be simple and easy.

B. Requests will be made through an online application form. If the request is denied, the supervisor will respond in writing and include explicit reasons for the denial.

C. Telework applications shall be promptly approved, disapproved or returned for revision and resubmission. The supervisor will normally respond within seven (7) calendar days of an application.

D. Employees may request to telework on a regular (recurring, set schedule) or on a non-regular (varying, ad-hoc or episodic) basis.

E. Scheduling requests for non-regular telework and schedule adjustments to regular telework will be made via email or similar, easy-to-use means. For such requests an Employee must already be approved to participate in telework. Supervisors shall promptly respond to such scheduling requests and give reasons for any denials.

F. Telework applications or changes that must be approved at higher than first-line supervisory levels will be acted upon in a timely manner normally within fourteen (14) calendar days. Upon request, the higher-level manager shall provide any reasons in writing with specificity as to why the approval is taking longer than the normal timeframe.

G. Requests that are denied or returned for revision will be accompanied by a specific written description regarding the denial or the need for changes.

H. The Agency agrees that telework schedules will not arbitrarily be set at some maximum level, e.g., one day per week. Instead, the approving official shall consider the Employee's job and aspects outlined in Section 1.0, Section 1.1, and Section 2.0 above. To the extent possible, the approving official will make decisions that promote and maximize the effective use of telework.

I. Approved teleworkers shall not be required to provide detailed work plans in order to schedule ad hoc, non-regular, or episodic days. In cases where an explanation of non-routine telework is justified, supervisors should request summary or general work descriptions in order to keep the process of telework scheduling simple and easy.

Section 4.0 Evaluation of Work

A. Any Employee who is teleworking will have their work evaluated in the same fashion as an onsite Employee, or how the Employee has historically been evaluated while at their regular onsite duty station.

B. Employees will communicate and complete work in a telework status as they would in their onsite duty location.

C. Employees will not be requested to provide summaries of their work, deliverables, and-or work products to their supervisor or to their supervisory chain of command, based solely on their status as teleworkers.

Section 5.0 Call Backs

A. Employees may be required to report to their official duty station for previously scheduled training, conferences, other meetings, or to perform work on a short term basis that cannot otherwise be performed at the ADS or accomplished via telephone or other reasonable alternative methods. Employees will be given advance notice of such events and will have appropriate time to report to their duty station in no cases less than an hour unless an emergency occurs.

B. Employees may also be required to report to their official duty station for emergency operational exigencies to perform Agency work which cannot otherwise be performed on another workday, at the ADS, via telephone or other reasonable alternative methods. In such cases, Employees will be provided reasonable advance notice and be provided a reasonable time to report. Employees should make every effort to report as soon as possible. With good and sufficient reason, the Employee will be permitted up to two (2) hours to report.

C. If a teleworker is directed to travel to their duty station or main office during his or her regularly scheduled basic tour of duty - for instance, for an unplanned meeting, or an emergency at the duty station - the teleworker's travel hours must be credited as hours of work. If the teleworker is directed to travel back to the main office before or after his or her regularly scheduled basic tour of duty for irregular or occasional overtime work, the Employee is entitled to at least two (2) hours of overtime pay under the "call back" rules. (See 5 C.F.R. 550.112(h) and 551.401(e).)

Section 6.0 Removal

A. The Agency may remove an Employee from the Telework Program due to one or more of the following:

1. The Employee is placed on a leave restriction. The Employee is eligible to reapply for participation upon lifting of the leave restriction.
2. The Employee is placed on a Performance Improvement Plan (PIP). The Employee is eligible to reapply for participation thirty (30) days after successfully completing the PIP.
3. The Employee's failure to adhere to the requirements specified in the Telework Program Agreement "Terms and Conditions" (see Appendix 3) – except where there is conflict or confusion with this Article or CBA, in those cases the CBA language would take precedence.
4. The Employee has demonstrated inability to adhere to the provisions of the agreement, regular non-responsiveness to email and telephone calls, non-availability, or working at the ADS has proven to place an undue burden on other office staff.

5. Any removals from telework will be provided in writing to the Employee with specific details that clearly explain why the Employee is being removed. In addition, if the Union wishes to see such removal letters they will be provided upon request.

B. Normally, Employees will not be removed from participation for single or minor infractions of Telework requirements. In such cases, managers will make a bona fide effort to counsel Employees about specific problems before cancelling an Employee's participation in telework. The counseling will be confirmed in writing.

C. For those Employees who office-share or "hotel" with other Employees, their removal from the telework program shall be for more significant matters and, with the exception of egregious violations, the Employee and manager shall work in a diligent and prompt manner to address and resolve any problems before the Employee is removed from the program.

Section 6.1
When a decision is made to remove an Employee from the Telework Program, the Employee must be given written notice indicating the explicit reason(s) for removal. Unless otherwise specified, the Employee may reapply for Telework Program participation thirty (30) calendar days after removal from the Program, provided that her/his performance is at least Level 3: Achieves Expected Results (AE), or an equivalent ratings level.

Section 7.0 Problems Affecting Work Performance
Employees will promptly inform managers whenever any problems arise at the telework site which adversely affects their ability to perform work at the ADS. Examples could include situations such as equipment failure, power outages, telecommunications difficulties, etc. In such cases, the Employee may request annual leave or report to the regular work place.

Section 8.0 Hours of Work and Leave
Employees performing work at the ADS are subject to the same workday requirements regarding hours of work and leave as they would be if they were performing work at the official duty station.

Section 8.1
When Employees do not telework their usual telework day Management will coordinate with them to find another mutually acceptable day.

Section 9.0 Travel Reimbursement
Employees will be reimbursed for official travel as if working at their official duty station.

Section 10.0 Emergency Closing-Late Openings-Early Dismissals

Section 10.1 Discretionary Closures
When Employees are released from duty for all or part of the day at the onsite work place as a discretionary benefit, such as closing early before a holiday, Employees who are teleworking that day will be released from duty for the same amount of time.

Section 11.0 Additional Requirements

Employees participating in the Telework Program will be required to:

1. Observe existing policies for requesting leave, in accordance with current agreements and-or past practice;
2. Utilize any government owned-leased equipment for official purposes only and safeguard government data-documents as currently required at their official duty station; and,
3. Adhere to applicable security protocols governing information management and electronic security procedures for safeguarding data.

Section 12.0 Equipment and Support

The Parties agree that a robust and successful telework program is greatly dependent upon adequate technology, equipment and support for teleworkers. Consequently, the Agency will ensure that Employees have proper equipment, resources, and technology that allows Employees to maintain their productivity and work performance compared to their official duty station.

Section 12.1

Employees are to use government equipment appropriately and for authorized use only. Employees are permitted limited personal use of authorized government property if the use (1) is incidental and involves minimal additional expense to the government, (2) does not interfere with staff productivity, the NIH mission or operations, (3) is not used to misrepresent oneself or NIH, (4) does not compromise the integrity of any NIH system or system security safeguards, and (5) does not violate federal laws.

Section 12.2

To the extent possible and budget permitting, the Agency shall provide appropriate resources and services for Employees to telework without diminished performance or productivity. Employees are not expected to incur personal expenses associated solely with their telework status.

A. As a voluntary workplace option, the Parties agree that telework can benefit both the Employee and the Agency.

B. Employees will typically provide their own space, furniture and utilities.

C. The Employee's supervisor, in consultation with the Employee will determine the government equipment needed for telework.

D. The Agency shall provide computer equipment, software, appropriate supplies, and other equipment necessary for an Employee to perform assigned duties at the ADS. The Agency will also make full use of surplus equipment and supplies to support telework needs.

E. The Agency will ensure fair and equitable distribution of equipment and software for teleworkers. Any denials shall be provided in writing to the Employee with explicit reasons for the denial.

Section 12.3

Employees will normally provide their own internet (data) connections. If an Employee does not have an internet connection and one is required for the Employee to perform assigned duties at the ADS, budget permitting, the Agency will provide internet connections through government devices or services (e.g., wireless router or air card).

The Agency will only reimburse an Employee's costs for personally-acquired internet services if no equivalent alternative exists.

Section 12.4
The Employee will be responsible for home maintenance, or any other incidental costs (e.g., electricity) associated with the use of the ADS. The Agency will be responsible for the maintenance and repair of government owned equipment (e.g., a government owned computer). The Employee does not relinquish any entitlement to reimbursement for authorized (in advance, if appropriate) expenses incurred while conducting business for the Agency as provided for by law and implementing regulations.

Section 12.5 Offsite Computer Support
Teleworkers will use government-supplied computers, typically portable models, at the alternate duty station (ADS) except in instances where exceptions have been obtained. Computers will be set-up for remote use by Institute support personnel before they are taken to the ADS. The Agency will provide technical support by phone, email or other easy to use method to resolve problems that may arise at the alternative worksite. If this remote assistance does not resolve issues, teleworkers are expected to bring malfunctioning equipment to the official worksite for problem diagnosis and repair.

Support personnel may be dispatched to the teleworker's ADS only in special cases. Offsite visits to the ADS are considered a last resort in resolving a problem. The Parties agree that every effort to resolve a problem will be made prior to sending support personnel to the ADS for offsite support.

Support personnel will assist only with problems that could not be resolved remotely or by having the Employee bring the equipment to NIEHS facilities. Support personnel will assist only with government-provided equipment or software. If there is no NIH tag or federal property documents there will be no support – all such information must be provided in advance of a visit.

Offsite computer support will be provided only during normal NIEHS business hours and during a telework day scheduled in coordination with the teleworker. Teleworkers are expected to provide a safe and business-like environment for support personnel. When the ADS is in a home, the teleworker must ensure that homeowner or renter liability insurance is provided.

To the extent possible, male support personnel will not make offsite visits alone with only a female staff member present at the ADS, and vice versa.

Any offsite support will be provided strictly in accordance with rule, regulation, and law.

BUEs will not be required to provide offsite computer support for teleworkers.

Section 13.0 Offices and Office-Sharing
As public servants, the Agency and Employees share a responsibility to be good stewards of public resources including office space and associated maintenance and utilities. The Parties further agree that telework, when optimized, offers an opportunity to improve the efficiency of federal space management. Specifically:

1. The Agency will provide appropriate office space to teleworkers when they are working onsite, consistent with Article 43, Office and Other Space.

2. Employees who are regularly scheduled to be out of the office three (3) or more days per week may be required to share space, use hoteling or use smaller workspaces. The regular absence from the onsite office may include only telework or may be a combination of telework and alternative work schedules.
3. Employees who modify their telework schedule (to fewer than three days per week) or discontinue telework will be given offices or workstations comparable to those they occupied previously. However, the Agency will not guarantee an Employee's return to the exact office or workstation previously occupied.
4. Upon an Employee's request, the Agency will agree to a ninety (90) day trial period for an Employee to telework with three or more days per week out of the office. During this trial period, the Agency would exempt the Employee from sharing, hoteling and size alternatives described above. This approach is intended to allow both the supervisor and the Employee to gain confidence that the expanded telework arrangement is a good long-term solution.
5. The Agency agrees that an Employee may choose to discontinue telework at their discretion or to modify their telework schedule upon request and approval. Employees shall not be coerced to telework or looked upon unfavorably if they do not telework.
6. The Agency shall ensure that teleworkers who share offices or hotel have adequate space and resources on those days when office meetings occur or when otherwise are in the office.
7. Within ninety (90) days of the effective date of this Agreement, the Parties agree to develop a pilot approach for telework office sharing, hoteling and alternative sizing per Article 12, Mid-Term Bargaining. The Agency and Union will jointly develop the pilot approach, duration and evaluation factors. All findings will be shared between the Parties and the results of the pilot will be used by the Agency, in cooperation with the Union, to develop ongoing approaches.

Section 14.0 Staff Coverage

Coverage requirements will be determined on a case-by-case basis. When Employees are working at an ADS, this does not necessarily detract from coverage requirements. On the contrary, Employees working at an ADS with e-mail capability enhance coverage requirements. The Agency will make every effort to maximize telework privileges and work with Employees to ensure adequate coverage through a range of options that include but are not limited to, flexible work schedules, phone, email, etc. Telework will be provided fairly and equitably among staff.

Section 15.0 Power Failure at ADS

Employees may be excused by their supervisor for a power or equipment failure that affects the ADS, but not the official work site. If the Employee can continue to perform work which is not affected by the failure, he or she is expected to do so. Further, if a power failure starts before the work period begins and is expected to continue for all or most of the work schedule, the supervisor may grant the Employee annual leave, change the tour of duty, or have the Employee report to the official work site as based upon discussions with the Employee.

Section 16.0

The Parties agree that telework arrangements should not have negative impacts on the work of other members of the work group (e.g., co-workers, supervisors). By definition such an effect would be a significant disruption of work or ongoing frequent requests by a teleworker that would adversely affect office or group operations. Regarding such disruptions the Employee should first be counseled in an informal manner and should such disruptions continue may be removed from the telework program.

Section 17.0 Unscheduled Telework
The Agency will make every effort to permit Employees to telework to the maximum extent possible on unscheduled telework when such conditions warrant. The Parties agree that an Employee must be approved to telework to use unscheduled telework. An Employee shall, to the extent practicable, notify their supervisors that they are taking the unscheduled telework option. If an Employee's request is denied then the supervisor must provide the specific reasons in writing and in a timely fashion to the Employee.

In emergency situations, if an Employee has made a good faith effort to reach his or her supervisor for telework approval, but is unable to obtain advance approval, then the Employee should proceed according to his or her best judgment. The Employee will then follow normal procedures for telework scheduling and leave requests as soon as conditions permit.

Section 18.0 Official Time for Union Representatives
The Agency and Union agree that Union representatives may use official time in accordance with the Official Time Article while in a telework status. Union representatives must be on an approved telework agreement for such official time to be approved.

Section 19.0 Telework Application Telework Agreement
The Agency agrees to ensure that its telework application is simple and easy-to-use. The telework application will only ask questions or require responses pertaining to necessary information that must be collected by the Agency in order to promote and maximize the effective use of telework.

The Agency will not require any special safety or work conditions at the telework location or ADS that differ from what is required at the regular duty station.

The Agency agrees to a webpage that would provide definitions and other information for teleworkers who are completing the telework application and agreement.

Teleworkers will be able to log-on to a webpage that will provide their status as a teleworker and, if necessary, change information that will be sent to their supervisor regarding their telework status. Cancellation of a telework agreement shall be made in accordance with this Article and CBA.

Whenever the Agency modifies the telework agreement they shall provide the Union with sufficient notice and opportunity to bargain in accordance with the Article 12, Mid-Term Bargaining.
In the telework application, the Agency agrees to include that the Employee's participation is voluntary, the Employee may withdraw from the program at any time, and that all Parties will adhere to the applicable policies outlined in Article 16, Telework, of the Collective Bargaining Agreement.

The Employee must ensure that they can be contacted without delay while teleworking, preferably by forwarding their office phone to their personal phone. Providing personal information such as personal phone number or email address is voluntary. Use of NIEHS or government email is normally the primary (but not the only) means of communication while teleworking.

An Employee's time and attendance for work performed at the ADS will be recorded in the same manner as is used to record the performance of work at the official duty station. Specifically, while the Agency's timekeeping system may be used to schedule and record telework, it will not be used to log

Employees in and out while teleworking unless the Employee is required to do so at the official duty station.

Appendix 3: Telework

Telework Terms and Conditions (From Telework Application)

1. I agree to perform services for the NIH as a teleworker and understand that teleworking is simply an alternate work location that must be requested and approved by my supervisor prior to beginning to telework.

2. I acknowledge that I have read the NIEHS telework policy and will adhere to it and all other applicable policies and laws. If I am in the Bargaining Unit, I understand that the telework provisions within the Collective Bargaining Agreement (CBA) apply.

3. Telework is voluntary; no one is required to telework and it is not an entitlement. The telework arrangement may be modified or terminated by my manager for a good business reason, such as if it adversely affects the operation of the Agency.

4. I agree that my duties, responsibilities, conditions of employment, salary, and benefits will remain unchanged.

5. I agree that my work schedule and other terms and conditions of employment will conform to NIH personnel policy and, if applicable, the current Collective Bargaining Agreement (CBA), and will meet the terms of this telework agreement.

6. I agree to maintain effective communication while teleworking. Government email will be the primary communication tool for contacting me but not the only method. I will assure that I can be contacted as if I were working onsite while teleworking by forwarding my office phone or, if I prefer, providing a Government PDA number or personal remote phone number.

7. I agree that, if applicable, I will establish dependent care arrangements during agreed upon telework hours.

8. I agree to designate a remote worksite that is free from safety hazards and meets Agency ergonomic standards as defined in the NIEHS Health and Safety Manual, "Indoor Environment," at: http://junction.niehs.nih.gov/divisions/management/safety/manuals/health_safety/chpt11/section_a/index.htm#four

9. If I plan to telework (excluding government travel) from any other location, I agree to notify my supervisor in advance and secure my supervisor's approval.

10. I agree to comply with applicable NIH policies when using any NIH-provided equipment, software, data, or supplies.

11. I understand that computer problems will be resolved remotely (e.g., by phone consultation or by a technician remotely accessing my equipment) or by me returning the equipment to the NIEHS work site.

12. I agree to return to the NIEHS any government equipment, software, data, or supplies upon termination of my telework agreement or termination of my government employment.

13. In the event that I am unable to perform my work duties while teleworking due to equipment failure or other reasons, I agree to notify my supervisor. I understand that if I am unable to perform my normal duties from my remote location that I may be assigned other work or be asked to report to the primary office worksite.

14. I understand that my remote worksite is considered an extension of the NIEHS primary worksite. If I am injured while performing official duties during my tour of duty, I will be covered by the provisions of the Federal Employees' Compensation Act. If I have a job-related accident during my telework hours I will report it to my supervisor as soon as possible. Workers Compensation Guidelines for Employees and Supervisors

15. Provided I am given twenty four (24) hours' notice, I agree that the NIEHS may make on-site visits to my remote worksite during my normal duty hours to investigate the condition and area related to any worker's compensation claim for injuries that occurred at the remote site.

16. I agree to indemnify and hold the NIEHS harmless regarding any injuries, other than my own, that occur at my remote worksite.

17. I agree to be responsible for the maintenance and repair of all of my personal property, and I understand that I should have appropriate insurance coverage.

18. I understand that the information supplied by me and contained in this Telework Agreement plus any additional information, inquiries, or surveys may be used for data collection and evaluation of the NIH Telework Program.

19. I understand that Telework agreements are valid for twelve (12) months unless otherwise specified. If conditions change, the telework agreement may be modified or cancelled.

20. If emergencies lead to full-day closings at the official worksite (e.g., inclement weather), and I am able to work at the alternate site, then I am expected to telework as scheduled.

21. I understand that I will need remote access privileges in order to access NIH network resources from my telework location. Information on requesting remote access service and other IT support is available at http://junction.niehs.nih.gov/divisions/management/computer/service

Article 17: Training and Career Development

Section 1.0 General Provisions
The training and development of Employees is important in carrying out the mission of the Agency. The Agency is responsible for ensuring that all Employees receive the training and development necessary for improvement of the workforce.

Section 1.1
Employee training and development will be administered in accordance with all applicable laws, rules, regulations, and the provisions of this Agreement.

Section 1.2
Either Employees or managers may initiate discussion of individual training needs. Such discussions may or may not be linked to an Individual Development Plan (IDP).

Section 1.3
Employees may be granted variations within the normal workweek including leave without pay and absence without charge to leave for training when the primary objective of the training is to improve the Employees' general skills, knowledge, and abilities, or career growth. The Agency shall, to the maximum extent practical, ensure the scheduling of training and education (over which the Agency has administrative control) so that it occurs during the normal workweek, including travel to and from training.

Section 1.4
All Agency-provided training will be conducted by instructors who are trained and qualified to provide such training.

Section 2.0 Non-Discrimination
The Parties agree that the nomination and/or selection of Employees to participate in training and career development programs and courses shall be nondiscriminatory and made without regard to race, color, religion, sex, national origin, handicap, age, sexual orientation, parental status, political affiliation, or Union membership or activity, and shall be in accordance with equal employment opportunity guidelines and consistent with other applicable laws, rules, regulations, and the terms of this Agreement.

Section 3.0 Training Programs
The Agency will publicize training and education programs as they become available on appropriate office bulletin boards, including in computer compatible format, by e-mail, and Local Area Network systems. The Agency will remind Employees, at least annually, of the availability of government-sponsored training programs, the general scope of training, the criteria for approval of training, and the nomination procedures. The Agency will advise individual Employees, upon request, of currently available government-sponsored training courses so as to provide the Employee the opportunity to express timely interest.

Section 3.1
Training nominations and/or approval will be based on the potential use of the training to improve organizational or individual performance or other criteria established by applicable law, rule, regulation,

and the provisions of this Agreement. Nomination and selection for training and career development programs and courses will be made in a fair and equitable manner.

Section 3.2
When an Employee is nominated for training, a copy of the Employee's Individual Development Plan (IDP), if any, may be attached to the nomination for consideration by the supervisor or deciding official. Employees will be notified in writing of the approval or disapproval of their nominations and the reason(s) for disapproval. To the extent feasible, Employees will be notified of the approval or disapproval prior to the starting date of the training. Should an Employee's nomination for training be disapproved for lack of resources, the Employee may be re-nominated as funds later become available, and the nomination will be given first consideration in seniority order.

Section 3.3
A record of satisfactory completed training, if known, will be maintained by the Agency. The Employee is responsible for furnishing information on outside training courses that were completed if she/he wants the information included in their file (college, technical courses, etc.).

As appropriate, records will be placed in the Employees' Official Personnel File (OPF). All training records maintained by the Agency will be made available to the Employee upon request.

Section 3.4
Appropriate training will be provided to all Employees whose positions are abolished or re-engineered as a result of reorganization, change in mission, budget priorities, work elimination, introduction of new duties, transfer of work, or implementation of new technology before expecting adversely impacted Employees to perform new or altered duties.

Section 3.5
Selections for training will be made impartially, fairly, and equitably. If appropriate, qualified Employees with the earlier NIEHS entry on duty (EOD) shall be selected.

Section 3.6
To the extent practicable, the Agency shall provide training to staff during regular duty hours. The Agency and Employees are free to consider and use other hours for training. Such training should be convenient to the extent possible for both Parties; however, the Agency reserves the right to make such determinations.

Section 3.7
The Agency shall notify Employees as soon as possible regarding mandatory training so that Employees have adequate time to make any necessary personal arrangements.

Section 4.0 <u>Career Development</u>
Each Employee will be permitted to establish an IDP. An IDP is a flexible document jointly and voluntarily developed between supervisor or other Agency-designated Management official and Employee to be used as a roadmap for the Employee's professional and career development. The primary emphasis of the plans will be, first to address the competencies (or knowledge, skills, and abilities) needed by the Employee in his/her current position; second, to prepare Employees for new career opportunities; and third, to address the competencies needed for advancement beyond his/her current journey level. Each plan shall establish a series of milestones and shall state the responsibilities of each party to realize such

milestones. Employees who have an IDP approved by their supervisor may be granted up to forty (40) hours of administrative time per calendar year for self-directed training or developmental activities, if such activities are related to the Employee's current or prospective job duties.

Section 4.1
Employees shall be permitted to prepare an IDP at any time. Upon request, the supervisor or other Agency-designated Management official will assist the employee in the preparation of the IDP and will review it with the employee to ensure that the plan conforms to organizational and individual career needs. Employees may seek assistance from career counselors, IDP coordinators, employee development specialists, and others who may provide advice and assistance in the preparation of the plan.

Section 4.2
Employees will not be penalized in any manner, including during the performance evaluation process, for not completing or not implementing an IDP.

Section 4.3
The Agency agrees, as permitted by law or regulation and within budget constraints, to continue to provide career counseling services and programs.

Section 4.4
The Agency will make efforts to use Employees' skills to the fullest extent and to provide the maximum feasible number of opportunities for Employees to improve their skills through any of a variety of training sources.

Section 5.0 Training and Career Development Expenses
Employees will not incur costs for Agency-required training necessary for the performance of their assigned duties. Management shall determine required training.

Section 5.1
The Agency shall reimburse Employees for all appropriate expenses for approved training as long as budget permits and consistent with regulations. This would include appropriate costs such as tuition, books, supplies, and travel. The Agency may not pay for training that is unrelated to official government duties. Denials shall not be unreasonable and will be provided in writing to the Employee.

Section 5.2
The Agency will pay Employees' expenses for attending mandatory or required conferences and/or meetings as provided in 5 C.F.R. 410.404:

1. The announced purpose of the conference is educational or instructional;
2. The content is germane to improving individual and/or organizational performance;
3. Most of the conference consists of planned, organized exchanges of information between presenters and audience; and,
4. The Employee will derive developmental benefits through attending.

Section 5.3
When fees are a necessary cost directly related to training or the payment of fees is required to undergo training, such fees will be reimbursed by the Agency within budget constraints.

Section 5.4
To the extent the Agency has established or establishes in the future a condition of employment that Employees must be members of particular professional societies or organizations, the Agency will reimburse Employees for their dues, subject to the availability of funds/budget permitting.

Section 5.5
Any Employee who receives in excess of eighty (80) hours of training in one (1) non-Government training program must sign an agreement using the appropriate form to continue in HHS employment for a period three (3) times the actual amount of the time spent in training. To the extent practicable and in compliance with regulations, waivers shall be granted for a mandatory training session in excess of eighty (80) hours if requested by the Employee.

Employees who fail to successfully complete the training may be obligated to reimburse the government. However, when an Employee fails to attend or academically pass a training course due to circumstances beyond the Employee's control, they will not be expected to reimburse the government for the cost of that training. Examples include but are not limited to: unforeseen severe weather or road conditions, failure by Agency to notify Employee in advance of scheduled training, simultaneously scheduled Employee training or assignments, and illness.

Section 5.6
Upon request, Employees will have their work hours or workweek adjusted to allow courses to be taken that are not sponsored by the Agency if additional costs will not be incurred; completion of the course will better equip the Employee for work in the Agency; and there will not be appreciable interruption of work.

Section 6.0
The Agency shall develop a set of objective criteria to be used in making decisions regarding training. These criteria will be shared with the Union in relation to pre-decisional involvement and Section 7.0 below. The criteria will be standardized and applied, to the extent practical, to all levels of Management who make decisions related to training. The criteria shall be guided by this Article

The criteria shall be negotiated with the Union in compliance with Article 12, Mid-Term Bargaining.

Section 7.0 Training Committee
The Union and Agency will establish an advisory training committee to review Agency training and career development programs and make recommendations for program improvements and greater access and utilization by Employees. The Training Advisory Committee shall meet to discuss: training methodologies, training and career development needs, education and communication, efficacy of training initiatives; and other related issues.

Section 7.1
The Training Advisory Committee is a recommending body that will use consensual decision making to address issues. It will meet quarterly and submit joint recommendations to the Agency Director with a copy provided to the designated Union representative.

Section 7.2
The Training Committee will be composed of six (6) members. Half of the Training Advisory Committee will be appointed by the Union and half will be appointed by the Agency.

Section 7.3
The Training Advisory Committee will meet on a quarterly basis. Normally the meeting will be held in RTP, NC. If the Union selects a member outside the duty station, they will use conference call or video conferencing, whichever is available. Dates for these meetings will be set by mutual consent of the Parties. The meetings will be face-to-face and there will be a minimum of three (3) such meetings per year. Additional meetings may be jointly agreed to. The Agency will pay for all meeting-related travel expenses as well as per diem for Union members of the Training Advisory Committee. The meetings will be held in at mutually agreeable locations. Official time authorized for Training Advisory Committee meetings will be handled in accordance with Article 11, Official Time.

Section 7.4
Establishment of the Training Advisory Committee is not a waiver of the Union's statutory rights to information, consultation, or negotiations pursuant to 5 U.S.C. 71. The Union reserves the right to request information and negotiations on issues impacting conditions of employment.

Section 8.0 Re-Training
Agency to provide Employees assigned to new positions with necessary training.

Section 8.1
The Agency shall provide training to any necessary unit Employee whose position is adversely affected by reorganization or changes in mission, budget, or technology in order to assist in the placement of the Employee in a vacant position.

Section 8.2
The Agency shall retrain or provide any necessary training to Employees displaced due to technological change.

Article 18: Performance Management

Section 1.0 Overview

Section 1.1
The Agency and the Union are committed to providing quality public service. Accomplishment of the Agency mission should be achieved in an environment that recognizes the value of its Employees and the importance of teamwork. Through the performance management program, the Agency shall ensure effectiveness and equity in managing Employee performance.

Section 1.2
The performance management program is a continuous, systematic process by which managers and supervisors communicate and clarify organizational goals and objectives to Employees. This system will identify individual and/or team accountability for accomplishing goals, address developmental needs for Employees, monitor progress and provide formal feedback to Employees. It is one component of the on-going process of performance management, which also includes frequent and ongoing feedback, recognition and awards, coaching, skills development, and appropriate corrective action.

The performance management program and its application of performance standards and performance elements shall be fair, objective, equitable, reasonable and related to the Employee's official position.

Improvement in the performance management program will be sought by analyzing work processes and correcting systemic problems and/or revising processes, as appropriate.

Section 1.3
The purpose of the performance management system in this Article is to provide a framework to ensure honest feedback and open, two-way communications between Employees and their supervisors (or other rating officials). The system focuses on contributions within the scope of the Employee's job description in achievement of the Agency's overall service mission. Accomplishment of objectives is intended to be achieved within a teamwork environment. The main emphasis of this system is day-to-day interaction among Employees and supervisors which includes the implementation of modern and flexible work practices where the Agency's objectives are emphasized by progressive personnel management.

Section 1.4
The performance management system will be used to:

1. Communicate organizational goals and objectives to Employees;
2. Promote individual and/or team accountability for accomplishing organizational goals;
3. Effectively address the training needs of each Employee;
4. Monitor progress and provide Employee feedback;
5. Use appropriate, fair, and consistent measures of performance as the basis for recognizing and rewarding individual accomplishments;
6. Use the results as a basis for appropriate personnel actions; and
7. Assess and improve individual and organizational performance.

Section 2.0 Definitions

A. *Performance* means an Employee's accomplishment of assigned work as specified in the critical elements of the Employee's position.

B. *Performance Elements* capture work assignments and responsibilities that are either critical or non-critical.

C. *Critical element* means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an Employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

D. *Performance standard* means the Management approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance. Performance standards provide the framework for the expectations of what Employees will accomplish and how it will be done. Employees are only rated on the standards that are applicable to them.

E. *Performance rating* means the written appraisal of performance compared to the performance standards for each critical element on which there has been an opportunity to perform for the minimum period (i.e., ninety (90) calendar days). A performance rating includes the assignment of a summary rating level.

F. *Progress review* means communicating with the Employee about his/her performance to date, compared to the performance standards for each element. Progress reviews are important for providing consistent performance feedback to Employees and can be conducted at any time during the appraisal period. One formal progress review is required and is generally conducted midway through the appraisal period. Ratings are not assigned for progress reviews.

G. *Rating of record* means the performance rating prepared at the end of an appraisal period for performance over the entire appraisal period. In most cases, a summary rating will become the rating of record.

H. *Rating Official* means the official who is responsible for informing the Employee of the critical elements of his/her position, establishing performance requirements, providing feedback, appraising performance, and assigning the summary rating. The rating official is ordinarily the Employee's immediate supervisor.

I. *Reviewing official* means an official with review and approval authority at a level higher than the rating official. Reviewing officials are ordinarily two supervisory levels above the Employee. Generally, only a rating official is necessary at NIEHS.

Any terms not defined above or in the Appendix, that relate to Performance Management, such as "appraisal," "critical element," or "performance rating" will, to the extent applicable, have the same meaning as in government-wide regulation. See 5 C.F.R. 430.203.

Section 3.0 Considerations When Assessing Performance

A. The Agency, when assessing performance, will consider factors that affect performance that are beyond the control of the Employee.

B. When numerical goals, guidelines, indicators and pars (level or standard considered to be average) are factors in appraising an Employee in a given element, Management will consider the Employee's other job assignments and the actual amount of time available to perform the job function being appraised under that critical element.

C. Management will also consider the amount of approved use of official time when evaluating Employee performance. Management shall not rate or consider any activity performed during official time with regard to performance evaluation or appraisal.

D. In the performance of and accounting for Agency work, statistical measures and their application will be reliable.

E. The procedures that are used to gather information in order to evaluate Employee performance must reasonably ensure the accurate evaluation of performance.

F. Management will timely disclose to each Employee all records that relate to his/her performance appraisal.

G. The Employee's individual development plan (IDP), if applicable.

Section 3.1
This system will be a positive building block in the foundation of relationships based on shared interests and mutual objectives. The assessment system will emphasize:

1. Employee development;
2. Administrative simplicity;
3. The supervisor's role as team leader and coach;
4. Overall Employee contributions;
5. Recognition of special skills and contributions such as translation and interpretive activities done as part of or in addition to regular job duties; and,
6. Unit and group achievement of the Agency's mission.

Section 3.2
The performance appraisal system will not:

1. Be used solely as a disciplinary tool;
2. Foster individual competition;
3. Be based on numerical goals and/or numerical performance levels not clearly communicated to the Employee;
4. Be punitive, adversarial, or overly labor-intensive;
5. Apply absolute performance standards except where they are crucial to the mission; and
6. Be based on expectations or requirements that are unrealistic and unattainable by most Employees working under normal conditions.

Section 3.3 <u>Feedback from Workgroup/Special Projects/Details</u>
Rating officials are responsible for obtaining feedback regarding an Employee's performance on workgroups, special projects, or details outside the normal work unit when the activity would have an impact on the determination of the Employee's performance. In determining whether to solicit feedback, consideration should be given to the activity, duration of the activity, and the amount of time the Employee spent on the activity.

Feedback should be obtained in writing from the supervisor responsible for the workgroup, project or detail. The rating official may include feedback obtained from a non-supervisory project leader, technical expert or team leader. Employees should be given a copy of the feedback and provided an opportunity to include comments.

Feedback shall not be solicited from co-workers although such feedback may be considered if given freely without any request or encouragement. If such feedback is considered it shall be provided to the Employee being rated.

Section 3.4 Forced Distribution

The Agency will not prescribe a distribution of levels of ratings for Employees covered by this Agreement. Each Employee's performance will be judged solely against his/her performance standards. The Employee performance management system and its application will be fair, equitable, reasonable and related to the Employee's position description.

Section 3.5

The Agency agrees to notify Employees regarding the process, procedures, and details of the performance system. In addition, to the extent practicable, the Agency shall be transparent regarding the budget process involved in performance awards. This will include but not be limited to a web page dedicated to explaining the basic budget process involved in formulating performance award budgets.

Section 3.6

Employees will only be evaluated on work which they have been assigned or expected to perform as described in their performance elements. Supervisors will not use or hold against the Employee, when evaluating performance, any of the following:

1. Factors or changes that affect performance and are beyond the control of the Employee; and
2. Authorized absences (including Union representation) during the course of the working hours.

Section 3.7

Awards granted during the year shall not be used to negatively influence PMAP ratings.

Section 4.0 Critical Elements

Section 4.1

Critical elements are those work assignments or responsibilities of such importance that unacceptable performance on one or any parts of the element would result in a determination that the Employee's overall performance was unacceptable.

Section 4.2

All critical elements to be used for performance appraisals will be directly related to the Employee's assigned Position Description, that the supervisor or other appropriate Management official has reviewed, determined to be complete and accurate for the duties assigned to the Employee, and communicated to the Employee at the beginning of the rating period or whenever elements or expectations change during the rating period.

Section 4.3
To the maximum extent feasible, the critical elements will be consistent for standard or like positions. Variations from these critical elements will be based on real differences in the job.

Section 4.4
The Parties agree that a reasonable number of critical elements shall be four (4) to six (6). Critical elements shall address performance, not necessarily conduct.

Section 4.5
Any element related to the HHS Strategic Plan or higher level organizational goal, objective, or outcome are only to contribute to such goals but no individual Employee is expected to be held accountable for the success or failure of any HHS goal.

The supervisor should ensure that the elements in each plan reflect the Employee's current responsibilities, are accurate, job-related, and are measurable (i.e., appropriately defined to clearly explain expectations for successful performance).

Section 5.0 <u>Performance Standards</u>

Section 5.1
Performance Standards are written statements of the expectations or requirements established by Management for a critical or non-critical element at a particular rating level. To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met.

Section 5.2
To the maximum extent feasible, the performance standards will be consistent for standard or like positions. Variations from these performance standards will be based on real differences in the job.

Section 5.3
Application of all performance standards shall be fair and equitable, and consistent with regulatory requirements.

Section 5.4
Standards, elements, or expectations shall not be based on arbitrary, subjective, or “zero” error rating methods. When quality is expressed in a standard or element related to an error rate, valid statistical methods shall be used to ensure fairness, reliability, and equity. Whenever any such statistical methods are used, their uses and bases shall be clearly communicated to the Employee. Upon request, the Agency will provide such methods to the Union in writing.

Section 5.6
The following principles shall be used in establishing performance standards:
Specific: Goals and expectations are clearly stated and direct.
Measurable: Outcomes are being achieved in comparison to a standard.
Attainable: Goals or results/outcomes must be achievable and realistic.
Relevant: Goals have a bearing on the overall direction of the organization, including the HHS Strategic Plan,
Timely: Results are measured in terms of deadlines, due dates, schedules, or cycles.

Section 5.7
Development of performance standards will include to the extent practicable performance metrics that are quantifiable and results-based for each individual performance objective that clearly define expectations and differentiations in performance levels. The performance metrics should define what is expected at the Level 3: Achieved Expected Results (AE), or an equivalent rating level, and the Level 5: Achieved Outstanding Results (AO), or an equivalent rating level.

Section 5.8
See Appendix 4 for a description of each rating level.

Section 6.0 Changes

Section 6.1
A. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given**.**

B. When an Employee's performance plan changes less than ninety (90) days before the end of the rating period, the Employee will be evaluated based on those parts of the performance plan that had previously been in place for ninety (90) days or more. In rare instances, rating periods may be extended if changes to the performance plan are changed shortly before the normal period ends.

Section 6.2 Discussions
Subsequent discussions between the Employee and rating official will normally be held when there is a change in the work situation, but not limited to:

1. Change in the supervisor of record;
2. Detail;
3. Change in the component's goals or objectives;
4. Change in assignments;
5. Change in the work process or product of the component;
6. Change in the composition of the work team;
7. When seasonal Employees return to duty; or,
8. When an Employee returns from an extended absence of ninety (90) days or more.

Section 6.3
For new or revised performance plans, Employees will be given ten (10) days to submit written or oral comments. Reasonable requests for extensions will normally be granted. Before comments are due, the Employee may request to meet on duty time with a Union representative to discuss the proposed changes in his/her performance plan. The Employer agrees to consider the written comments of an Employee before finalizing a new or revised performance plan.

Section 6.4 Effective Date
If the Employee declines to sign, the effective date of the plan (or rating) is the date the rating official attempted to obtain the Employee's signature. The supervisor will note this on the plan, citing the date the Employee was given a copy of the established plan.

Section 7.0 Communications and Training

Section 7.1
Prior to receiving their performance plans, Employees will be provided an opportunity and encouraged to participate in the establishment of their performance standards. Rating officials will give serious consideration to suggestions made by the Employees.

Section 7.2
At the beginning of every rating period, or upon entering on duty, Employees will meet with their rating official regarding their job functions and responsibilities. During this meeting, the rating official and the Employee will have an oral discussion to explain, clarify and communicate the Employee's job responsibilities to ensure that there is a clear and common understanding of the duties and responsibilities contained in the Employee's position description and performance plan and their relationship to the Agency's mission, and the levels of performance necessary to achieve each summary rating for a given critical or other element. The discussion should also focus on the development of performance metrics that are quantifiable and results-based for each individual performance objective that clearly define expectations and differentiations in performance levels. If there are no changes in job functions, responsibilities, or their relationship to the Employee's performance plan, the rating official will advise the Employee of that fact, and document in the Employee's records.

Section 7.3
Subsequent discussions between the Employee and rating official will be held, and critical elements or performance standards may be changed when there is a change in the work situation such as, but not limited to:

1. Change in the supervisor of record;
2. Detail;
3. Change in the component's goals or objectives;
4. Change in assignments;
5. Change in the work process or product of the component;
6. Change in the composition of the work team;
7. When seasonal Employees return to duty; or
8. When an Employee returns from an extended absence of ninety (90) days or more.

Section 7.4 Ongoing Performance Discussions

A. Informal discussions are a standard part of supervision and should occur throughout the annual assessment period. Discussions may be initiated by the supervisor, rating official (if not the immediate supervisor) or Employee. Discussions may be held one-on-one or between a supervisor or rating official and a work group. If an Employee requests a discussion with his/her rating official to discuss his/her performance, it will normally be scheduled within fifteen (15) work days. If, in rare circumstances, this is not practicable, the Employee's file shall be documented to show the request for a discussion and the failure to have one.

B. Discussions should be candid, forthright dialogues between the supervisor or rating official and Employee(s) aimed at improving the work process or product and developing the Employee. The discussion will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the Employee's or work team's work product.

C. Where indicated, the supervisor or rating official should provide additional guidance aimed at developing the Employee(s), removing obstacles and improving the work product or outcome. Discussions will provide the Employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for improving processes.

Section 7.5
The Agency agrees to provide regular training to Employees regarding the performance management process, which shall include but is not limited to: how Employees are rated, the role of the Employee, supervisor, and/or rating official, how to develop quantifiable and objective elements, performance expectations, and ongoing frequent feedback from supervisors. (Materials on the Agency's performance system shall be provided to all new Employees during or before orientation.)

The Agency also agrees to provide regular training to supervisors that will include but not be limited to: giving positive and constructive feedback (formal and informal), allowing for two (2) way communication, equitable performance expectations, developing objective elements, fostering and supporting Employee development and professional growth.

On a regular basis the Agency shall notify Employees of career and developmental programs and resources. For those Employees who request it, the Agency shall provide developmental counseling on how to improve their performance and/or advance their career.

Section 8.0 Mechanics

Section 8.1
All Bargaining Unit Employees will receive an annual performance rating for the period January 1 through December 31. The performance rating will be issued in writing to the Employees within thirty (30) days of the end of the assessment period. Where an Employee is subject to a Performance Improvement Plan (PIP) under Section 10.2 and the established ending date would not afford him or her a reasonable opportunity to demonstrate improved performance this period will be extended.

Section 8.2
A. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given**.**

B. When an Employee's performance plan changes less than ninety (90) days before the end of the rating period, the Employee will be evaluated based on those parts of the performance plan that had previously been in place for ninety (90) days or more. In rare instances, rating periods may be extended if changes to the performance plan are made shortly before the normal period ends.

Section 8.3
In regard to performance, Employees will not be responsible for matters beyond his/her control.

Section 8.4
For any group or related committee that makes recommendations or provides input regarding PMAP, the Union shall be permitted to have one (1) representative on such group and the Union representatives shall have full committee rights on awards matters affecting or pertaining to unit Employees but will not vote on actions pertaining only to non-unit employees. The Parties review this as

PDI, see Executive Order 13522. The Agency agrees that any changes to the PMAP or performance changes shall be negotiated with the Union per Article 12, Mid-Term Bargaining.

Section 8.5
The Parties agree that any aspect of the PMAP process or system may be grieved in compliance with applicable laws, government-wide regulation, this MOU, and the CBA. Mid-year reviews may not be grieved.

Section 9.0 Performance Reviews and Ratings

Section 9.1 Progress Review

A. Performance discussions will occur at appropriate times between Employees and rating officials during the appraisal period. At least one (1) progress review is mandatory and should take place approximately midway during the appraisal cycle. In addition, the rating official and the Employee may meet on a more frequent basis if desired by either party and are encouraged to have ongoing dialogue and feedback as needed regarding performance, accomplishments, work unit goals, or training and development opportunities and needs. The Employee will be provided clear guidance on what type of performance will merit a rating of "meets" expectations. Appropriate guidance will be provided whenever performance is determined by the Agency to not be at the "Level 3: Achieved Expected Results (AE)," or an equivalent rating level. Any performance deficiencies shall be communicated to the Employee promptly and suggestions given to help improve.

B. During the discussion, Management should discuss the Employee's contributions and results achieved within each performance element, reinforce expectations, and identify needs for performance improvement.

C. To ensure that all performance related activities are identified and documented, Employees should provide feedback about their contributions to managers.

D. Managers should document the content of performance discussions. The documentation may be a short statement or a bulleted list highlighting individual accomplishments and/or contributions.

E. During the progress review the supervisor will indicate to the Employee whether they are meeting or exceeding the AE level for each critical job element. The communication during a progress review does not constitute a final rating and may be subject to change. The Employee's performance at the mid-year point is only a reflection of their performance to that date. If, at the time of a progress review, the rating official or supervisor is aware of an instance(s) of performance deficiency below Level 3: Achieved Expected Results (AE), or an equivalent rating level, in any element, they shall provide that information to the Employee at that progress review and what would be necessary for the Employee's performance to improve.

F. Supervisory conclusions based upon observations of an Employee by Management will be timely communicated to the Employee during informal discussions and/or the progress review. If the Employee disagrees with the supervisory conclusions on individual cases or overall performance to date, he/she may provide Management with written rebuttals which shall be placed in the Employee's file.

G. If the supervisor or rating official does not provide any feedback or documentation during the rating cycle to the Employee regarding a performance deficiency, then any such deficiency will not be used to adversely affect the final performance rating. Exceptions can be made but they should be rare involving unusual circumstances. The Agency agrees that supervisors shall make every effort to promptly communicate any deficiencies to the Employee. For any exception the supervisor or Management official shall provide a bona fide rationale with specificity and in writing (to the Employee) regarding why they did not promptly communicate a performance deficiency. Documentation (if it exists) of such deficiency shall be given to the Employee. This information, rationale and documentation, will be provided when the supervisor first communicates or discloses the deficiency, as mentioned above, to the Employee.

H. Employees and supervisors will sign the performance plan to acknowledge that the formal discussion took place. If the Employee disagrees with their rating then they do not need to sign the performance plan. The documentation will be placed in the Employee's file and a copy given to the Employee.

I. Signatures for ratings shall not be requested or given until the rating official/supervisor has provided their performance evaluation in writing on the performance plan.

J. Performance progress reviews (mid-year) are excluded from Article 22, Grievances.

Section 9.2
The Agency agrees that it is important for supervisors to communicate with Employees to set relevant, achievable goals that support the organization's mission. Each Employee should actively participate in developing his/her performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics. The following is a list of actions that supervisors shall follow:

1. Communicate to Employees their strengths and encourage the development of necessary skills to overcome weaknesses.
2. Active partnering in performance management to reinforce positive manager-Employee relationship.
3. Provide equitable performance expectations.
4. Submit constructive feedback and improvement strategies.
5. Discuss and identify, where appropriate, supervisor support of Employee development and professional growth.
6. Development of objective performance measures that reflect job requirements.
7. Provide an atmosphere that allows for two- way communication.
8. Provide and encourage constructive feedback.
9. When applicable, discuss individual goals or IDP.

Section 9.3 Performance Rating
The performance rating given to Employees under this performance assessment system is used for a number of purposes.

1. Within-Grade Increases (WIGI). An Employee who has attained a rating of at least "Level 3: Achieved Expected Results (AE), or an equivalent rating level," has achieved an "acceptable level of competence" and will be entitled to appropriate within-grade increases.
2. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.

3. This performance rating will be considered in making determinations regarding reductions-in-force (RIF) within the Agency in accordance with Article 36, Reduction in Force, of this Agreement.
4. The rating of record may be used in evaluating candidates under the merit promotion system contained in Article 28, Merit Promotion, of this Agreement.
5. To identify systemic changes in operations, work processes, training, teamwork, etc.

Section 9.4
If an Employee disagrees with their current rating they are encouraged to make a timely written response such as within five (5) days of the rating. This response should explain and document why the Employee disagrees with any of the findings of the rating official. The response will be attached to the material submitted by the rating official and go into any folders or files that contain the Employee's rating. Making or not making a response has no effect on an Employee's right to grieve the performance rating under Article 22, Grievances, or other appropriate forum such as EEO.

Employees are permitted to make written responses to their ratings at any time. Whenever an Employee makes a request regarding a rating that was given over a year in the past, a supervisory response or change in rating will occur at the discretion of Management barring any third-party decisions or settlements.

Section 9.5
Within five (5) days from the date of when an Employee makes a written response to their rating, the supervisor or rating official will give the Employee their decision in writing as to whether or not the Employee's rating was changed or not. The supervisor or rating official's response will become part of the record and be contained in any files with the final appraisal.

Section 9.6
If the Employee meets the timeframe in Section 9.4 above and if the supervisor/rating official does not provide a response within five (5) days, any grievance timeframes shall be extended by the number of days the official has exceeded the five (5) days.

If there is no response after ten (10) days the Employee may request a response from their second line supervisor. The second line supervisor will render a decision and notify the Employee in a prompt manner, normally no longer than seven (7) days. Any grievance timeframes shall be extended by this number of days.

Regarding the instances above, under no circumstances shall the grievance extension be longer than 30 days from when the Employee first received their rating.

Section 10.1 Performance Opportunity Period
The rating official or supervisor (if different from the rating official) shall communicate to Employees when performance falls below the "Level 3: Achieved Expected Results (AE)," or an equivalent rating level. The rating official and Employee will meet at the earliest opportunity to identify specific problem(s) related to the deficient performance. The supervisor should clearly identify performance expectations in writing to the Employee to resolve the problem.

The performance opportunity period (POP) is an informal process that affords the Employee a reasonable period of at least thirty (30) calendar days to resolve the identified performance-related

problem. Normally, Employees shall be granted this opportunity period. During this period, the Employee will be deemed to be performing at a successful level for purposes of any performance-related personnel actions and will normally not be subject to adverse action for performance-related problems. This "deemed successful" level will not constitute an assessment or rating of a successful level of performance.

The POP should be tailored to the specific needs of the Employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate. The Parties agree that solely placing the Employee on 100% review does not equate to the best and/or appropriate assistance.

At any time during the POP the supervisor may conclude that assistance is no longer necessary. The supervisor will so notify the Employee of this determination in writing.

If, following the POP, the supervisor is unable to make an evaluation that the Employee is at the Level 3: Achieved Expected Results (AE), or an equivalent rating level, the supervisor will give the Employee a documented performance interview communicating (1) this determination, (2) that if the Employee is at the Level 2: Partially Achieved Expected Results (PA), or an equivalent rating level, the supervisor should issue the Employee a memorandum of expectation, (3) that if the Employee is at the Level 1: Achieved Unsatisfactory Results (AR), or an equivalent rating level, the Employee will be placed on a formal Performance Improvement Plan (PIP) and will be notified in writing of such, and (4) that personnel related actions (WIGI, awards, etc.) will be withheld while performance continues at the "Level 2: Achieved Expected Results," or an equivalent ratings level, or "Level 1: Achieved Unsatisfactory Results," or an equivalent ratings level.

Section 10.2 Performance Improvement Plan

It is the responsibility of the Agency to monitor Employee performance throughout the rating period. After the Employee has been given a POP and continues to perform at an "unacceptable" level in one or more critical elements, the rating official will call for a meeting with the Employee to discuss the Employee's performance. At this meeting, the rating official or supervisor shall:

1. Inform the Employee of the perceived deficiencies in the applicable critical element or elements, including a discussion of the applicable performance standards within the element or elements;
2. Inform the Employee of the consequences of an unacceptable rating in any critical element in terms of career ladder promotions and/or within-grade increases;
3. Recommend specific ways for the Employee to correct the perceived deficiencies; and,
4. The rating official, supervisor (if different from the rating official), Employee, and, if requested, a Union representative, will meet to identify the specific problem, attempt to determine the root cause, and develop a written improvement plan to resolve the problem.

Section 10.3

The goal of the PIP is to return the Employee to successful performance as soon as possible. The PIP shall include the following aspects in writing:

1. The improvement plan will identify the critical element(s) for which performance is unacceptable and inform the Employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance. It will state which assigned tasks demonstrate the unacceptable performance and how they relate to an identified job requirement(s), element(s), and standard(s), as applicable.

2. The improvement plan will afford the Employee a reasonable opportunity of at least ninety (90) days to resolve the identified performance-related problem. The duration of the PIP shall be specified.
3. The improvement plan will be tailored to the specific needs of the Employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.
4. The improvement plan will state which supervisor or Management officials will be available to guide, coach, and otherwise assist the Employee in reaching "Level 2: Partially Achieved Expected Results (PA)," or an equivalent rating level, performance, what specific assistance will be provided and when. Employees may request additional assistance.
5. The Employee will be informed in writing that personnel-related actions (WIGIs, awards) may be withheld while this level of performance continues.
6. The notice will explain how the supervisor addressed an Employee request for reasonable accommodation, if any such request was made. If reasonable accommodation was made, the notice should explain how that may impact on the opportunity to improve, if at all.

Section 10.4
The purpose of the performance improvement period is to help the Employee improve and reach at least an acceptable level of performance, rather than for the supervisor to accumulate documentation as the basis for a future performance-related adverse action. Solely placing the Employee on 100% review does not equate to appropriate assistance.

Section 10.5
At any time during the performance improvement period, the rating official may conclude that assistance is no longer necessary because the Employee's performance has improved to at least "acceptable," or equivalent. The rating official will notify the Employee of this determination in writing.

Section 10.6
If, following the PIP, the rating official is unable to make an assessment that the Employee is at least Level 2: Partially Achieved Expected Results (PA), or an equivalent rating level, in performing his/her critical job duties and responsibilities, the rating official will give the Employee a documented performance interview communicating this determination. In that case, it may be appropriate to extend the PIP until an assessment can be made, consistent with law.

Section 10.7
During the PIP process, if the Employee requests Union representation, a Union representative has the right to be present at the first and last meetings with the Employee, which shall involve or include procedures communicated to the Employee regarding the PIP process and responsibilities of both Parties.

Section 11.0 <u>Actions Based on Unacceptable Performance</u>

Section 11.1
If all remedial action fails and the Employee's performance is determined to be "unacceptable," or equivalent, the supervisor will provide written notification to the Employee that the Employee may be liable for one of the following actions:

1. When the Employee is capable of performing another position of the same grade, the supervisor may propose to reassign the Employee to such a position.

2. When the Employee is not capable of performing any position at the same grade but is capable of performing a position at a lesser grade, in the same or different job series, the supervisor may propose a demotion to a position at the next lower grade.
3. If neither 1 nor 2 above is feasible, the supervisor may propose a removal or demotion to a lesser grade.

Section 11.2
An Employee who is reassigned or demoted to a position at a lower grade based on unacceptable performance will receive a new performance plan, in accordance with this Article.

Section 11.3
An Employee whose reduction in grade or removal is proposed for unacceptable performance is entitled to:

1. Thirty (30) days advance written notice of the proposed action, which identifies the specific basis (i.e., the critical job duties and responsibilities) for the proposed action including specific instances of unacceptable performance.
2. A representative. The Employee must inform the deciding official, in writing, of the representative's name.
3. A reasonable time, not to exceed thirty (30) days, to answer orally and in writing, and to provide witnesses and work product or other evidence to challenge the proposed action.
4. The Agency shall consider any response provided from the Employee or his/her representative prior to the decision.

Section 11.4
A decision whether to retain, reduce in grade, or remove an Employee shall be made within a reasonable amount of time after the date of expiration of the notice period or after the Employee's response. Normally the decision shall be given within sixty (60) days. The Employee will be given this decision in writing. Unless the action is proposed by the Head of the Agency, the deciding official will be at a higher management level than the proposing official. The decision will:

1. Specify the instances of unacceptable performance and the critical element(s) for which the Employee did not achieve "Level 2: Partially Achieved Expected Results," or an equivalent rating level, performance, and on what the decision is based;
2. Specify the action to be taken, the effective date, and the Employee's right to appeal the decision.

Section 11.5
The Employee may appeal to either the Merit Systems Protection Board (MSPB) in accordance with applicable law, or the Union, on behalf of the Employee, may timely file a written request to invoke arbitration under the terms of Article 23, Arbitration. An Employee shall be deemed to have exercised the MSPB or appellate option at such time as the Employee timely initiates an appeal under the MSPB statutory procedure or the Union, on behalf of the Employee, timely files a written request to invoke arbitration, whichever occurs first.

Section 11.6
The identification of job elements and the establishment of performance standards are a Management right. Management agrees to formulate the job elements and performance standards fairly, reasonably, and objectively. The job elements and performance standards are not grievable. However, Employees

may grieve the application of the job elements and performance standards as related to their final rating of record.

Section 12.0 Electronic Performance Management System

Should the Agency propose to establish an electronic system for processing any part of the Performance Management System, the Union will be notified and have an opportunity to bargain in accordance with Article 12, Mid-Term Bargaining, of this Agreement. Nothing will be implemented until negotiations are completed.

Section 13.0 Authority of the Arbitrator

Pursuant to the provisions of the Civil Service Reform Act of 1978, and regulations prescribed by the Office of Personnel Management (OPM), the Parties recognize that an arbitrator has jurisdiction to hold Management to the provisions of this Agreement, which provides the performance appraisal system for Bargaining Unit Employees, including but not limited to periodic appraisals of the job performance of Employees, encouraging Employee participation in establishing performance standards, and use of the results as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing Employees. The arbitrator's authority would also include any appropriate remedy.

Appendix 4: Takes the place of the HHS PMAP Guidance

Level 5: Achieved Outstanding Results (AO)

Contributions impact well beyond the Employee's level of responsibility. They demonstrate exceptional initiative in achieving results critical to Agency success and strategic goals. Managers must evaluate the Employee at this level as based upon the Employee's reasonable capability to influence or affect changes beyond their level of responsibility. For example, to be rated AO, a lower graded Employee may not be able to substantially affect the Agency's mission or strategic goals; however, the same Employee would be expected to contribute substantially to their immediate area and have an indirect influence on the overall Agency success.

The Employee performed as a model of excellence by surpassing expectations on a consistent basis. Indicators of performance at this level include outcomes that exceed Achieved More than Expected Results level standards. Examples include:

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that impact outside the work unit and facilitate organizational recognition;
- Increases in office and/or individual productivity;
- Improved customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;
- Flexibility and adaptability in responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiation of significant collaborations, alliances, and coalitions;
- Leadership on workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistent demonstration of the highest level of ethics, integrity, and accountability in achieving specific HHS, OPDIV, and/or program goals; making recommendations that foster clarification, and/or influence, improvements in ethics activities.

Level 4: Achieved More than Expected Results (AM)

The Employee continually demonstrates successful collaborations within the work environment, overcoming significant organizational challenges such as coordination with external stakeholders or resource shortfalls. Employee contributions have impact beyond their immediate level of responsibility. Managers must evaluate Employees in this level as based upon the Employee's demonstrated performance. A new Employee would likely need more guidance and assistance from more experienced, possibly higher-level Employees or supervisors as compared to an Employee who has demonstrated proficiency in the job. Examples include:

- Effectively plans, is well-organized, and completes work assignments that reflect requirements;
- Decisions and actions demonstrate organizational awareness. This includes knowledge of mission, function, policies, technological systems, and culture;
- Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains professional relationships with Employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements;

effectively communicates necessary actions to them and employee/customer satisfaction is conveyed; and/or
- When serving on teams and workgroups, contributes substantively and completely according to standards identified in the plan.

Level 3: Achieved Expected Results (AE)

Employee consistently meets performance requirements. Work is solid and dependable; customers are satisfied with program results. Employee seizes opportunities to improve business results and include Employee and customer perspectives. This is the level where Employees are expected to perform. Examples include:

- Acquires new skills and knowledge to meet assignment requirements;
- Demonstrates ethics, integrity and accountability to achieve HHS and Agency goals; and
- Resolves operational challenges and problems, and when needed seeks guidance and assistance from higher-level staff.

Level 2: Partially Achieved Expected Results (PA)

Marginally acceptable; needs improvement; occasionally does not meet Level 3 (AE) performance requirements. The Employee has difficulties in meeting expectations. Actions taken by the Employee are sometimes inappropriate or marginally effective. They do not significantly contribute to any positive results achieved. This is the minimum level of acceptable performance for retention on the job. Improvement is necessary to achieve expected performance level

Whenever an Employee's work nears this level the supervisor must clearly and promptly communicate performance deficiencies with the Employee. Supervisors are strongly encouraged to closely monitor an Employee that is rated PA. The supervisor will provide written guidance to the Employee outlining the marginal element and examples as to how to bring their performance up the Achieved Expected Results level. This guidance may be communicated both verbally and in writing to the Employee. Examples of PA include:

- Occasionally fails to meet assigned deadlines;
- Work assignments occasionally require major revisions or often require minor revisions;
- Does not consistently apply technical knowledge to work assignments;
- Occasionally fails to adhere to required procedures, instructions, and/or formats on work assignments;
- Occasionally fails to adapt to changes in priorities, procedures or program direction; and/or
- Impact on program performance, productivity, morale, organizational effectiveness and/or customer satisfaction needs improvement.

Level 1: Achieved Unsatisfactory Results (UR)

Employee consistently does not meet Level 3 (AE) performance requirements. There are usually repeat observations of performance that indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.) Immediate improvement is essential for job retention.

The supervisor must, at a minimum, give written notice to the Employee of his or her failure to demonstrate acceptable performance in a given critical element and give the Employee an opportunity

to demonstrate acceptable performance under a Performance Improvement Plan (PIP). In regard to performance, Employees will not be responsible for matters beyond their control. Examples of UR include.

- Consistently fails to meet assigned deadlines;
- Work assignments often require major revisions;
- Fails to apply adequate technical knowledge to completion of assignments;
- Frequently fails to adhere to required procedures, instructions and/or formats in completing work assignments; and/or
- Frequently fails to adapt to changes in priorities, procedures or program direction.

Article 19: Awards

Section 1.0 Background and Purpose

Recognition of Employees through monetary award and non-monetary awards reflects the Parties' efforts to promote quality service, continuous improvement and to recognize Employee contributions to Agency performance. Employee recognition is based on achievement and acknowledges the individual and collaborative accomplishments of Employees that support or promote the success of the Agency mission, goals and objectives, that enhance organizational performance, and improves organizational quality. The program recognizes the accomplishments of Employees both as individuals and as members of groups or teams. Those who contribute to the success of their work unit, and thus, the Agency, deserve recognition of their accomplishments. Recognition of group accomplishments also promotes and acknowledges the value we place on working together.

The program provides for various forms of recognition, enabling the award recipient to be recognized in a meaningful manner. It provides the flexibility necessary to adapt to a changing work environment and unanticipated circumstances. The intent of this program is that Employees will be appropriately rewarded regardless of changes in the Agency's organizational structure, work processes or work initiatives.

Section 2.0 Policy

The Agency retains the right to determine how much of its budget will be allocated for awards. In establishing budgets for Employee awards, the Agency will allocate funding in a manner that ensures fair and equitable treatment of all Employees. Awards shall be based strictly on merit with consistency and fairness being overarching principles. Decisions regarding awards shall be made without regard for Employee grade or Bargaining Unit status. The Agency will provide to the Union upon request, the overall allocation of award budgets for the Institute once they are finalized.

All awards recommended under this Article shall be subject to review and approval in accordance with 5 C.F.R. 451. Such approval shall not be withheld unless the decision is based on criteria that are uniformly applied to all employees.

The Parties agree that the awards and recognition program shall:

1. Generate understanding and openness by publicizing the awards and recognition criteria, processes and results, summary of awards granted for the fiscal year;
2. Recognize Employees based on the merits of their accomplishments and contributions;
3. Communicate various types of awards and criteria;
4. To the extent possible and within financial management controls, be designed to recognize accomplishments throughout the year, and as close in time to the accomplishment as feasible.

Therefore, to accomplish these goals, the following policies shall apply:

1. Provide for no limits on the number of awards that Employees may receive or the frequency with which they may receive awards unless otherwise stated in this Article.
2. When Employees are considered for awards, the relative significance and impact of their contributions will be considered in determining which type of award would constitute appropriate recognition and, for monetary awards, in determining the amount of money to be granted. Funding availability must also be considered in the granting of monetary awards. See "Criteria" section below.

3. Awards will be processed in a timely and expeditious manner.
4. The Agency will provide an award recipient with written documentation that clearly articulates the specific reason(s) or justification that the Employee received the award.
5. When the budget will not permit awards to be granted, then other mechanisms will be considered and used such as time off awards. The Agency shall promptly notify the Union whenever budget does not permit monetary awards. Employee performance ratings will not be determined by budget.
6. The Agency will grant awards in a fair, consistent, and objective manner.
7. Awards shall be granted by the Agency on the basis of merit.
8. The availability/eligibility of an award shall not be based on grade level or membership in historically disadvantaged groups, such as those with disabilities and certain minority groups. See Article 25, Equal Employment Opportunity.
9. The Awards process and procedures shall be a transparent process and available to all employees. The Agency agrees to post the process on an easily accessible NIEHS internal web page. Such information will include but not be limited to who is reviewing and approving awards.
10. The Parties agree that, to the extent possible, award criteria shall be standardized and uniformly applied awards across the Agency and communicated to Employees. The intent is to ensure consistency and equality in awards. When evaluating award recommendations (with the exception of PMAP awards), the following examples of efforts/contributions may be considered for eligibility yet this list is not all inclusive:
    a. Outstanding contribution to a special committee or task force dealing with specific group, NIEHS, or NIH-wide policies, procedures or operations.
    b. Extent to which competence and resourcefulness improved the scientific or administrative management of the NIEHS;
    c. Extent to which "ideas," "concepts," etc., represent originality, creativeness, and/or initiative;
    d. Exceptional initiative in carrying out activities to improve program operations or to benefit the NIEHS environment;
    e. Recognition of special efforts and contributions beyond regular duty requirements.

The Parties agree that whenever the Agency establishes or changes criteria for awards that they shall be uniformly applied to BUEs across the Institute. Award criteria shall be bargained with the Union to the extent under the law, per Article 12, Mid-Term Bargaining. Award criteria shall be clearly communicated to Employees.

Section 3.0 Types of Awards

Monetary and non-monetary awards are granted to Employees for suggestions, inventions, superior accomplishments, productivity gains, or other efforts that contribute to the efficiency, economy, or other improvement of operation or achieve a significant reduction in paperwork. The amount and form of these awards depend upon the value of the Employee's contributions.

Awards which Employees may be eligible to receive include, but are not limited to:

1. Performance Award
2. Quality Step Increase
3. Time-off Award
4. Suggestion Award
5. Special Act or Service Award

6. NIEHS Peer Award
7. On-the-Spot Award
8. Director's Award
9. Informal Recognition Award

The Agency agrees to negotiate any new awards with the Union per Article 12, Mid-Term Bargaining, which affect BUEs.

Section 3.1 Performance Awards
Performance awards for Bargaining Unit Employees will be allocated and distributed in accordance with this Article and the Article on Performance Management and any applicable regulations such as 5 C.F.R. 451.

The Agency retains the right to determine how much of its budget will be allocated for performance awards. Should the Agency establish budgets for Employee awards, it will allocate an amount of its overall budget for Bargaining Unit Employees in an amount not less than the Agency has allocated to any other pay pool. (For example, if the Agency uses 1.5% of its budget for awards for all employees then that same percentage would be allocated for Bargaining Unit Employees.) The Agency will notify the Union of award budgets once they are finalized.

When the budget will not permit awards to be granted, then other mechanisms will be considered such as time-off awards. The Agency shall promptly notify the Union whenever budget does not permit monetary awards. Employee performance ratings will not be determined by budget.

The Parties agree that performance awards shall be:

1. Processed in a timely and expeditious manner.
2. Conducted in a fair, consistent, equitable, reasonable, and objective manner.
3. Granted on the basis of merit.
4. The Agency will provide an award recipient a written narrative that clearly articulates the specific reason(s) or justification that the Employee received the award.

Whenever a pay group or salary is not included in the overall awards pool allotted for non-SES and non-T-42 SES equivalent performance and cash awards, it is understood that their award payout will be derived from other sources or award pools.

The Parties agree, that to the extent possible, award criteria shall be standardized and uniformly applied across the Agency and communicated to Employees.

Supervisors and managers shall document their award justifications in writing. The intent is to ensure consistency and equity in awards.

A. Performance awards for Bargaining Unit Employees will be allocated and distributed in a fair, consistent, and equitable manner.

B. Subject to funds availability, the following scale for determining awards based upon the level of the annual performance rating will be established as follows:

Achieved Outstanding (AO) Results (or equivalent)	up to 5%
Achieved More (AM) than Expected (or equivalent)	up to 4%

Achieved Expected (AE) up to 3%

When funds are available, Employees at the AO level will be paid first, then AM, then AE. An Employee rated AO shall be given an award up to 5% of salary, including locality. This can be in the form of cash and/or a time off award or they may receive a QSI. There is no minimum percentage but the percentage awarded for an AM may not equal or exceed the minimum percentage awarded for an AO. The percentage awarded for an AE may not equal or exceed the minimum percentage awarded for an AM.

When there is a choice managers will offer Employees the option of converting a cash award to a time-off equivalent and will do so only if the Employee agrees to the conversion or if budget prohibits cash awards. A combination of cash and time-off is also acceptable.

If funding or time-off are not available, the Agency will make every effort to recognize Employees using other appropriate means. The lack of funds or time-off shall not preclude Employees from being appropriately rated based on merit, (e.g., Level 5, Level 4).

After rating and assigning a score to each critical element, the summary rating shall be derived by using a simple average (number of critical elements divided into total score). Summary ratings shall be this average with the following exception: If any critical element is assigned at the lowest level (UR) then the overall summary rating must be rated at that same level (UR).

C. The Agency rating official shall use summary ratings to determine where an Employee shall fall in any award distribution range. For instance, if the award range of Level 5 (or equivalent) is 1. 5% to 3% of salary then an Employee with a 4.8 summary score would typically receive a higher percentage than one with a 4.5 summary.

D. The Parties recognize that mere declarations are not enough to ensure fairness, consistency, and objectivity in the award process. Therefore, the Parties agree that positive steps must be taken to provide equity and impartiality for all Employees. To this end the Parties agree to develop selection and allocation criteria for Employees that shall be transparent and applied consistently, fairly, and equitably. This shall be an ongoing process.

Section 3.2 Quality Step Increases

A QSI is a faster than normal within grade increase used to reward Employees at any GS grade level who display high quality performance. A QSI will be in accordance with 5 C.F.R. 531.

A. When given a choice, an Employee who has been recommended for a QSI may choose a cash award, if they are ineligible to receive a QSI or if they formally request the cash award instead, which shall be in the amount of 5% of the Employee's salary in accordance this Agreement and budget permitting. If budget does not permit the amount must be at the highest range for Level 5 (or equivalent).

B. Employees who are ineligible for a QSI because they are at a Step 10 level but would have otherwise been recommended for a QSI, will receive a cash award of 5% of the Employee's salary pursuant to Section 3.1 above, budget permitting. If budget does not permit the amount must be at the highest range for Level 5 (or equivalent).

C. Whenever possible, managers shall offer Employees the option of converting a cash award into a time-off equivalent. This option shall be exercised when budgets cannot cover all cash awards or when the Employee has made such a request.

D. **QSI Eligibility**

Employees are eligible for a QSI if their performance is rated Achieved Outstanding (or equivalent) during their annual performance appraisal. An Employee may receive only one QSI within a 52-week period. A QSI may not be given to an Employee who has received a cash award for the same performance.

The Agency shall provide to the Union each year within ten (10) days of when the awards are finalized: number of BUEs rated Level 5; granted a QSI, grade of those Employees, and number of employees rated Level 5; and number of QSI's given (in total for NIEHS).

F. The Agency shall use the following selection criteria and process in conjunction with this CBA and regulation to make determinations regarding QSI's:

1. The Agency shall consider Employees at steps 1 and above.
2. Grade and or Bargaining Unit status shall not be a factor in any decision regarding QSI's.
3. Employee summary rating shall be the priority consideration while years of service will be another consideration.
4. The interval for QSI consideration shall be 52 weeks.
5. The purpose of quality step increases is to recognize outstanding performance.
6. Whether or not the Employee receives a WIGI shall not be a determining factor.

G. After awards have been finalized, the Union will be provided data (division, pay plan, grade, step, Bargaining Unit status code, nature of award code, and award amount). Upon request, the Agency shall provide to the Union, PMAP summary scores on a specific organizational basis. A meeting may be requested by the Union to discuss any concerns or issues it may have regarding the data.

Section 3.3 Time Off as Incentive Award

The purpose of the Time Off Award (TOA) is to increase Employee productivity and creativity by rewarding Employee contributions to the quality, efficiency, or economy of Government operations. The award is also intended to increase the quality of work life for all Employees, as well as encourage and recognize one-time, non-recurring accomplishments above or beyond normal job requirements.

A. A TOA provides an Employee with an excused absence without charge to leave or loss of pay. All Bargaining Unit Employees shall be eligible for a TOA unless they are currently on leave restriction.

B. During any single leave year, Employees may be granted up to the average total number of hours that such an Employee works during a biweekly scheduled tour of duty. For example, a full time Employee is eligible for a total of eighty (80) hours of time off; and a part-time Employee working an average biweekly schedule of sixty-four (64) hours is eligible for a total of sixty-four (64) hours of time off.

C. The minimum amount of time off for any contribution shall be one (1) hour. The maximum TOA for any single contribution shall be forty (40) hours for a full-time Employee. A part-time Employee will be granted a TOA not to exceed his or her weekly work schedule.

D. A TOA may be used in single blocks of time or in one (1) hour increments, subject to approval by Management.

E. Whenever an Employee has a large amount of leave hours, e.g., more than 100, then the supervisor in consultation with the Employee will consider other award options. The Employee may opt to accept a TOA regardless of their leave balance.

F. To encourage the use of TOAs for timely recognition of an Employee's contribution, supervisors may grant up to eight (8) hours of time off without higher level review or approval.

G. A TOA may carry over from year to year. It will not transfer if the Employee leaves NIH with another Federal agency or retires. It may not be converted to cash. TOAs should be scheduled so as not to conflict with use of "use or lose" annual leave. When physical incapacitation for duty occurs during a period of time when an Employee is using his/her TOA, sick leave, if requested and available, will be granted for the period of incapacitation and the TOA will be scheduled at another time in accordance with the Leave Article.

Section 3.4 <u>Suggestion Program</u>

The Suggestion Program recognizes an individual or group who identifies a specific need and proposes a course of action for improvement to the economy, efficiency, and effectiveness of the NIEHS program or mission.

A. Employees' suggestions to improve work processes and working conditions provide a valuable and unique source of ideas which can greatly increase the efficiency of the service and/or Employee morale.

B. Suggestion award amounts will be in accordance with government-wide rule and regulation, and Agency guidelines.

C. Employee suggestions will be forwarded to either the Employee's immediate supervisor or the Awards Coordinator.

D. The Awards Coordinator shall provide a copy of the submitted suggestion to the Union.

E. Supervisors must be receptive to Employee suggestions. They may assist Employees in preparing suggestions by obtaining the suggestion forms, assisting in wording the suggestion, if the Employee so requests, and forwarding the suggestion to the NIEHS Awards Coordinator, if requested.

F. Employee suggestions will be evaluated and decided upon within sixty (60) days of receipt by the Coordinator. If this time limit cannot be met due to extenuating circumstances (i.e., suggestion requires review by higher level department or headquarters), the Employee will be notified in writing of the reason within the agreed-upon time limit.

G. Upon final determination of an Employee suggestion, the Coordinator will notify the Employee and Union in writing as to whether or not the suggestion was adopted.

H. Consistent with this Article, the Agency shall provide the Union their formula for determining the amount of an award that an Employee whose suggestion is adopted will receive. The Union will bargain, as appropriate, the establishment of that formula per Article 12, Mid-Term Bargaining.

I. The Union shall be permitted to have a minimum of two (2) voting members on the Quality Council or Suggestion Committee.

Section 3.5 Special Act or Service Awards

Special Act or Service Awards recognize significant or one-time contributions of an individual or group of Employees that are in the public interest and in connection with or related to official employment.

A. Recognition should be awarded within forty five (45) to sixty (60) days of completion of the noteworthy contribution.

B. Examples of contributions may include:
    1. Exceptional participation or leadership in a project, detail, or regular or special assignment;
    2. Overcoming unusual difficulties or showing unusual creativity in meeting an objective;
    3. Achieving substantial savings of resources in meeting an objective;
    4. Achieving a breakthrough (scientific or technical) that contributes significantly to the accomplishment of goal or mission;
    5. Completing an important objective in record time;
    6. Any effort that contributes to efficiency, economy, or improvement of NIEHS, NIH, or other Agency performance.

C. This award may be given at any time for Employee or group contributions that are within, as well as outside, normal job duties or responsibilities. Award amounts are in the range of $250 – 10,000 and should be based on tangible and intangible benefits to the government.

Section 3.6 NIEHS Peer Recognition Awards

This award provides a unique mechanism by which NIEHS Employees can recognize fellow Employees who have consistently provided extraordinary assistance to their fellow workers. This recognition is available to individuals rather than groups.

Peer Awards are a form of recognizing Employees who: a) perform their duties in a manner that goes beyond the minimum requirements of their jobs, and b) serve as mentors and examples to their peers in encouraging Employee cooperation, development and empowerment; team work within work groups; and a sense of community and commitment to the goals of the NIEHS and to the NIH as a whole.

A. There shall be a minimum of two (2) NIEHS Peer Awards given annually. The award recipient(s) will be announced at the annual NIEHS Director's Award ceremony.

B. Peer Awards are given only to individuals and are not considered group awards.

C. An Employee may be nominated repeatedly until selected for receipt of an award. After receiving an award, an Employee may not be nominated by the same individual again.

D. At the discretion of the Director, NIEHS, a Peer Awards Ad Hoc Advisory Group will be convened each year to assist the Director with Peer Award nominations and reviews.

E. There will be one (1) Peer Award evaluation committee to review and rank Peer nominations. The Union will have a minimum of one (1) voting member on this Peer Award evaluation or advisory committee. This group will consist of non-supervisory Employees.

F. Budget permitting, the recipient(s) will be given $600 and a plaque or other commemorative token.

G. Barring any overriding mission-related reason, the recipient(s) will be taken in rank order based on the Peer Award evaluation committee. Normally two (2) awards will be given annually. The Union will be provided the list that ranks each nominee that is also given to the NIEHS Director.

H. The Agency agrees that supervisors of nominees shall not have a role in the Peer Award process and shall be only notified if or when the Employee is recommended for approval to the NIEHS Director.

I. The Parties agree to discuss whether or not Employees should be notified that they were nominated by a peer or peer(s) for the Peer Award regardless if they ultimately receive the award.

Section 3.7
The Agency has the authority to approve awards within the range of $50-$2500 which may be used to recognize an individual or group of Employees for day-to-day extra efforts or contributions - outside their normal duties or responsibilities.

Contributions being recognized have usually occurred during a limited period of four (4) to six (6) weeks or less. These awards should be initiated within thirty (30) days of completion of the contribution being recognized.

Section 3.8 Director's Award
The Director's Award is intended to recognize superior performance or special efforts significantly beyond the regular duty requirements, and directly related to fulfilling the NIH mission. Nominations are to be submitted for one of the five specific categories according to the nature of the act, service or work performance. The five categories are:

1. Scientific/Medical;
2. Administrative;
3. Technical/Clerical/Support;
4. Common Fund Leadership, and,
5. Mentoring

Section 3.9 Informal Recognition Awards
The Agency may provide an informal award, such as a letter of appreciation, an engraved gift, or a gift certificate, to recognize contributions of lesser scope that do not meet the criteria for a cash award or might otherwise go unrecognized. These awards will be of nominal value.

Section 4.0
Employees will be eligible for awards under this Agreement for any period(s) of time that they are in the Bargaining Unit.

Section 4.1
In the event that the Agency determines to change the allocation, distribution or other conditions of employment by which awards are granted, the Agency shall notify the Union a minimum of thirty (30) days prior to the change. If there is an exigency the Agency shall notify the Union of that matter and provide advance notice as appropriate. Any negotiations shall be conducted in accordance with provisions of Article 12, Mid-Term Bargaining. The Parties agree that it is important to conclude such negotiations promptly in order to award Employees without delay.

Section 4.0 External Awards
See Appendix 5 (MOU dated 3/1/11).

Section 5.0 Collaboration
The Union and Agency agree to work together to:

1. Identify and bring to the Agency leadership any trends, improvements, problems, issues or circumstances regarding the incentive awards program;
2. Focus on any practices or problems with the incentive awards program that could be revised to improve Employee morale and satisfaction among Employees;
3. Promote and communicate the efforts of the Agency to achieve and maintain an effective incentive awards program; and
4. Evaluate and recommend disposition of Employee suggestions that shall include a recommendation for an appropriate award based upon the overall benefit and impact to the Agency.

Section 6.0 Award Nomination Procedures

Section 6.1
Employees and Management officials are encouraged to identify individual Employees who they believe should be recognized for high quality accomplishments or contributions.

Section 6.2
Nominations of individual Employees should be submitted, in writing, to the appropriate manager or award panel. The nominations should include a description of the accomplishments or contributions of the nominee(s) and an explanation of their significance, as well as the name and telephone number of the Employee submitting the nomination. Information provided in the nominations will be considered in determining appropriate recognition.

Section 7.0
If a supervisor or Management official disapproves an award or denies a performance-based award for a BUE, they shall, upon request, provide the Union with a rational for that specific disapproval.

Section 8.0
On an annual basis, the Agency agrees to provide the Union a listing of all awardees that shall include the following information: grade, step, position, award type, award amount, BU status, and organizational location. The Parties shall discuss this listing as appropriate.

Appendix 5: External Awards

1. Achievement in Managing Information Technology Award
2. Arthur S. Flemming Award
3. Charles A. Bradshaw Award
4. Donald L. Scantlebury Memorial Award
5. Everett O. Alldredge Award
6. Executive Excellence Awards
7. Federal Women's Program Achievement Award
8. Federal Leadership Conference Award
9. Federal Property Manager Award
10. Federal Telecommunications Systems 2000 Award
11. GEICO Public Service Award
12. Information Resource Management Award
13. Innovations in American Government Award
14. Kennedy International Prizes in Mental Retardation
15. Linda Trunzo Humanitarian Award
16. Mary D. Pinkard Leader in Federal Equity Award
17. National Partnership Award
18. National Public Service Award
19. President's Council on Management Improvement (PCMI) Awards for Management Excellence
20. President's Quality Award
21. Public Service Excellence Award
22. Roger W. Jones Award for Executive Leadership
23. Volunteer Action Award
24. William A. Jump Memorial Award
25. Volunteer Action Award

Article 20: Alternative Dispute Resolution

Purpose

Alternative Dispute Resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing Parties to come to an agreement. It is a collective term for the ways that Parties can settle disputes, with, or without, the help of a third party. ADR includes a variety of forms such as mediation, conciliation, conflict resolution, negotiation, and fact-finding.

The Parties will use ADR principles and practices to improve working relationships between the involved Parties. A commitment to this process demonstrates a positive approach and joint ownership of concerns and issues, with the intent to resolve disputes quickly and informally.

The Parties agree that although ADR cannot guarantee specific results, there are benefits that are characteristic of ADR, as it generally produces or promotes:

1. Mutually satisfactory outcomes;
2. Economical decisions;
3. Faster settlements;
4. High rate of compliance;
5. Comprehensive and customized agreements;
6. Greater degree of control and predictability of outcome;
7. Personal empowerment;
8. Preservation of an ongoing relationship or termination of a relationship in a more amicable way;
9. Workable and implementable decisions;
10. Agreements that are better than simple compromises or win/lose outcomes; and,
11. Decisions that hold up over time.

Section 1.0

The Agency encourages its Employees to use ADR to help resolve workplace conflicts as early as feasible, to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level. The Parties agree that whenever appropriate ADR shall be used in an effort to resolve any workplace difficulty, concern, or challenge. Such ADR interactions shall be voluntary and confidential.

Employees' relationships, their interest in retaining control over the process, the need to proceed quickly, and the need for neutral involvement are factors to be weighed in deciding whether mediation is appropriate for a particular conflict.

Section 1.1

Management and Union representatives who function as facilitators at ADR meetings shall attempt to be neutral, professional, confidential, and work towards a mutually acceptable outcome. Such outcomes may be non-precedential and/or creative with the principal understanding that the resolution should be acceptable to all and beneficial to the Parties.

Section 1.2

The role of the mediator includes, but is not limited to assisting the Parties in identifying issues, fostering joint problem solving, and exploring settlement opportunities. In mediation, decision-making authority rests with the Parties. The mediator is not authorized to make decisions or force a decision on

any Party to the dispute. The mediator will not provide counseling, therapy or legal advice to either Party during the mediation process. If either Party does not understand how an agreement may adversely affect legal rights or obligations, then the Parties may consult their respective representative.

Section 1.3
The Parties shall use mutually agreed upon mediators with appropriate skills, experience, and training in mediation. Mediators can be used from the NIH Center for Cooperative Resolution, shared interagency mediators, the Federal Mediation and Conciliation Service (FMCS), Sharing Neutrals, or other appropriate source.

Section 1.4
Identification of interests, options, and solutions are a part of the ADR process. In addition, addressing interpersonal or organizational challenges to facilitate communication among colleagues or peers in an effort to improve workplace relationships may also a part of ADR.

Section 1.5
ADR may be used as a preliminary or intermediary stage in any formal grievance or disciplinary action.

Section 2.0 Federal Interactive eXchange (FIX)
The FIX is an informal alternative dispute resolution (ADR) process that is completely voluntary. The primary purpose of FIX is to improve the working relationships and/or improve the workplace. Participation must be mutually agreed to by all Parties prior to participation.

Section 2.1
The Union or Management may initiate the consideration of a FIX/ADR meeting. The primary participants include the Employee, supervisor(s)/Manager(s), Union representative(s) and a Management representative. Other appropriate participants may be from Health and Safety, Human Resources, etc., as agreed by the primary participants.

Section 2.2
The FIX/ADR does not abrogate either Party's rights, which may include taking appropriate discipline, filing a grievance, etc., however it encourages the participants to appropriately address issues in a manner that considers the Parties' collective bargaining agreement, current MOUs, and the Labor-Management Statute, and the work environment.

Section 2.3
The Parties may mutually decide to memorialize an agreement in writing, however it is not required. Agreements made as a result of FIX/ADR are non-precedential.

Section 2.4
The FIX process shall incorporate a variety of resolution methods and will include but not be limited to:

1. A fair and respectful process;
2. Early resolution of problems;
3. Promotion of better communication;
4. Respectful exchange to share concerns;
5. Answer questions;
6. Clarification of NIH policies and procedures;
7. Non-adversarial approaches to address issues;

8. Facilitation and just resolution of problems and disputes;
9. Suggestions for other appropriate resources, if needed; and,
10. Collaborative problem-solving

Section 2.5
The Agency agrees to provide mediation training to participating Union representatives on an annual basis, or as necessary. This training will be solicited from available cost-effective resources such as the Federal Mediation Conciliation Services. Costs, per diem, and travel shall be paid by the Agency.

Section 2.6
When the Parties engage in a FIX process it is agreed to extend the grievance timeframes by the number of days engaged in the FIX process not to exceed sixty (60) days.

Section 3.0
Employees are free to use any other ADR or mediation service offered by the Agency.
NIH Center for Cooperative Resolution: http://ombudsman.nih.gov/index.html
FMCS: http://www.fmcs.gov/internet/findMediator.asp?categoryID=72&itemID=16806
HHS Policy on Sharing Neutrals: http://www.hhs.gov/dab/divisions/adr/sharingneutrals/snpolicies.html

Section 4.0
Whenever the NIH Ombudsman or other Agency-sponsored mediator meets with a group of BUEs or a group of BUEs and a manager(s), the Union will be given adequate notice and opportunity to attend the meeting.

Section 4.1
The NIH Ombudsman's office agrees to communicate to BUEs that the only Employee advocate at NIEHS is AFGE Local 2923.

Section 4.2
Whenever any settlements involving a BUE or BUEs occur, the Union is permitted to be notified of this fact and be present at any settlement discussions. In addition, the Union shall be provided a copy of any such settlements.

Section 5.0
The NIEHS-AFGE L 2923 Labor-Management Forum will:

1. Work collaboratively to establish and maintain an ADR Program including supporting the development and utilization of shared mediators' resources.
2. Provide ADR awareness training for Employees at NIEHS.
3. Serve as advocates for the program encouraging the use of mediation among Employees to resolve issues at the lowest level.
4. Collaborate with other organizational elements within NIH or HHS on efforts to effectuate a best-results approach to ADR and to avoid unnecessary expenditures of effort, time and money.

Section 5.1
The NIEHS Director will support ADR efforts by providing resources for ADR initiatives; including support for the development and training of union-Management mediators.

Managers and supervisors are responsible for maintaining an awareness of mediation as an alternative way to resolve disputes that arise within the workplace, for encouraging and supporting the use of mediation to resolve disputes at the early stages, and for cooperating to the fullest extent in any mediation effort that involve themselves and/or Employees they supervise.

Employees are responsible for reviewing the mediation policy and considering mediation as a way of voluntarily resolving disputes that arise within the workplace and for cooperating to the fullest extent in any mediation in which they agree to participate.

Section 6.0 <u>Roles, Rights and Responsibilities of Mediation Participants and Mediator</u>

A. Mediation is a voluntary dispute resolution process that is non-adversarial in nature and seeks to find reconciliation between disputing Parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, quick and minimizes the harm to either party.

B. The Mediator is not involved in the immediate occurrence and is committed to treating this matter in a fair and unbiased way. The Mediator's role is to facilitate and help the Parties reach for themselves a mutually satisfactory resolution to the problem. However, the decision-making power rests with the Parties, not the Mediator. If the Parties cannot agree on a resolution, the Mediator will NOT impose a resolution nor will s/he offer judgment as to which party, if any, is at fault. In certain circumstances, Co-Mediators may be assigned to the matter.

C. The Mediator has no authority to make decisions or act as a judge or arbitrator. The Mediator will not act as an advocate or attorney for any party. To the extent that either of the Parties wish to have legal counsel to consult with or assist them at any stage in the mediation, that party is responsible for taking steps to obtain such a person and for paying such costs of legal counsel.

D. Mediation is a confidential process. Any documents submitted to the Mediator and statements made during the mediation are for settlement purposes only. The participants agree to not subpoena or request the Mediator to serve as a witness, or request or use as evidence any materials prepared by the Mediator for the mediation, except for the settlement document signed by all Parties. In no event will the Mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation (except for statistical data). Matters that are admissible in a court of law or other administrative process continue to be admissible although brought up in a mediation session.

E. No party will be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary Parties. If a settlement is reached, the Mediator will reduce the agreement to writing and, when signed and approved by the appropriate authorities for all the Parties, the settlement document will be legally binding upon all Parties to the agreement.

F. In electing to use mediation, no statutory deadlines are waived, and all statutory deadlines must be adhered to.

G. The party's RIGHTS to pursue grievance processes are not waived and will be protected during the mediation process. At the same time, the party's RESPONSIBILITIES to comply with all requirements of any administrative or court processes, e.g., time limits, point of contact, ARE NOT WAIVED and must be adhered to.

H. In the event the mediation is terminated for any reason, the Parties may continue to pursue an informal or formal resolution of the matter as s/he sees fit.

I. No admission of guilt or wrongdoing by either party is implied and none should be inferred by participation in this process.

J. Participants voluntarily and actively accept to resolve this matter, agree to cooperate with the Mediator assigned to this matter, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. Participants will conduct themselves in a courteous and non-hostile manner, use appropriate language, and to allow the Mediator to interrupt the process if the Mediator feels a caucus or break is needed to facilitate the mediation process.

K. The Mediator agrees to inform their Labor and Management points-of-contact of the status and results of the mediation process as soon as possible after the conclusion of the process, including settlements, non-settlements, or cancellation.

Article 21: Discipline and Adverse Actions

Section 1.0 Statement of Purpose and Policy

The objective of discipline is to correct and improve Employee behavior so as to promote the efficiency of the service. It is not to be punitive in nature. The concept of progressive discipline, which is designed primarily to correct and improve Employee behavior, will guide managers in making decisions regarding discipline. A common pattern of progressive discipline is reprimand, short term suspension, long term suspension and removal. Any of these steps may be bypassed when the severe nature of the behavior makes a lesser form of discipline inappropriate.

In general, the Agency and the Union recognize that the public interest requires the maintenance of high standards of conduct. Bargaining Unit Employees will only be subject to disciplinary action for just and sufficient cause. Disciplinary actions will be taken only for such cause as will promote the efficiency of the service. Actions based upon substantively unacceptable performance should be taken in accordance with 5 C.F.R. 430 and will be covered in Article 18, Performance Management.

The Parties agree that the concepts of due process, impartiality, and fair treatment are essential regarding disciplinary actions and procedures.

Section 1.1 Definitions

A. *Disciplinary Action:* A disciplinary action is defined as a written reprimand, or a suspension from duty for fourteen (14) calendar days or less.

B. *Adverse Action:* An adverse action is defined as a suspension for more than fourteen (14) calendar days, furlough without pay for thirty (30) calendar days or less, removal, or involuntary reduction in grade or pay.

C. *Day:* Day is a calendar day, unless specified otherwise.

D. *Removal:* Removal is the involuntary separation from federal service that terminates the Employer-Employee relationship for cause.

E. *Informal Actions:* Informal actions include oral warnings, oral admonishments, and written letters of caution as opposed to letters of instruction or similar issuances that are considered guidance to Employees, the purpose of which are to inform or clearly convey practices, procedures, or instructions.

F. *Formal Action:* Formal actions include letters of reprimand, suspensions without pay, involuntary reduction in grade or pay, removals, or furloughs of thirty (30) days or less.

G. *Furlough:* furlough is an involuntary placement of an Employee in a non-pay, non-duty status for non-disciplinary reasons. Furloughs are relatively rare, and usually employed in response to a lack of Agency funds necessary to continue operations.

H. *Suspension:* A suspension is a disciplinary penalty under which an Employee is involuntarily placed in a non-duty, non-pay status.

I. *Indefinite Suspension:* indefinite suspension is the placement of an Employee in a non-duty, non-pay status for an indefinite period of time through the use of adverse action procedures, often while an investigation into potential misconduct is being completed.

J. *Preponderance of the Evidence:* That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

Section 1.2
Whenever possible, discipline should be preceded by counseling or oral warnings which are informal in nature. Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassment to the Employee. Admonishments in general will be considered informal counseling yet may be grieved as appropriate.

Section 1.3
Disciplinary and adverse actions will be consistently applied. The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all Employees in a fair and equitable manner. The deciding official will always be different from the official who proposed a disciplinary or adverse action. Normally the deciding official will be at a higher level of management than the proposing official.

The Agency agrees to effect discipline on a progressive and equitable basis as much as possible. These progressive applications of penalties are known as progressive discipline. This concept should be applied in all cases except where penalties are prescribed by law, rule, or regulation; or instances where Management deems the misconduct is egregious enough to warrant more serious action up to and including removal.

Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating, in determining the most appropriate corrective action for each situation, including whether alternative discipline should be an option in a given situation.
Douglas Factors: http://hr.od.nih.gov/hrguidance/er/douglasfactors.htm
Metz factors: http://hr.od.nih.gov/hrguidance/er/metzfactors.htm
(See Appendix 6)

Section 1.4
The Parties agree that disciplinary actions that are remote in time or are unrelated to any current proposed or effected disciplinary action generally should be precluded from being used or used in more severe progressive disciplinary action. There may be cases where it is warranted to use remote and/or unrelated actions in current disciplinary action and in such cases Management will provide the nexus of such use.

Section 1.5 Investigations
Taking a corrective action against an Employee is appropriate only when the Employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, Management shall conduct a thorough inquiry or investigation into any apparent offense (which may include collecting information directly from the subject Employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Disciplinary investigations will be conducted fairly and

impartially, and a reasonable effort will be made to reconcile conflicting statements by developing additional evidence.

This investigation will include the following facets:

1. Employees who are alleged to have committed some offense will be interviewed and told that they are the subject of an investigation;
2. Signed statements will be obtained from any Employees, Management officials or others who are interviewed in the course of the investigation;
3. All Employees being interviewed will be told the subject matter of the interview with as much specificity as possible, including whether the interview involves criminal or non-criminal matters, if known, except when doing so would undermine the investigation;
4. Additional evidence will be sought to reconcile any conflicting statements;
5. All evidence, whether for or against the Employee(s) being investigated, shall be documented;
6. No supervisory notes will be admitted in any disciplinary or adverse action case unless they were shown to the Employee in a timely manner;
7. The Union will be given an opportunity to have a representative present at any examination in an investigation that may result in disciplinary or adverse action.
8. Upon completion of an investigatory examination the Employee shall be permitted to review their statements and provide comments and or corrections as appropriate.

Section 1.6 Standard for Taking Action

Management must be able to show that the actions taken under this Article and related policies promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for the action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the circumstances.

Section 1.7

The Union shall be given the opportunity to be represented when the Agency conducts an investigation of an Employee and the Employee is a potential recipient of any form of discipline or adverse action, the Agency shall advise the Employee of his/her right to Union representation prior to the commencement of questioning. If the Employee reasonably believes that the event may result in a disciplinary action against him/her, he/she may request Union representation. If an Employee requests a representative, no further questioning will take place until the representative is present. In the event a representative is unavailable then the meeting will be rescheduled with the Union at the earliest possible availability, normally no later than three (3) business days.

If the Agency supplies written questions electronically or otherwise then the Employee has the opportunity to seek Union counsel prior to responding. The Agency will include in any written query that the Employee has the right to Union representation and the necessary time to respond after Union consultation.

Section 1.8

In any interview involving possible criminal conduct, at the beginning of that interview the Employee will be given the following written statement regarding his or her rights:

> *You are here to be asked questions pertaining to your employment with the NIEHS and the duties that you perform for the Agency. You have the option to remain silent, although you*

may be subject to discipline up to and including removal from your employment if you fail to answer material and relevant questions relating to the performance of your duties as an Employee. You are further advised that the answers you may give to the questions put forward to you at this interview, or any information or evidence which is gained by reason of your answers, may not be used against you in a criminal proceeding except that you may be subject to a criminal prosecution for any false answer that you may give.

I hereby acknowledge receipt of the aforementioned notification of my rights.

The Employee will be asked to sign and date this statement, and will be given a copy of the executed statement.

Section 1.9 Timeliness of Discipline

When an allegation is made regarding an offense or an offense is made known to the Agency, the Agency will conduct any appropriate investigation in a timely fashion. If disciplinary action is necessary, such action will be initiated in a timely manner based upon the circumstances and complexity of the case. A reasonable effort will be made to accomplish such action within forty five (45) work days following the conclusion of the investigation, or if no investigation occurred, within forty five (45) work days after the offense was committed or made known to the Agency.

Final Agency action should occur in a reasonable time period after the Employee has provided their response (or the deadline for such response has passed). A reasonable effort will be made to complete the process within forty five (45) work days.

Section 2.0

Letters of caution and other informal disciplinary actions may be issued by any supervisor in the Employee's supervisory chain of command. These letters are not filed in the Employee's eOPF but are retained as long the purpose of the discipline has been served normally this will be six (6) months but in no cases more than one year. The Parties agree that the Agency shall not rely upon or use letters of admonishment or other informal disciplinary actions once they have been removed from supervisory files.

Section 2.1 Official Reprimands

A. An official reprimand is a written disciplinary action which specifies the reasons for the action. The reprimand will specify that the Employee may be subject to more severe disciplinary action upon any further offense and that a copy of the reprimand will be made a part of both the Agency File (or Extension File) and the Official Personnel Folder (OPF) in accordance with this Article.

B. Reprimands shall normally be removed after one (1) year as long as there has not been additional misconduct. Reprimands may be removed earlier, however not less than six (6) months after issuance. In all cases, Reprimands will be removed from an Employee's file after eighteen (18) months from the date of issuance.

C. If a formal meeting is to be held when an Official Reprimand is given, the supervisor will notify the Union in advance of the time, place, and name of Employee prior to the start of the meeting.

D. The Official Reprimand will inform the Employee that s/he has the right to file a grievance under the negotiated grievance procedure, and the right to Union representation. The letter will specify the

date by which a grievance must be filed and the name of the Management official to whom a grievance should be addressed.

E. Upon request, the Employee and/or his/her designated representative will be provided, in a timely manner, normally within three (3) business days, copies of all material that was relied upon to support the disciplinary action. This information shall include any material that may be favorable or not for the Employee in question.

F. If the Employee or Union believes the purpose of the discipline has been served, they shall specify such reasons in writing to the supervisor. The supervisor shall respond in a timely fashion to the Employee and/or Union.

Section 2.2 Short-Term Suspensions

For proposed suspensions of fourteen (14) days or less the Employee is entitled to:

1. An advance written notice of thirty (30) days stating the specific reasons for the proposed action and the evidence upon which the proposed action is based;
2. Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. Additional time may be granted by the Employee or representative if requested in writing prior to the expiration time;
3. The Employee will be given a reasonable amount of duty time to prepare and present an oral and/or written response to the proposal;
4. After considering the Employee's response, the Agency will issue a written decision. The decision will comply with the requirements of the "Agency Decision" Section below. If the decision is unfavorable to the Employee, the decision may be grieved, through Article 22, Grievances, beginning with the last (pre-arbitration) step of the grievance procedure; and,
5. Be represented by an attorney or other representative.

Section 2.3 Removal, Suspension for More Than 14 Days, Reduction-in-Grade, Reduction-in-Pay, and Furlough of 30 Days or Less

An Employee against whom such an action is proposed is entitled to:

1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;
2. Fifteen (15) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. Additional time may be granted upon written request;
3. The opportunity to use up to eight (8) hours of duty time to review the evidence on which the notice is based and that is being relied on to support the proposed action. Additional time may be granted on a case by-case basis. Upon request, one copy of any document(s) in the evidence file will be provided to the Employee and his/her designated representative;
4. A written decision, after receiving the Employee's response, if provided, including the action to be taken, the effective date, and applicable rights;
5. The thirty (30) day advance notice period and other time frames may be reduced to seven (7) days when the crime provision is invoked. That is where there is reason to believe that the Employee has committed a crime for which a sentence of imprisonment may be imposed; and,
6. Be represented by an attorney or other representative.

When the circumstances require that the Employee be kept away from the worksite, the Agency may place the Employee in a non-duty status with pay for such time as is necessary to effect the proposed action.

Section 2.4
If the Agency wishes to add additional charges between the time it proposes disciplinary action and when a decision is issued, the Agency will rescind the original proposal and issue a new one, including the new charges, thus starting the process all over.

Section 2.5 Requests for Time Extensions on Proposals
The Agency will not unreasonably deny a request for extension of the time to respond to proposals.

Section 2.6 Union Officials
Whenever a Union Official is given a disciplinary action that would take them away from the work place, (e.g., suspension), that Union Official may continue to gain access to the Union Office to maintain its representational responsibilities as appropriate unless the Agency has a reasonable belief that the Union Official's access will interfere with Management's right to maintain security and protect information systems.

In the event the suspended Union Official is denied access, the Agency shall provide a written rationale.

Section 2.7 Medical Condition
An Employee who wishes consideration of any medical condition that may contribute to a conduct, performance or leave problem shall be given a reasonable amount of time to furnish medical documentation (as defined in 5 C.F.R. 339.102) in accordance with Article 32, Medical Determinations, of this Agreement.

Section 2.8 Off-Duty Conduct
In cases where a disciplinary or adverse action is proposed for reasons of off-duty misconduct, the Agency's written notification will also contain a statement of the nexus between the off-duty misconduct and the efficiency of the service. The notification will describe why and how there is a connection between the specific off-duty misconduct and the efficiency of the service.

Section 2.9
After the issuance of the decision letter, the Agency may amend or change its nexus statement for whatever legitimate reason and, if so, the process would need to restart anew with the included changes or amendments.

Section 3.1 Agency Decision
In arriving at its written decision, the Agency shall consider the evidence file, the Employee's response, if provided, including applicable medical documentation. The Agency shall not consider any reasons for action other than those specified in the notice of proposed action.

The written decision shall include the reason for the disciplinary action, a statement of findings and conclusions to each charge, and the relevant factors, both mitigating and aggravating, considered in determining the most appropriate corrective action.

If the decision is unfavorable, it shall also include the effective date, the action to be taken, and the Employee's appeal rights regarding the decision in accordance with the provisions of this Agreement.

Section 3.2 Representation (Agency)

A. Employees are entitled to representation at all phases of these proceedings, including all meetings with a Management official held for the purpose of discussing the covered actions. An Employee may be represented by the Union or other representative of his or her choice.

B. An Employee shall be provided with a second copy of any proposed formal action, as described in Sections 2.2 and Section 2.3, for the purpose of informing his or her Union representative, if the Employee so chooses to be represented by the Union.

C. Designations will be in writing and signed by the Employee. Once the designation has been made, all contacts and correspondence will be through the representative.

D. The Employee is responsible for bearing any and all costs for representation if the representative is other than the exclusive representative (Union). In the event an Employee (or Employees) proceeds without Union representation, the Union will be given the opportunity to be present at all meetings. Any adjustments must be consistent with the terms of this Agreement.

Section 3.4 Appeal Rights

The Employee may appeal the decision to take an action addressed in Section 2.3 regarding removal, suspensions of fourteen (14) days or more, etc. either to the Merit Systems Protection Board (MSPB) or under the provisions of Article 22, Grievances, but not both. A grievance will be filed at the final, pre-arbitration step. The decision letter will also specify the date by which a grievance must be filed; the name, and telephone number of the Management official to whom a grievance should be addressed; and the name, and telephone number of the Local President. The decision letter will specify the date by which an appeal to MSPB must be filed, and have attached to it the appropriate appeal form, and a copy of the MSPB's regulations regarding appeals of adverse actions.

Section 3.5

The Agency agrees that whenever a disciplinary action is found to be unjust, unmerited, and is ordered or authorized to be removed by a third party or other legal authority, that all such records and/or appropriately related records will be expunged from all Agency files.

Section 3.6

The choice of the appeal forum is irrevocable. An Employee shall be deemed to have exercised his/her option at such time as the Employee timely initiates an appeal to the MSPB, or timely files a written grievance, whichever occurs first.

Section 4.0 Alternative Discipline

Alternative discipline is an alternative to traditional penalties for Employee misconduct. It is a form of alternative dispute resolution that can be used to effectively resolve, reduce or even eliminate workplace disputes that arise from circumstances where disciplinary action is appropriate. The traditional penalties that alternative discipline generally replaces are suspensions and removals. Last chance agreements (LCA) are a form of alternative discipline.

Section 4.1
The option to offer alternative discipline to an Employee is the right of Management, generally the supervisor or manager with authority to propose or decide disciplinary action against the Employee. The process allows Management, the Union, if applicable, and the Employee who has committed an infraction to negotiate an alternative form of corrective action in lieu of traditional discipline, if some basic criteria are first met. The agreement between Management and the Employee is formalized in a written "Alternative Discipline Agreement" which details all of the terms and conditions used to resolve the situation.

Section 4.2
"Last Chance Agreements" refer to the terms agreed to by an Employee (or former Employee) and the Agency under which the Employee will be given a last opportunity to demonstrate acceptable conduct. If the Employee abstains from any further instances of misconduct during this time, at the end of the abeyance period, the proposed or final removal will be cancelled.

A. The use of LCAs shall be for just and sufficient cause and will not be arbitrary, capricious, or be based on disparate treatment.

B. Prior to offering an Employee a LCA, the Union will be notified and given an opportunity to be present at any meeting in which the Employee is offered such an agreement.

The Agency shall not attempt to persuade Employees to waive their rights in connection with disciplinary and/or adverse actions or to waive their rights to challenge such actions through appropriate procedures.

The terms of any LCA offered by Agency Management to Employees for their signature shall contain at a minimum the following provisions:

1. Signing a LCA does not necessarily constitute admission of any wrongdoing by the Employee.
2. The period called for in the LCA will normally not exceed eighteen (18) months. However, a lesser length of time may be negotiated by the Employee or his/her designated representative and the Agency.
3. If during the abeyance period the Agency alleges that the Employee has violated the terms of a LCA, the Agency shall provide the Employee with a final decision letter and the Employee shall be permitted to grieve, appeal, or take other appropriate action regarding that final decision in accordance with law, regulation, and this agreement.

Section 4.3 <u>Alternative Discipline</u>
Alternative forms of discipline are often of benefit to both the Employee and the Agency. The objectives of alternative discipline include but are not limited to:

1. Improving communications and interpersonal working relationships between supervisors and Employees;
2. Resolving behavioral problems or the perception of behavioral problems;
3. Reducing the costs and delays inherent in traditional disciplinary actions; and,
4. Decreasing the contentiousness between the Parties.

There are a number of options that, singularly or in combination, may be appropriate as alternatives to traditional penalties. These examples are not all inclusive and supervisors, Employee relations, Union

officials and Employees are encouraged to be creative and innovative in using the options stated as well as others while remaining within the confines of law and statute.

1. Donation of accrued annual leave to an approved recipient in the leave donor program or to the Agency's leave bank.
2. Leave without pay (LWOP) in lieu of suspension. (Note: an FLSA-covered Employee cannot report to work during an LWOP period.)
3. Paper suspension, in which an SF-50 documenting a suspension of a specific number of days is placed in the Employee's Official Personnel File, but the Employee does not actually serve a suspension. He/she remains in active duty status, performing work and getting paid. The SF-50 could be removed from the OPF after an agreed upon period of time.
4. Performance of unpaid, off-duty community service related to the offense. For example, instead of a thirty (30) day suspension for drinking alcohol on the job, the Employee agrees to perform 120 hours of community service in an alcohol abuse center. This must be documented to ensure that the Employee performed the community service work.
5. Agreement to seek and actively participate in counseling through the Employee Assistance Program (EAP) or other organization. This must be documented to ensure that the Employee attends and participates and can be done without violating the Employee's privacy.
6. Holding all or part of a suspension in abeyance for periods of time (generally one (1) to two (2) years) while the Employee demonstrates acceptable conduct and/or performance.
7. Writing, developing and/or presenting a variety of e-mails, memoranda, instructional guides, training modules, etc., that explains a specific aspect of proper conduct and the potential consequences for violating approved standards.
8. Making restitution to either the Agency or the Department of Treasury for monies owed to the government for unauthorized personal long-distance phone calls, credit card charges, time and attendance abuse, "wasting" official time, etc.

A. The CBA does not require that alternative discipline be used. However, if it is used, all the provisions of the CBA must be met.

B. Prior to proposing a traditional form of discipline, the Agency will notify the Employee that such discipline is being contemplated and that the Employee may request consideration of an alternative form of discipline. The Employee shall enter into any alternative discipline voluntarily.

C. The Employee will have five (5) workdays to request consideration of the alternative discipline option. Should the Employee request consideration of alternative discipline, a meeting(s) will be held and concluded within five (5) workdays of the request.

D. The Employee (or Employee representative) may after receiving the disciplinary action request alternative discipline instead.

E. If alternative discipline is used then the formal disciplinary action is expunged from any official record.

F. The employee may make a written statement in which she or he acknowledges that the perception of an impropriety occurred and further acknowledge that they will do their part to correct such perceptions (although employees are not responsible for other's opinions or views.)

G. The Employee is responsible for adhering to their provisions of the alternative discipline agreement.

H. If the Employee or Management does not adhere to the alternative discipline then any necessary formal disciplinary action or grievance may be pursued after discussions with the Parties to resolve the breach.

Section 4.4
At a minimum, all alternative discipline agreements should include the following:

1. A description of the misconduct and a statement that the disciplinary analysis resulted in a determination that a specified "traditional" penalty is warranted under formal disciplinary procedures. If alternative discipline is agreed to after initiation of the traditional process, attach the proposal and decision letters, as appropriate, to the agreement.
2. A statement in which the Employee acknowledges that the perception of an impropriety occurred and a further acknowledgement that they will do their part to correct such perceptions although they are not responsible for other's opinions or views.
3. A description of the terms and conditions that must be met for the Employee (and/or Management) to satisfactorily fulfill the agreement. The terms must include the timeframe(s) in which the Employee (and/or Management) must satisfy the agreement.
4. A statement in which the Employee agrees that if he/she fails to satisfy the terms and conditions of the agreement, the traditional penalty specified in the agreement will be effected unless there is an exigency or matter outside the Employee's control that would have caused such failure. The Employee shall provide such information to Management upon request.
5. A statement that the agreement was entered into voluntarily and that the Employee had the opportunity to seek the advice of a personal representative.
6. If applicable, an acknowledgment that no salary or wage compensation can be requested for any off-duty volunteer service and that such service is not covered by Workers' Compensation.
7. The signatures of the Parties to the agreement. At a minimum, this will include the Employee and the supervisor or other Management official authorized to enter into such an agreement. It may also include the Employee's representative and/or the Employee/Labor Relations Specialist.
8. A clause addressing the retention of records associated with the agreement (such as the case file and a copy of the agreement). The retention period is four (4) years for disciplinary action files.

Upon request, the Union shall be provided a copy of the alternative discipline agreement.

Section 5.1 <u>Notice to Union</u>
For all, the Agency will provide to the Union, on an annual basis, in March, the number of all reprimands, proposals of disciplinary and adverse actions, including any last chance agreements or alternative disciplinary actions effected by the Agency.

Section 6.0
If a discussion is to be held when a notice of proposed discipline is given, the supervisor will, prior to the start of the discussion, provide adequate advance notice to the Union.

Section 6.2 <u>Evidence</u>
Management shall furnish a copy to the Employee or designated representative, upon request, any and all evidence on which the notice of disciplinary action is based and that is being relied on to support the

proposed action. This evidence shall be provided in a timely manner normally within three (3) work days of the request.

Section 6.3
The Agency agrees that for many reasons it is important that Employees are treated with dignity, respect and professionalism in the workplace and this also includes when an Employee must be removed from government service.

Consequently, when an Employee is to be removed from government service they will be treated in a respectful manner. They shall be given sufficient time to pack their belongings. This time will normally be in the range from two (2) to four (4) hours depending on the amount of personal items they may have. Additional time may be granted upon request. The Employee may be given the option of returning to the workplace on the weekend or other acceptable time when fewer Employees are in the building to pack/retrieve their belongings. The Employee shall not linger but will complete packing and removal of their personal items in a prompt fashion. The Employee shall not remove any government files or equipment.

Security guards may patrol the area and are expected to allow the Employee to pack their belongings and to exit the building. There may be instances where it is in the Agency's best interest for the Employee to be escorted, particularly when the Employee is being removed due to misconduct. It is not expected that Employees being removed for non-disciplinary reasons be escorted unless there is sufficient reason to necessitate security escort.

Supervisors or managers of the Employee shall provide the Employee appropriate space and not antagonize the Employee. To the extent practicable, supervisors or managers shall attempt to stay away from the Employee's immediate area until they leave. Security guards may patrol the area but are expected to allow the Employee to pack their belongings and exit the building without being escorted as long as the Employee is not disrupting the work area.

This Section does not include those circumstances that are due to national security, criminal offense(s), or where immediate action must be taken to remove the Employee from government premises.

Section 6.4
When the circumstances require that an Employee be kept away from the worksite, the Agency may place the Employee in a non-duty status with pay for such time as necessary to effect the proposed action. The Union will be given, upon request, a reason in writing why it is necessary to place the Employee in a non-duty status.

With regard to Employees who have been given a proposed removal notice and who are taken out of their work area, the Agency shall ensure, to the extent practicable, that any files or documents (paper or electronic) shall not be removed or altered.

When the Agency deems it is appropriate, the Employee shall be given access to the Agency's computer and/or files, documents, systems, etc. that are paper or electronic including those on government equipment.

On a case-by-case basis, the Agency may permit a representative to access specific records.

If files or documents are removed they shall only be taken for just cause, their operational needs or other required Agency need and, to the extent practicable, maintained in their original condition. The Agency shall make a reasonable effort not to modify such files. Whenever this cannot be done the Agency shall, upon request, inform the Employee and specify any reasons why the documents cannot be returned or maintained in their original condition.

Appendix 6: Douglas and Metz Factors

Metz Factors

In Metz v. Department of the Treasury (86 FMSR 7001), the Federal Circuit Court stated that to determine if the words constituted a threat, the Merit Systems Protection Board (MSPB) must use the connotation that a reasonable person would give the words. The Court also listed several factors to consider in making a determination of a threat:

1. Listener's reactions;
2. Listener's apprehension of harm;
3. Speaker's intent;
4. Conditional nature of the statements; and,
5. Attendant circumstances.

Douglas Factors

(Douglas v. VA, AT07529006 4/10/81)

Factors Used to Determine Appropriate Penalties:

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 the 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 supervisors' 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. Consistency of the penalty with any applicable Agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the Agency;
9. 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;
10. Potential for the employee's rehabilitation;
11. 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
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Article 22: Grievances

Section 1.0 Purpose

This Article shall be administered in accordance with 5 U.S.C. 71, The Federal Service Labor-Management Relations Statute, and this Agreement. The Employer and the Union recognize and endorse the importance of bringing to light and addressing Employee concerns through the negotiated grievance procedure promptly and, whenever possible, informally. Most grievances arise from misunderstandings that can be settled promptly and satisfactorily in an informal basis at the immediate supervisory level. In this regard, the Parties will ensure that their representatives are properly authorized to resolve matters raised under this Article.

The Employer and the Union recognize the importance of settling disagreements and disputes promptly, fairly, and in an orderly manner that will maintain the self-respect of Employees and be consistent with the principles of good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest level of supervision where a decision can be made. Employees will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal for seeking adjudication of their grievances. In as much as dissatisfactions and disagreements arise occasionally in the work place, the filing of a grievance shall not be construed as reflecting unfavorably on an Employee's good standing, his/her performance, loyalty, or desirability to the organization.

The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances. Except as provided by law, this Article shall be the sole and exclusive procedure available to the Employer and the Union and Employees of the Unit for the resolution of grievances.

Section 2.0 Coverage and Scope

A grievance means any complaint:

1. By an Employee(s) concerning any matter relating to the employment of the Employee;
2. By the Union concerning any matter relating to the employment of any Employee; or
3. By any Employee(s), the Union or the Agency concerning:
   a. The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or,
   b. Any claimed violation, misinterpretation or misapplication of any law, rule or regulation affecting conditions of employment.

Grievances on the following matters are excluded from the scope of this procedure:

1. Any claimed violation of subchapter III of 5 U.S.C. 73 relating to prohibited political activities;
2. Retirement, life insurance or health insurance;
3. A suspension or removal under 5 U.S.C. §7532 relating to national security;
4. Any examination, certification or appointment; or
5. The classification of any position that does not result in the reduction in grade or pay of an Employee.

Section 3.0 Exclusivity

Section 3.1

Grievances may be initiated by Employee(s) covered by this Agreement and/or their Union representative or by the Agency. Representation of Bargaining Unit Employees shall be the sole and exclusive province of the Union.

Section 3.2
Except as provided by law, this is the exclusive procedure available to Bargaining Unit Employees, the Union or the Agency for the resolution of grievances within its scope.

Section 4.0 Representation

Section 4.1
Upon filing of a grievance, an Employee may elect to be self-represented or represented by a Union representative. Anyone whom the Union has designated in writing is the representative of the Union.

Section 4.2
The Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Employee self-represents, a copy of the grievance will be provided to the Union within five (5) days of the filing date. The Agency will provide the Union reasonable advance notice of any grievance meeting/discussion when the Employee self-represents. A copy of each grievance decision will be timely provided to the Union.

Section 4.3
Where the grievant elects Union representation rather than self-representation, meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative.

Section 4.4
When the grievant and the representative are on the same tour of duty, all steps in the grievance process will be scheduled during that tour, unless the Parties mutually agree otherwise.

Section 4.5
In situations where the grievant(s) and representative are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the grievance process to the common work times of the grievant(s) and representative unless the Parties mutually agree otherwise.

Section 5.0 Resolution of Grievances and Employee Standing
The Union and the Agency agree that grievances should be settled in an orderly, prompt and equitable manner so that the efficiency of the Agency may be maintained and morale of Employees shall not be impaired. Every effort shall be made by the Agency and the Union to settle grievances at the first level of supervision. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal, consistent with 5 U.S.C. 71 and this Agreement, in seeking resolution of grievances. Employees shall be authorized necessary time while on duty to prepare and participate in grievances, including individual or Union grievances.

Section 6.0 Grievability/Arbitrability Questions
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 Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the limit for the written answer in the final step of this procedure. All disputes of grievability/arbitrability shall be presented jointly with the merits issue(s) in the related grievance, except where the Parties agree to hear the grievability/arbitrability issue and the merits issue separately.

Section 7.0 Time Limits

Section 7.1
A grievance concerning a continuing practice or condition, including EEO matters, may be presented at any time. Except as covered in Section 2.0, a grievance concerning a particular act or occurrence must be presented to the Step 1 Management official within thirty (30) calendar days of the action or date the Employee became aware of it.

Section 7.2
Proof of service shall be a return post office receipt executed by the person served, or a written acknowledgment from the person served when hand delivered. In addition, when filing a grievance electronically the proof shall be the email with the appropriate grievance information contained therein sent to the Agency representative or Management official. In those instances where it can be shown the sender sent the email to an email address that was not authentic then such issues will be brought before the arbitrator.

Section 7.3
All the time limits in this Article may be extended by mutual consent.

Section 8.0 Options

Section 8.1
In accordance with 5 U.S.C. § 7121, an Employee at his/her option may raise matters covered under Sections 4303 (Unacceptable Performance) and Sections 7512 (Adverse Actions) under the appropriate statutory procedures or the negotiated grievance procedure, but not both. An Employee shall be deemed to have exercised his/her option at such time as the Employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing, whichever event occurs first.

Section 8.2
Similarly, an Employee affected by a prohibited personnel practice under 5 U.S.C. § 2302(b) (1) of the Civil Service Reform Act may raise the matter under a statutory procedure or the negotiated procedure but not both. An Employee shall be deemed to have exercised his/her option at such time as he/she timely files a grievance in writing or files a written complaint under the statutory EEO procedure, whichever event occurs first.

Section 8.3
Before filing a grievance which alleges discrimination, the Employee may first discuss the allegation with an EEO counselor. This discussion must be within forty five (45) calendar days after the event causing the allegation or after the date the Employee became aware of the event. The counselor shall have thirty (30) calendar days to resolve the matter informally. If the counselor is unsuccessful, he/she will give the Employee a written notice stating his/her right to file a formal complaint. If the Employee elects to file under the negotiated procedure, he/she shall proceed under Section 9.0 (Step 3) of this Article within fifteen (15) working days.

Section 9.0 Procedures for Employee Grievances

Section 9.1
Employees and/or their representatives are encouraged to informally discuss issues of concern to them with their supervisors at any time. Employees and/or their representatives may request to talk with other appropriate officials about items of concern without filing a formal grievance if they choose. In the event of a formal filing of a grievance, the following procedures will be followed.

Section 9.2
The Parties agree that a grievance shall reference the Articles or sections of the CBA that have been allegedly violated, the basis for the grievance, and a remedy.

The aggrieved party should attempt to provide, in summary terms, general information such as dates and times of significant events as accurately as practicable, identify who may have been involved by title, e.g., "Chief Steward Pat Jones" or "Lou Smith, the File Room Supervisor," and tell what happened, in chronological order.

Section 9.3 Normal Procedure
Step 1.
An Employee and/or the Union shall present the grievance to the immediate or acting supervisor, in writing, within thirty (30) calendar days of the date that the Employee or Union became aware, of the act or occurrence; or, anytime if the act or occurrence is of a continuing nature. The immediate or acting supervisor will make every effort to resolve the grievance immediately but must meet with the Employee/representative and provide a written answer within fifteen (15) calendar days of receipt of the grievance. If there is to be more than one Agency official involved in the grievance meeting, the Union will be so notified in advance.

Step 2.
If the grievance is not satisfactorily resolved at Step 1, it shall be presented to the second level supervisor or designee within seven (7) calendar days of the Step 1 supervisor's written decision letter. If there is to be more than one Agency official involved in the grievance meeting, the Union will be so notified in advance. The Step 2 official will provide the Step 2 answer within ten (10) calendar days from receipt of the grievance.

Step 3.
If no mutually satisfactory settlement is reached as a result of the second step, the aggrieved party or the Union shall submit the grievance to the Agency Director within seven (7) calendar days of receipt of the decision of Step 2. The Director or designee shall meet with the aggrieved Employee(s) and their Union representative(s) and/or provide a written decision within ten (10) calendar days from receipt of the Step 3 grievance.

Step 4.
If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 23, Arbitration. Only the Union or the Agency can refer a grievance to arbitration.

Section 9.4 Special Procedure

Step 1.

Any complaint which involves an adverse action, a removal or reduction in grade, or more than one Employee shall be submitted in writing by the Local President (or their designee) directly to the Institute Director (or their designee) within thirty (30) calendar days of the final notice of action.

The Agency will have fifteen (15) calendar days in which to answer the complaint in writing.

Step 2.

If the matter is not satisfactorily settled in Step 1, the Union can invoke arbitration per Article 23, Arbitration.

Section 9.5

In some cases, depending on the Employee's location in the organization, all of the foregoing grievance steps may not be applicable. If so, the procedure would end with the highest Management official (Director or designee) and then, if appropriate, proceed to arbitration.

Section 10.0 Grievance Decisions

All grievance decisions will be in writing and state the issue being grieved, a summary of the findings and the rationale for the decision. Copies of relevant documents cited in the decision will be provided if they are not otherwise readily available to the Employee.

Section 11.0 Failure to Meet Requirements

A. Should the Agency fail to comply with the time limits at any step outlined in Section 9 above, the grievance may be advanced to the next stage as determined by the Union.

B. If the grievant, after receiving a decision, fails to timely pursue the grievance, the grievance shall be terminated.

C. Failure to issue a decision will not in and of itself terminate a grievance.

Section 12.0 Withdrawal

The Union, acting as the responsible representative of all Employees in the Bargaining Unit, may, at any step of this procedure, withdraw on a nondiscriminatory basis from the grievance or grievance procedure.

Article 23: Arbitration

Section 1.0 Purpose
This Article shall be administered in accordance with the 5 U.S.C. § 71, the Federal Service Labor-Management Relations Statute and this Agreement. This Article establishes the procedures for the arbitration of disputes between the Union and Agency, which are not satisfactorily resolved by the negotiated grievance procedure found in Article 22, Grievances, of this Agreement. A referral to arbitration can be made only by the Union or the Agency.

Section 2.0 Preliminary Procedures
The Union or the Agency may invoke arbitration by serving written notice on the other party within thirty (30) days following receipt of a final decision under the Negotiated Grievance Procedure found in Article 22, Grievances. The notice shall identify the grievance and shall be signed and dated by an authorized representative on behalf of the Party submitting the matter to arbitration. "Day" in this Article is defined as a work day (Monday through Friday, excluding holidays and days in which the Agency is not open for business).

Section 2.1 Method of Selecting an Arbitrator
Within ten (10) days after invoking arbitration, the Agency shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial arbitrators. A copy of the request to FMCS will be served on the other party. Within five (5) days from receiving the list of arbitrators from FMCS, the Parties shall meet to select an arbitrator. If the Parties cannot agree upon an arbitrator, the Parties shall each strike one (1) name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator. The Party striking the first name shall be chosen by a coin toss. The cost of obtaining a list of arbitrators from the FMCS shall be shared equally by the Parties. At any time, the Parties may obtain a new list of arbitrators from the FMCS by mutual consent.

Following the selection, the moving Party, will, within ten (10) days, notify the FMCS of the name of the arbitrator selected. A copy of the notification will be served on the other party. The time limits may be extended by mutual consent.

Upon request of the moving Party, the FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event (1) either Party refuses to participate in the selection of an arbitrator; or (2) upon inaction or undue delay on the part of either Party.

For efficient use of government and Union resources, whenever possible grievances (even those that are unrelated) that are fairly close in temporal proximity will be heard by the same arbitrator. By mutual agreement the Parties may decide otherwise.

Section 2.2
Upon selection of the arbitrator, the Parties shall jointly communicate with the arbitrator and one another to select an agreeable date for the submission of motions and responses dealing with questions of arbitrability, if any, and establish a date for the hearing. Hearings over Employee grievances shall take place at the site provided by the Agency at NIEHS, RTP, NC, unless otherwise mutually agreed.

Section 2.3
When a grievance concerns a complaint of sexual harassment, as defined in Article 25, Equal Employment Opportunity, the hearing shall be a closed forum upon request of the Union.

Section 3.0
The expedited arbitration process is available to provide a swift and economical method for the resolution of identified disputes.

Section 3.1
The Parties will select an arbitrator in accordance with the provisions of this Article. The designated arbitrator shall be notified by the Parties jointly by telephone or email of any request for expedited arbitration. If one Party refuses then the other Party may move forward. In such cases, the designated arbitrator shall arrange a time, place, and date for the hearing within a period of not less than five (5) days and not more than fifteen (15) days after being contacted.

Section 3.2
The Parties agree that the Union will determine when a grievance filed by the Union is to be submitted for expedited arbitration.

Section 3.3
The following rules apply to the conduct of the expedited arbitration hearing:

1. The rules of evidence will be relaxed;
2. Briefs will not be filed either before or after the hearing and a transcript will not be made unless mutually agreed to by the Parties or required by the arbitrator;
3. Parties will be encouraged to use stipulations of fact and expected testimony for uncontroverted evidence;
4. Parties may present closing statements orally at the conclusion of the hearing; and
5. The arbitrator will issue an award either from the bench at the close of the hearing, which will be confirmed in writing within five (5) days from the close of the hearing; or in writing within seven (7) days after the close of the hearing.

Section 3.4
The Parties agree that expedited arbitration shall normally be used for the following matters:

1. Suspensions for fourteen (14) days or less;
2. Oral or written reprimands;
3. Actions imposing sick leave restrictions;
4. Sick leave, annual leave, LWOP, or AWOL disputes;
5. Denial of WIGI;
6. Individual disputes over AWS or telework;
7. Decisions by the Employer concerning:
   a. Bulletin board postings;
   b. Literature distribution;
8. Denial of an Employee's requested AWS or telework schedule.

Section 3.5
A. If the Union concludes that the issue(s) involved are of such complexity or significance as to warrant referral to regular arbitration under the procedures of this Article, the Union shall notify the Agency representative of such reference at least seven (7) calendar days prior the scheduled time for the

expedited arbitration. In such case, the regular arbitration procedures will be utilized.

B. If the Agency concludes that the issue(s) involved are of such complexity or significance as to warrant referral to regular arbitration under the procedures of this Article, the Agency shall notify the Union representative of such reference at least seven (7) calendar days prior the scheduled time for the expedited arbitration. In such case, the regular arbitration procedures will be utilized and the Agency shall pay the full cost of the court reporter and transcript.

Section 4.0 Grievability/Arbitrability
The arbitrator has the authority to make all grievability and/or arbitrability determinations. Grievability/arbitrability issues must be raised in writing by the final step of the grievance procedure. The arbitrator shall make a determination on grievability/arbitrability as a threshold issue prior to the scheduled hearing. Issues under this section will be submitted to the arbitrator and opposing party by written brief.

There will be no separate hearing for grievability/arbitrability issues, except by mutual consent. The arbitrator shall not address the merits of the dispute if the case is found to be non-grievable and/or non-arbitrable.

Section 5.0 Witnesses and Parties

Section 5.1
The grievant(s), the grievant's representative, and technical advisor, if any, and all Employees identified as witnesses, who are in an active duty status, shall be excused from duty and granted official time, travel and per diem expenses to the extent necessary to participate in all phases in the arbitration proceeding, either as a Party or to testify as a witness, without loss of pay. The Union will identify such persons, as they deem necessary, at least three (3) days prior to the hearing.

Section 5.2
The Agency shall ensure that all witnesses who are employed by the Agency are available for the hearing. In those instances when a witness cannot be made available on the day required, the arbitration may be postponed.

Section 5.3
The Agency will provide its list of witnesses to the Union a minimum of three (3) days prior to the hearing.

Section 6.0 Authority of Arbitrator
The arbitrator's decisions shall be final and binding subject to the Parties' right to take exceptions to an award in accordance with law, or the grievant's right, if applicable, to initiate court action. However, the arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement. The arbitrator may retain jurisdiction over a case when necessary to clarify the award, and will retain jurisdiction in all cases where exceptions are taken to an award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award.

The arbitrator shall have the authority to define the explicit terms of this Agreement.

The arbitrator's award will be limited to the issues presented and remedies requested during the grievance procedure.

The arbitrator may, at their discretion, require witnesses to testify under oath or affirmation, and, if requested by either party, shall do so. The arbitrator may sequester witnesses other than the grievant during the testimony of other witnesses as s/he deems appropriate.

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as s/he deems proper after consideration of any objection made to its admission.

Section 7.0 Ex Parte Communication with Arbitrator
There will be no communication with the arbitrator unless both Parties are participating in the communication.

Section 8.0 Computation of Time
In computing periods of time for the purpose of this Article, the first day of counting will be the day after the day of the act or event (e.g., the day after the Employee received a final decision to take discipline, or the day after the deadline for submitting a response to a grievance). If the last day in the count is a Saturday, Sunday, a legal holiday, a day other than a legal holiday when the employer's office is closed, or a day in which an unscheduled leave policy is in effect due to inclement weather, that day shall not be counted, and the last day will be the next regular work day.

The computation of time begins when the Employee knew of the act or event in question. Furthermore, if the Employee is unaware of the timelines involved with grievances then that will be a threshold issue, and the grievance will still be timely if the Employee can show they were unaware of the timeframes involved for submission of a grievance.

Section 9.0 Arbitrator's Award
The arbitrator shall render a written decision not later than thirty (30) days after the conclusion of the hearing unless the Parties mutually agree to extend this time limit. If no exception or other appropriate legal action is filed within the time limit established by statute and/or FLRA regulation, the award is final and binding. The appropriate Party will immediately take the actions required by the final award within fifteen (15) days after it becomes final and binding, or for issues related to pay as soon as possible but not to exceed sixty (60) days, except as provided by the Award. This section does not apply to the expedited arbitration procedure contained in Section 3.0.

Section 10.0 Costs of Arbitration

Section 10.1
The Parties agree to share equally the cost of regular fees, including reasonable travel expenses of the arbitrator selected to hear the case.

The exception to the above is the cost of a court reporter or arbitrator transcript. If a transcript is requested by the arbitrator, the Agency shall pay those costs. If transcripts are used or requested by both Parties, those costs shall be borne by the Parties. It is understood that if either party chooses additional copies of transcripts or services above the minimum they are responsible for those extra costs.

Whenever possible the Parties should seek an arbitrator within the regional vicinity, i.e., a maximum of 100 miles distant from RTP, NC. This will not prevent an arbitrator from being chosen by mutual consent from another area of the country.

Section 10.2
If, prior to the arbitration hearing, the Parties resolve the grievance, any cancellation fees shall be borne equally by both Parties. If a Party requests postponement, that Party shall bear the full cost of any rescheduling fees or postponement fees.

Section 11.0 Attorney Fees and Expenses

Section 11.1
Award of reasonable attorney fees and expenses incurred will be provided to the Union consistent with governing statute or case precedent.

Section 11.2
A. By statute, an arbitrator, notwithstanding the *functus officio* doctrine, has jurisdiction to resolve a motion for attorney fees from the Union after an award becomes final and binding.

B. The arbitrator's award on the issue of attorney fees will be issued within thirty (30) days of the arbitrator's receipt of the Agency's response to the Union's request. The arbitrator will provide a detailed explanation of why fees were or were not granted, as well as the hours and rates allowed.

C. All charges of the arbitrator incurred in connection with the award of attorney fees will be shared equally by the Parties.

Section 12.0 Dismissal/Cancelation/Postponement
The Parties recognize each other's right to dismiss any pending arbitration for failure to prosecute should the moving party fail to take reasonable steps to have a hearing held within one (1) year of the case being invoked.

If either Party wishes to postpone or cancel a hearing, that Party shall pay the full costs associated with the postponement and/or cancellation, unless the Parties agree otherwise.

Either Party is free to file motions to dismiss, which will be granted candid review by the arbitrator and a decision rendered in advance of the actual arbitration hearing. In the event a decision is reached dismissing the issue, thus resulting in cancelation or no further need of a hearing, the Parties shall equally bear the cost thereof.

If the Parties fail to agree on a joint submission of the issue for arbitration, each may submit a separate submission and the arbitrator shall determine the issue or issues to be heard. If neither party accepts the arbitrator's framing of the issue, this matter will be decided before this case proceeds to hearing.

Section 13.0 Arbitration Training
In the public's interest and with the intent upon saving money and resources for both Parties, the Agency agrees to pay for training (and associated costs and at no charge to leave) for one (1) Union representative to attend, at least once every two (2) years, a course, seminar, or class related to grievance and/or arbitration training. The Agency shall consider its budget and the training

recommendations from the Union prior to approval of a specific course, seminar or class.

Article 24: Security Investigations

Section 1.0 Policy
The Parties agree that the security and safety of Employees, contractors and affiliates and Federal facilities is critical. According to the Homeland Security Presidential Directive (HSPD) 12 dated August 27, 2004, "It is the policy of the United States to enhance security, increase Government efficiency, reduce identify fraud, and protect personal privacy by establishing a mandatory, Government-wide standard for secure and reliable forms of identification issued by the Federal Government to its Employees and contractors."

Section 1.1
All Applicants and Employees are subject to a background investigation appropriate to the position they occupy at the Agency. There may be instances where an Employee has already completed a Federal background investigation that may preclude the requirement of completing another one. The Agency shall make such decisions, and provide the rationale for such to the Employee upon request.

Applicants and Employees retain any and all rights and privileges granted to them through Federal Regulations, HSPD-12, and this agreement.

All suitability determinations shall be in accordance with 5 C.F.R. § 731.

Section 2.0 Background Investigations
The Agency shall provide adequate notice and information to Employees regarding any security investigation process. The Agency shall ensure that the information sent via email to Employees is recognizable as important and from a credible source. The Agency agrees that it is their responsibility to ensure that correspondence with Employees regarding background investigations is communicated in a clear and official manner so that such correspondence is not considered to be "spam" or some other possible malicious electronic communication.

Section 2.1
Background investigations are expected to be completed during duty time. Employees will be permitted up to eight (8) hours of duty time to complete all background information forms. For those Employees that may need additional time, particularly any Employee who must complete extra forms, they shall be given additional duty time as appropriate and on a case-by-case basis.

Any Employee who is not provided adequate notice or who could not meet the initial time requirements when a valid reason is provided, shall be given additional time to complete necessary paperwork.

Section 2.2
The Agency shall consider any methods that may save money or resources and make the process as easy for Employees as practicable. Training for Employees shall be user-friendly and effective. The Agency will make available personnel who can assist Employees through this process and shall notify Employees of contact information to request assistance.

The Agency agrees to make the application and background information investigation process easily accessible and online to the extent within their control. This is determined by the Office of Personnel Management (OPM) and NIH has no control over the applicable forms, releases, or OPM's automated systems.

Section 2.3
The Agency shall notify the Union when the security background or Personal Identity Verification (PIV) process changes and negotiate, per law, according to Article 12, Mid-Term Bargaining. In addition, whenever BUEs will be subjected to investigations beyond their usual or standard security level the Union shall be notified.

Section 3.0 Opportunity to Correct Discrepancies
Employees shall be granted a reasonable amount of duty time to correct any errors, omissions, or oversights or provide clarification on their paperwork involving their background investigation or PIV card prior to any disciplinary action being brought against them. This excludes egregious or criminal offenses.

Section 4.0 Security and Suitability Determinations
If an Employee is determined to be unsuitable for federal service or is unable to verify the Employee's identity and the Agency proposes the removal of an Employee from federal service, the Employee has the right to dispute the action using applicable grievance, appeal, or complaint procedures available under Federal regulations including but not limited to, 5 C.F.R. 315, 5 C.F.R. 752, other rules and/or regulations as appropriate, HHS Directives, or this agreement.

Section 4.1
During any grievance, appeal, or complaint procedures the Employee shall be allowed to maintain their current duties, functions, entry to NIEHS space, and access to all necessary systems unless it is determined that the Employee is a valid threat to the Agency or its Employees or inconsistent with National security. In such cases the Employee cannot be permitted to continue with his/her current duties.

Where the Employee is not permitted to continue with their regular duties, the Agency shall consider other options such as detail assignments, leave, or temporary reassignments.

The Employee has the right to Union representation during any/all grievance, appeal, or complaint procedures.

The basis regarding any adverse actions or negative suitability or security determinations shall be promptly released to the Employee.

Section 5.0 Access to Records
The completed background investigation information will only be provided to those on a strict need-to-know basis and to officials involved in the investigative process who have the appropriate clearance to see sensitive and private personal information.

Section 5.1
Employees have a right to their background investigation file. They may request the file by writing to:

OPM, Federal Investigations Processing Center
PO Box 618
Boyers, PA 16018-0618

Requests must include the Employee's full name, social security number, date and place of birth (city and state) and signature.

Section 6.0 PIV Card
The Agency shall ensure that the use of the PIV card for computer access or any other access shall be easy-to-use and as efficient as current means of entering passwords. In the event the Employee's password is forgotten the Agency shall provide Employees a method to reset their password.

Employees must safeguard their badge. Employees shall not be charged for damaged, lost, or stolen PIV cards. Employees will not be disciplined for accidental loss or damage to a PIV card.

Employees must notify their administrative officer of a lost, damaged, disabled or stolen card as soon as they can. In the interim, Employees will be issued a temporary badge for physical access only until the HHS ID badge clearance process has been completed. There will be no cost to Employees, however if the policy changes, the Union shall be notified and permitted to negotiate such a change to completion prior to implementation.

Section 6.1
The following information will NOT be on the PIV or ID badge:

1. Social Security Number
2. Home Address
3. Home Phone number

The Agency agrees to ensure the security of the information contained on PIV cards from digital theft or through other electronic interception method.

Section 6.2
Employees are required to keep the HHS ID Badges (PIV or smartcards) in their electromagnetically opaque badge holders, supplied by the Agency as they agreed to when the HHS ID Badge was issued to them. If personal information has been compromised the Agency agrees to assist the Employee to the maximum extent practicable in correcting the situation.

Section 6.3
The only persons authorized to the personal information on the PIV card are personnel security, suitability, and investigations professionals who have the appropriate security clearance and who have a demonstrated need to access the information.

Section 6.4
The Parties agree that the PIV card shall not be used as a monitoring device. However, the Parties agree that there may be times that the PIV card may be used to verify that an Employee has accessed a campus, a building, a lab or office or a data system during an investigation or in an emergency or security event. Such information shall be provided to the Union upon request when it involves BUEs during any grievance investigation or process.

PIV cards shall not be used as a timekeeping device or timecard, or other monitoring device, unless NIH policies change. And in that instance, the Union shall be notified and permitted to negotiate, prior to implementation, in accordance with 5 U.S.C. 71.

Section 6.5
If additional security related software is necessary for a personally-owned computer to access Agency network systems, the Agency will supply such software, budget permitting.

Article 25: Equal Employment Opportunity

Section 1.0 Policy

The Agency and the Union affirm their commitment to the policy of providing equal employment opportunity (EEO) to all Employees, to establish the Agency as a model agency, and to prohibit discrimination on the bases of race, color, religion, sex, (including sexual harassment, and pregnancy), age, national origin, or disability. In addition, the Parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status, sexual orientation, parental status and/or political affiliation as well as to the policy of prohibiting retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, the Equal Pay Act, the Genetic Information Nondiscrimination Act of 2008 (GINA) and all other laws and regulations related to unlawful discrimination.

In accordance with 29 C.F.R. 1614, Federal Sector Equal Employment Opportunity Act (1999), and the NIH's Equal Opportunity policy, the Agency will maintain a continuing affirmative program to promote equal employment opportunity and to identify discriminatory practices and policies and take corrective measures.

The Agency agrees that no discrimination will be tolerated on the basis of sexual preference and/or orientation.

Section 2.0 Equal Employment Opportunity Program

Section 2.1

The Agency's EEO Program shall be designed to promote equal employment opportunity in every aspect of the Agency's personnel policy and practice in accordance with applicable law and government-wide rules and regulations. The Agency shall conduct a continuing campaign to eliminate discrimination from its personnel practices and policies and employment conditions consistent with this Agreement, 29 C.F.R. 1614 and with the Employment Opportunity Commission (EEOC) Management Directive 715 (MD-715). The Agency will have a positive, ongoing, results-oriented, and effective affirmative action program of equal employment opportunity and will ensure that all managers and Employees are trained accordingly. Programs shall include, but not be limited to, implementation of the following objectives and goals:

1. Identify and eliminate barriers that impair the ability of individuals to compete in the workplace because of race, color, religion, sex, sexual harassment, sexual preference/ orientation, national origin, age, physical or mental disabilities and/or marital or parental status;
2. Establish and maintain training and education programs designed to provide maximum opportunity for all Employees to advance; and,
3. Ensure that unlawful discrimination in the workplace is promptly addressed and corrected.

Section 2.2

Consistent with EEO regulations, the EEO program shall include, but not be limited to:

1. Providing prompt, fair, and impartial processing of complaints at the counseling and complaint stages, and expeditious adjudication of complaints of discrimination filed through the EEO administrative complaint process;
2. Integration of EEO into the Agency's strategic mission;

3. Proactive prevention of unlawful discrimination from the Agency's personnel policies, practices, and working conditions;
4. Working with the appropriate Agency official(s) in order to provide reasonable accommodations for qualified individuals with disabilities unless such accommodations impose an undue hardship upon the operations of the Agency's programs and in compliance with the Americans with Disabilities Act of 1990 (ADA), Sections 501 and 505 of the Rehabilitation Act of 1973 and any other applicable Government-wide law and regulation;
5. Implementing procedures that allow for the redesigning of jobs, where feasible and desirable, without creating undue hardship to achieve the Agency's mission to use to the maximum extent possible the present skills of qualified disabled Employees; and,
6. Working with the appropriate Agency official(s) in order to provide religious accommodations for Employees that make such requests.

Section 3.0 Diversity Council - "Advisory Council"

A. The Union will be permitted to designate one (1) full voting member to the Council when total membership is ten (10) or less. When membership is greater than ten (10), the Union is permitted to designate two (2) voting members to the Council.

B. Ground rules and operating procedures, including Privacy Act considerations, for the Committee will be determined by its members.

C. The Union will be permitted to volunteer one (1) designated member on any subcommittee to the Council.

D. Union designated Diversity Council members shall serve a tenure as determined by the Union.

E. The Council described under this section is to be advisory and consultative in nature and serves both the Agency and the work force by functioning as a continuing link regarding matters of work force diversity.

F. The roles and responsibilities of the Council typically include:
    1. Identifying and bringing to the Agency's attention any trends, problems, issues or circumstances of a diversity nature;
    2. Focusing the Agency's attention on personnel management practices or problems of a diversity nature that are producing or could produce dissension and dissatisfaction among Employees such as merit promotion procedures, selection for training and distribution of awards;
    3. Promoting and communicating the efforts of the Agency to achieve and maintain an effective diversity program; and,
    4. Acting as a forum for an exchange of ideas and actions on matters or concerns of a diversity nature.

G. The Advisory Council may not be used as a means to investigate Employee grievances or as a means to investigate EEO complaints but may be used as a forum to discuss general issues that surround such complaints.

Section 4.0 Affirmative Employment
The establishment and implementation of EEO and affirmative employment is a fundamental Agency objective, mandated and reviewed by the EEOC.

A. Affirmative employment refers to workforce analysis, training, retention and recruitment efforts to ensure that qualified Employees and applicants from diverse groups are included in the recruitment pool for Agency vacancies, and while employed they progress at comparable rates. Affirmative employment programs cover those groups protected by Title VII of the 1964 Civil Rights Act.

B. The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives and to establish and/or maintain effective EEO programs that cover all aspects of equal employment opportunity throughout the Agency, as outlined in 29 C.F.R. 1614. 102 and MD-715.

C. The NIH Office of Equity, Diversity, and Inclusion (EDI) serves as the focal point for NIH-wide policy formulation, implementation, coordination, and management of the civil rights, equal opportunity, affirmative employment and workforce diversity programs of the NIH.

Section 5.0 Information and Data
The Agency shall make available to Employees written information describing the Agency's affirmative employment programs, and the EEO complaint process.

Section 5.1
If the implementation of the Agency's EEO program, plans or reports involve changes in personnel policies, practices, or matters affecting working conditions, the Union will be given a copy of the proposed implementation and an opportunity to exercise its bargaining rights prior to implementation.

Section 5.2
Within sixty (60) days of the effective date of this Agreement, the Agency will provide a copy of its EEO and affirmative employment related plans, MD-715 reports. This information will be provided annually thereafter.

Section 5.3
The Agency shall provide the Union annual status reports on workforce profile and action items at the end of each fiscal year when provided to the NIEHS Executive Leadership Committee.

Section 5.4
The Agency will review any employment practice or policy that has a disproportionate impact on members of minority groups, women, people forty (40) years of age and older, and people with disabilities with a view toward its elimination.

Section 5.5
The Agency will develop results-oriented programs for affirmative employment to resolve problems of under-utilization and under-representation of members of minority groups. The Agency's EEO program and reports and affirmative employment programs will be developed in accordance with Equal Employment Opportunity Commission (EEOC) and Office of Personnel Management (OPM) guidelines.

Section 5.5
In the case of a selection for a position where under-representation has been identified by the Agency's EEO reports or MD-715, qualified candidates from minority groups or other protected classes shall be given full consideration in accordance with law and under merit promotion procedures as outlined in Article 28, Merit Promotion, of this Agreement.

Section 6.0 Upward Mobility Opportunities
Upward mobility objectives will be considered in affirmative employment planning and will be consistent with EEO goals and objectives.

Section 6.1
Consistent with OPM regulations, the Agency will provide training programs in support of Employees selected to participate in Upward Mobility opportunities. As outlined in OPM regulations, the training will be directed toward providing the knowledge and skills required by the targeted positions.

Section 6.2
The Agency will consider establishing, on an ongoing basis, bridge positions in an effort to afford opportunities for Employees to transition to new career fields such as from clerical to technical and technical to specialist fields. The Agency will advise the Union of the data considered and the decision made to transition Employees during the semi-annual Workgroup meeting.

Section 7.0 EEO Counseling
A. Names, telephone numbers, of EEO counselors, an EEO Complaints Process chart, and the Agency's EEO policy statement will be posted on official bulletin boards in locations frequented by Bargaining Unit Employees (e.g., break room or cafeteria). This information will also be available on the Agency's intranet or website.

B. The Agency will ensure full cooperation of all Agency personnel with EEO Counselors and EEO personnel in the processing of complaints at all stages of the EEO complaint process.

C. EEO Counseling shall be conducted pursuant to 29 C.F.R. 1614 and supervision of the processes and program is directly under the EEO Director. Training requirements, such as certification, and guidance for the counseling process is conducted pursuant to 29 C.F.R. 1614 and MD-110.

D. Union officials representing Employees in EEO complaints, and for whom the complainant has submitted a written designation of representation to the Agency, will have access to copies of the EEO Counselor and Investigative Reports and the personnel records of the complainant, subject to applicable EEOC procedures.

E. The Agency will provide Employees with a place to meet privately with EEO counselors.

Section 8.0 Discrimination Complaints
A. Any Employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal and shall be entitled to expeditious processing of the complaint. The Employee must contact a staff member of the NIH EDI, an EEO counselor, or file a pre-complaint form (by fax, in person, mail, email a scanned pre-complaint form, or through the online NIH EDI website) within forty five (45) calendar days of the date of the alleged discriminatory action or within forty five (45) calendar days of when the Employee was made aware of the alleged discrimination. Any Employee

who seeks to file a complaint shall have the right to select a representative in accordance with applicable EEOC regulations and any other applicable law and regulations.

B. Consistent with 29 C.F.R. 1614, a formal EEO complaint must be filed within fifteen (15) calendar days of receipt of the Notice of Right to File a Formal Complaint provided by EDI.

C. An Employee has the option of filing a complaint under the negotiated grievance procedure (Article 22, Grievances) or under the statutory EEO complaint procedure, but not both. A grievance must be filed within fifteen (15) days of receipt of the Notice of Right to File a Formal Complaint provided by EDI. If a grievance is filed of this nature, it will be filed at the final step of the negotiated grievance procedure (Article 22, Grievances).

D. The Agency will maintain Alternative Dispute Resolution (ADR) for EEO Complaints during the pre-complaint counseling stage and during the formal complaint process. Any additional ADR Program will be jointly developed by the Parties and will continue throughout the term of this Agreement. The Parties recognize that ADR is a viable alternative that may not be appropriate in every situation.

E. The Union may file a group or class-action grievance on behalf of Employees who allege they have been or are being adversely affected by a personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or EEO activity. The Union must file the grievance within fifteen (15) days, as stated in Article 22, Grievances. A grievance concerning a continuing practice or condition, including matters involving discrimination, may be presented at any time, as stated in Article 22, Grievances.

Section 8.1
An Employee has the right to be accompanied, represented, and advised by a representative of his/her choice at any stage of the complaint process under the EEO administrative complaint process. The Employee is entitled to expeditious processing of the complaint within the time limits prescribed by regulations or by this Agreement. The Employee will designate his/her personal representative in writing.

Section 8.2
If the Employee files under the Negotiated Grievance Procedure, they may represent themselves or they may be represented by an authorized Union official (see Section 4.1 of Article 22, Grievances).

Section 8.3
Any Employee who wishes to file or has filed an EEO complaint or grievance will be free from coercion, interference, dissuasion, and reprisal.

Section 8.4
Any Employee who serves as the representative of another Employee will be free from coercion, interference, dissuasion, and reprisal.

Section 8.5
Any Employee who is a witness to or gives evidence concerning an EEO complaint or grievance will be free from coercion, interference, dissuasion, and reprisal.

Section 8.6
Persons who allege discrimination or who participate in the presenting of such complaints or grievances will be free from restraint, interference, coercion, dissuasion, or reprisal.

Section 8.7
Union officials representing Employees in EEO complaints or grievances will have prompt access, subject to applicable EEO procedures, to copies of the EEO Counselor's Report, Investigative Reports, and the personnel records of the complainant. Complainant must file a Designation of Representation form.

Section 8.8
The Agency shall provide the Union advance notice and opportunity to be represented at formal discussions, in accordance with 5 U.S.C. § 7114(a)(2)(A), which may include mediation/investigation sessions and EEO settlement negotiations pertaining to formal EEO complaints.

Section 8.9
If a change in working conditions arises as a result of an EEO settlement, the Agency will notify the Union and will bargain upon the Union's request in accordance with Article 12, Mid -Term Bargaining. Nothing in this Article should be construed as waiving the Union's right to bargain mid-term changes in personnel policies, practices, or matters affecting working conditions.

Section 8.10
Employees who believe they have been discriminated against on the basis of marital status, sexual orientation, parental status, or political affiliation may file a grievance pursuant to this Article without first contacting an EEO counselor.

Section 8.11
The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved Employee to request the Merit Systems Protection Board (MSPB) to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable. The Employee may request the EEOC to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the MSPB or to the EEOC shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

Section 9.0 EEO Complaint Elections

Section 9.1
Consistent with Article 22, Grievances, an Employee shall be deemed to have made an election under either the statutory procedure or the negotiated grievance procedure at such time as the complainant files a written grievance or files a formal written complaint under the statutory EEO complaint procedure, whichever comes first. A discussion with an EEO Counselor in no way precludes the filing of a grievance that is otherwise timely.

Section 9.2
At the conclusion of the informal interview process, the EEO counselor shall inform Employees in writing of their right to file an EEO complaint. The EEO counselor will provide an Employee a written description of the procedure for filing a formal EEO complaint.

Section 10.0 Reasonable Accommodations for Employees with Disabilities

Section 10.1
In accordance with Section 501 of the Rehabilitation Act of 1973, as amended, Section 403 of the Vietnam Veterans Readjustment Assistance Act of 1974, as amended, and other Government-wide rules and regulations pertaining to the employment of individuals with disabilities, the Parties agree that there is a need for more concerted effort and strategic planning to aggressively pursue the goal of increasing the employment of people with disabilities, thereby positioning the NIEHS as a model employer. NIEHS is committed to equal opportunity for the employment, retention, and advancement of qualified individuals with disabilities and disabled veterans.

Section 10.2
The Agency will offer reasonable accommodation, upon the oral or written request, to the known physical or mental limitations of qualified individuals with a disability, regardless of type of appointment, in accordance with law, unless the Agency can demonstrate that the accommodation would impose an undue hardship on the operation of the Agency as defined in 29 C.F.R. 1630.2(p).

Section 10.3
Employees may request an accommodation, orally or in writing to the immediate supervisor, or to the manager in the immediate chain of command. If the accommodation requires changes beyond their scope, supervisors will consult with the facilities and health and safety branches as appropriate. Upon request, the Agency must provide the Employee requesting a reasonable accommodation with its accommodation guidelines describing how to initiate an accommodation request and the Agency process for determining an accommodation request.

It is the Employee's responsibility to provide appropriate medical information related to the functional impairment and requested accommodation where the disability and/or need for accommodation is not obvious.

The Agency agrees to explore and take necessary actions required to accommodate Employees with disabilities. Supervisors shall actively engage Employees in an interactive process to find a resolution whenever possible. The need for reasonable accommodation is determined on a case-by-case basis, taking into consideration the Employee's specific disability and existing limitations to performance of a particular job function; the essential duties of a job; the work environment; and whether the proposed accommodation would create an undue hardship on the Institute.

Section 10.4
The Agency shall acknowledge receipt of the oral or written request within three (3) calendar days by the decision-making body or immediate supervisor. A response for granting or denying the request should be made within fifteen (15) calendar days from the initial request by the appropriate body or immediate supervisor. The response will include what accommodations will be provided, why they will be provided and how they will be provided. The Agency shall assist the individual with temporary accommodations until a decision or the requested accommodation can be made.

If the request is denied, the specific reason(s) for the denial will be provided to the Employee in writing within fifteen (15) calendar days. The written denial must state that prompt reconsideration of the denial may be made by the Agency, upon the Employee's written request within forty five (45) days.

Upon request, the EDI Disability Employment Program Manager will provide assistance. Employees may also file a grievance as described in Section 8.0 of this Article.

Section 10.5
Both Parties agree that reasonable accommodation means modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable Employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated Employees without disabilities.

Section 10.6
Reasonable accommodation normally does not cover personal items that the Employee would be expected to provide, such as hearing aids, prosthetic devices, wheelchairs, eye glasses**,** or transportation to work.

Section 10.7
Should an Employee become unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability**,** the Agency shall offer to reassign the Employee when a funded vacant position is available and conditions in 29 C.F.R. 1630 are met.

Section 10.8
The Agency agrees to consider reasonable accommodations that include, but are not limited to:

1. Job restructuring;
2. Making facilities readily accessible to and usable by individuals with disabilities;
3. Modifying work schedules;
4. Acquiring or modifying equipment or devices;
5. Adjusting or modifying examinations, training materials or policies;
6. Providing qualified readers and interpreters for persons with visual impairments;
7. Varying work hours in accordance with Article 14, Hours of Work;
8. Telecommuting or working at home in accordance with Article 16, Telework;
9. Granting of leave in accordance with this Agreement; and,
10. Reassigning or transferring Employees to another position.

Section 10.9
For Employees with disabilities, job restructuring is one of the principal means by which some qualified workers with disabilities can be accommodated. The principal steps in restructuring jobs are:

1. Identify which factor, if any, makes a job incompatible with the worker's disability.
2. If a barrier is identified in a nonessential job function, the barrier may be eliminated so that the capabilities of the person may be used to the best advantage.

Job restructuring does not alter the essential functions of the job; rather, any changes made are those which enable the person with a disability to perform those essential functions.

Section 10.10
The Agency will be liberal in granting requested leave to accommodate the condition of qualified Employees with disabilities. For example:

1. Leave without pay may be granted for illness or disability; and,

2. Sick leave can be appropriately used by a disabled individual (who uses prosthetic devices, wheel chairs, crutches, guide dog, or other similar type devices) for equipment repair, guide dog training, or medical treatment.
3. Voluntary Leave Transfer Program (VLTP) may be used.

Section 10.11
The Agency agrees to provide interpreter services when requested for those deaf or hearing impaired Employees who seek Union assistance and/or representation for their individual concerns. To the extent possible, interpreter services should be arranged in advance, unless the Employee chooses to take responsibility for the arrangement of the interpreter in order to maintain confidentiality.

Section 10.12
The Parties agree that, in many cases, changes in the work environment and accommodations enable persons with disabilities to more effectively perform their job duties. Alterations and accommodations may include, but are not limited to, the following:

1. Rearranging files or shelves;
2. Widening access areas;
3. Maintaining hazard-free pathways;
4. Moving or modifying equipment controls;
5. Installing special holding devices on desks, benches, chairs or machines;
6. Using modernized systems, computers and software; and,
7. Using operational and training materials in Braille.

Section 10.13
The Agency will provide Employees with disabilities full consideration for all training opportunities. Once an Employee is selected for training, the Agency will provide reasonable accommodations to the Employee to attend and complete the training, consistent with federal guidelines and laws. The Agency agrees to provide on-the-job training opportunities to qualified disabled Employees on the same basis as nondisabled Employees, consistent with the Agency's operational needs.

Section 10.14
Employees with disabilities shall be provided with equal opportunity to perform official business travel. Certain additional travel expenses that are necessarily incurred to reasonably accommodate the Employee's disability may be reimbursed under the Federal Travel Regulations.

Section 10.15 <u>Pregnancy and Temporary Disabilities</u>

A. Employees who are pregnant, nursing, or temporarily disabled may formally request accommodation. Such requests can be informal or formal and may be orally or in writing. The request needs only to be a succinct reason for requesting an accommodation, the Employee's suggestion for an accommodation (e.g., modification of schedule), and the anticipated length of time the accommodation that will be needed. The Agency agrees to make every reasonable effort to grant such requests. The Employee and supervisor should work together to try to find solutions to accommodate each other's needs. The Agency's decision of whether or not to provide individual accommodations will be made on a case-by-case basis, taking into consideration the Employee's specific needs, the work environment, and the Agency's business needs. If an Employee's request is based on a medical condition, the Agency may require the Employee to submit medical documentation in support of her/his request to the designated disability manager or disability committee. Such medical documentation shall be comprised of a letter from a physician or

healthcare practitioner. Any and all such documentation shall be confidential and private and only given to personnel on a need-to-know-basis.

B. Where working conditions are more strenuous or hazardous than normal office conditions, a pregnant Employee may request temporary reassignment to other available work for which she is qualified, to protect her health and that of her unborn child. She may also request modification of her work duties due to adverse working conditions. Where such reassignment is requested, based on medical certification, the Agency will make every reasonable effort to accommodate the Employee's request.

C. A pregnant Employee shall not be involuntarily reassigned to other duties solely because of pregnancy unless the Employee makes such a request.

D. Employees recuperating from illness or injury who are temporarily unable to perform the full range of official duties may submit to their supervisor a written request for a temporary assignment (not to exceed forty-five (45) calendar days initially, additional time to be considered as appropriate) to duties commensurate with the disabilities of the illness or injury. Such requests will be accompanied by a letter from a physician or health practitioner. Upon receipt of the Employee's written request with the accompanying medical statement, the Agency agrees to make a reasonable effort to assign duties to the Employee in accordance with applicable rules and regulations, medical recommendations, and the needs of the office and other workers.

E. The Agency agrees to continue the current Health and Safety Reproductive Hazard Evaluations, which are committed to protecting the reproductive health of all NIEHS and minimizing the risks of damage to the unborn fetus.

Section 10.16 Confidential Information

The Agency agrees that it will preserve the confidentiality of personal/personnel medical records and medical data in accordance with the Privacy Act of 1974 (552a). This type of information should be placed in a separate, confidential medical file. Written permission from the Employee is required for any release of medical documents and records. All medical records and data will be held in strict confidence.

Section 11.0 Religious Accommodation

Employees may request accommodation for special religious needs. Accommodation of Employees with religious needs will be addressed consistent with federal guidelines and consistent with Article 15, Overtime. (Refer to 29 C.F.R. 1614.102(a)(7).29 C.)

Section 12.0 Sexual Harassment

Section 12.1

Sexual harassment is a form of sex discrimination which undermines the integrity of the employment relationship and adversely affects Employee opportunity. All Employees must be allowed to work in an environment free from unsolicited and unwelcome sexual behavior. The Agency will provide all Bargaining Unit Employees a work atmosphere free from sexual harassment and make Employees aware of the Agency’s sexual harassment policy.

Section 12.2
Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for career or employment decisions affecting such individual; or,
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Section 12.3
Where an Employee has brought an allegation of sexual harassment to the attention of the Agency, the Agency shall treat such allegations as serious and confidential and shall disclose information on a need to know basis. The Agency shall take prompt and effective action to address the allegation of harassment.

Section 12.4
Any Employee who believes that he/she has been a victim of sexual harassment may file a grievance, EEO complaint, or a mixed case appeal with the MSPB as set forth in Section 8.10 of this Article and Article 22, Grievances.

Section 13.0 Agency Diversity Work Group
The Parties will form and meet semi-annually, a working group constituted under the auspices of the Labor-Management Forum (as defined in Article 2, Labor-Management Cooperation) to perform workforce and trend analyses to identify factors and practices that can contribute to inequities in the representation, advancement, and treatment of individuals within the Agency's workforce.

The working group will develop recommendations for consideration to improve the fair and equitable treatment of all applicants for all BUE positions, based on merit principles and the principles of equal employment opportunity, including ways to strive to achieve MD-715 objectives pertaining to recruitment, promotion, and retention. The working group will not be a forum for the resolution of individual grievances. In carrying out this task, the working group shall consist of eight (8) members and will include representatives from the Union (3), Management (3), EDI (1), and Human Resources (1). Recommendations will be submitted to the Director of EDI (or equivalent Management official). Should recommendations be referred to higher levels, the Union will be timely notified. The Agency agrees to provide information to the Union that shall include but not be limited to work force analysis of current and previous year, statistical summary of discrimination complaints, training opportunities (e.g., leadership development program), promotions, awards, and disciplinary actions.

The working group shall examine employment policies, procedures and practices to identify actual problems, barriers, and “triggers” that alert the Agency to the existence of problems or barriers which may limit employment opportunities to certain groups; develop plans, objectives and action items to address and to correct problems and barriers, including a clear statement of specific and measurable objectives and supporting action items that will address and resolve problems and barriers identified.

Section 14.0 Official Time
All Committee and workgroup meetings will be during regular duty hours and the Agency will, to the maximum extent possible, make work schedule changes to accommodate attendance by Union

representatives. All Union representatives shall receive official time while attending such advisory committee meetings.

Section 15.0 Information and Notice to Union and Employees

Section 15.1
The Agency will provide the Union copies of regulations in the Agency's possession that describe the discrimination complaints process and statistical reports concerning discrimination complaints filed by Bargaining Unit Employees.

Section 15.2
If an Employee elects to use the grievance procedure with Union representation, instead of the statutory procedure for filing a discrimination complaint, the Union shall have the right to discovery, as described in the EEOC's regulations. Provision of any information under this Article does not impact any rights the Union may have under 5 U.S.C. § 7114 (b) and the Freedom of Information Act.

Section 15.3
The Union will be provided information relating to the demographics of the workforce when requested to represent the Bargaining Unit Employees in a potential or actual grievance. The Agency will also provide this information to the Union within ten (10) workdays of receiving a written request from the Union.

Section 16.0 Pay Equity
The Agency will observe the principle of equal pay for equal work by applying classification standards and OPM decisions consistently. The Agency shall classify positions based upon their duties, responsibilities, and qualification requirements compared to the criteria specified in the appropriate OPM classification standard or guide. Other methods of evaluation, including comparison to other positions, are not permitted. As such, the Agency will not discriminate against any Employee or group of Employees with respect to wages, pay, grade, benefits, condition of employment or any other compensation.

Article 26: Details, Reassignments, and Voluntary Changes

Section 1.0 Details
A detail is the temporary assignment of an Employee to a different position or to a different set of duties for a specified period, with the Employee returning to his/her regular duties at the end of the detail, as the Employee continues to be the incumbent of the position from which detailed.

Section 1.1 Documentation
Employees shall be recognized for the work they perform. Employees detailed to another position shall be given a position description or brief description of duties if such assignment exceeds thirty (30) calendar days. Details in excess of thirty (30) calendar days shall be reported on Standard Form 52, "Request for Personnel Action," and maintained as a permanent record in their Official Personnel Folder (OPF). For details of ten or more consecutive workdays but less than thirty (30) calendar days, the Employer shall provide Employees with a memorandum. Employees may update and augment their OPF with additional information about their work in accordance with Article 5, Employee Rights, of this Agreement.

Section 1.2
The Agency will make a reasonable effort to avoid placing Union officials on details that would prevent them from performing their representational functions.

The Union will be given written notice at least fifteen (15) workdays in advance before detailing a Union Officer, Official, or Steward, other than a detail at that Employee's request, provided that the Agency has advance notice of the need for a detail. Whether requested or not, details will be in accordance with Sections in this Article. Upon request, the Agency will bargain over negotiable aspects of such changes.

Section 1.3 Higher Graded Duties
Details to higher graded positions or to positions of known promotion potential will be accomplished in accordance with the procedures contained in Article 28, Merit Promotion.

Section 1.4 Lower Graded Duties
Performance of lower graded duties officially assigned by the Agency which are outside an Employee's position shall not result in loss of recorded or credited time in the grade of the Employee's permanent position. Such performance of lower graded duties shall not be the basis for a lowered assessment or appraisal of the Employee, nor will it adversely affect the Employee's ability to bid for and be considered for any job for which the Employee would have been eligible had the Employee not been detailed to those duties.

Section 1.5 Appropriate Use of Detail
Details shall be used to meet temporary needs of the Agency's work program. Details will be rotated fairly and equitably among qualified Employees. Details will not be used to reward or punish Employees. Whenever possible, details will also be used to help provide career development opportunities for Employees. Volunteers for details shall be given prompt and fair consideration.

Section 1.6
The following will apply when filling non-competitive details in excess of thirty (30) calendar days:

The Agency will determine the qualifications of the position of detail, as well as any task-related qualifications of the work to be performed. Only objective and job-related qualifications will be applied under these procedures.

The Agency will determine the area of solicitation in which to post the detail. Postings will be done electronically or by bulletin board posting, whichever is available to Employees in the area of solicitation.

Postings will be for a reasonable period of time to allow eligible Employees the opportunity to become aware of and apply for details.

After the posting period, the Agency will select from the qualified volunteers. If more than one qualified Employee volunteers, normally seniority will be the selection criterion, except when the Agency demonstrates and determines that the position to which an Employee will be detailed requires unique skills and abilities that are not possessed by another qualified Employee or that an operational need requires or precludes the detail of a particular Employee. Seniority will be determined by the Service Computation Date (SCD).

When there are no volunteers or fewer volunteers than vacancies, then normally the least senior qualified Employee(s) will be selected, except when the Agency demonstrates and determines that the position to which an Employee will be detailed requires unique skills and abilities that are not possessed by another qualified Employee or that an operational need requires or precludes the detail of a particular Employee or when the Agency makes a detail to accommodate a substantiated medical or health problem.

Upon request, the Agency shall provide the Union with their reasoning for making selections that are different than what is normally expected.

Section 1.7
A non-competitive detail may not be made primarily:

1. For training or evaluation of an Employee in a higher-graded position;
2. To give an Employee a trial period before permanent promotion; or,
3. To decide among candidates for permanent promotion.

Section 1.8
The Agency agrees that non-competitive details shall not afford certain Employees an undue opportunity to gain qualifying experience or prevent others from gaining such experience with respect to filling a likely vacancy or being promoted.

Section 2.0 <u>Reassignments</u>
Reassignment means a change from one position to another, without promotion or demotion, while the Employee is serving continuously within the same Agency. Because they are permanent, all reassignments will be documented in the Employee's eOPF.

Section 2.1
Reassignment includes:

1. Movement to a position in a new occupational series, or to another position in the same series;

2. Assignment to a position that has been redescribed due to the introduction of a new or revised classification or job grading standard;
3. Assignment to a position that has been redescribed as a result of position review; and,
4. Movement to a different position at the same grade but with a change in salary that is the result of different local prevailing wage rates or a different locality payment.

Section 2.2
Requests for voluntary reassignments shall be given prompt and fair consideration. The Agency will make a reasonable effort to reassign Employees in the best interests of the Agency and its workforce. The Labor-Management Committee will devise a reassignment program with a goal of benefiting both NIEHS and its Employees.

Section 2.3
An Employee reassigned outside the commuting area will be given reasonable advance written notification, normally not less than sixty (60) days.

Section 2.4
When an Employee is reassigned to a different position, the Employee will be given a reasonable period, e.g., ninety (90) days, in which to become competent. If he or she cannot attain satisfactory performance, serious consideration will be given to returning the Employee to the previous position or a new position at the same grade level.

Section 2.5
The Union will be given reasonable advance written notice, normally not less than sixty (60) days, before reassigning a Union Officer, Official, or Steward to a position outside the commuting area. When applicable and upon request, the Agency will bargain over negotiable aspects of the reassignment before implementing it in accordance with Article 12, Midterm Bargaining.

Section 2.6
The Agency will make every reasonable effort to avoid placing Union officials to reassignments that would prevent them from performing their representational functions.

Section 2.7
The Union will be provided a listing of all Bargaining Unit Employees reassigned each month, if applicable. The listing will describe the overall nature of the reassignment, the new duties or position description assigned to the Employee before and after the reassignment if significantly different.

Section 2.8 Voluntary Changes
Employees may voluntarily request a reassignment for any reason. All such requests are subject to Management's right to assign Employees work, and to determine the personnel by which Agency operations shall be conducted. Such requests will be considered by the Agency and a good faith effort will be made to balance the needs of the Employee with the Agency's program needs. Employees may voluntarily request changes in their work assignments at any time. Any voluntary changes will be processed in accordance with applicable laws, rules, regulations, and this Agreement.

When appropriate, the Agency will consider factors such as Employee’s perceptions of reprisal, discrimination, or other difficult work conditions precipitating the request for reassignment. If a work situation is determined to be unpleasant and likely affecting morale and/or productivity of an Employee

or group then a reasonable effort will be made to reassign that Employee to another area where their skills can be used in a more positive fashion.

Section 2.9
Reassignments shall be in compliance with Merit System Principles and not be made as a reward or penalty.

Section 2.10
Management will, to the maximum extent practicable, reassign Employees whose positions are eliminated.

Section 3.0 Relocation Expenses
Employees affected by a change in duty station shall be entitled to relocation expenses in accordance with applicable laws, rules, regulations, and this Agreement.

Section 4.0 Leave
All leave previously requested and approved will be transferred with the Employee.

Article 27: Position Classification

Section 1.0 General
Each position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, code, and grade.

Section 1.1
Affected Employees and the Union will be provided timely notice of personnel management evaluations conducted by either the Agency or the Office of Personnel Management (OPM) that will involve classification audits of Bargaining Unit Employees.

Section 1.2
While classification audits are in process, the Agency will not reassign duties if the purpose of the reassignment is to avoid reclassification of the position.

Section 1.3
Employees shall have the right to Union representation in all phases of the classification process, including desk audits, covered by this Agreement.

Section 1.4
The Agency will notify the Union in writing as soon as possible when substantive changes will be made in the duties and responsibilities of positions held by Bargaining Unit Employees due to reorganization, or when changes in position classification standards result in classification changes, or for any other reason that changes will be made in position classification standards that could result in classification changes.

Section 1.5
The Agency will apply newly issued OPM classification and job grading standards within a reasonable period of time. The Union will be provided with copies of new standards. Current standards will be provided upon request.

Section 1.6
Upon request, the Agency will provide the Union with copies of all Agency guidance provided to OPM in connection with any classification standards.

Section 1.7
The Agency will consider the Union's oral or written views concerning occupational classification standards when making recommendations to OPM and will notify the Union, in like manner, of any action taken.

Section 2.0 Position Descriptions

Section 2.1
All Employees are entitled to a complete and accurate position description, which clearly and concisely states the major and grade controlling duties, responsibilities, and supervisory relationships of the position. This will be provided to the Employee at the time of assignment and upon request.

Section 2.2
Each position covered by this Agreement must be current and accurately described, in writing, and

classified to the proper occupational title, series, code, and grade in accordance with OPM and Agency regulations.

Section 2.3
Current position descriptions for Bargaining Unit positions will be provided to the Union, upon request.

Section 2.4
The Agency will provide the Union with copies of any Agency guidance provided to OPM in connection with any classification standards. The Union will be provided the opportunity to review proposed changes in position descriptions and copies of updated and new position descriptions and make recommendations and present evidence concerning the adequacy and equity of position descriptions. The Union will be given this information once received by Management, or promptly thereafter, to review the proposal and offer comments.

Section 2.5
Whenever an existing position description is amended or new descriptions for Employees are finalized, the Agency will provide copies of the amended or new descriptions to the Union and affected Employees once received by Management, or promptly thereafter.

Section 2.6
The phrase "other related duties as assigned" and other phrases having similar meaning as used in position descriptions, means duties related to the basic duties of the position. Such phrases will not be used to regularly assign work to an Employee that is not reasonably related to the duties listed in the position description.

Section 2.7
If an Employee has a question concerning his/her classification or position description, he/she is entitled to discuss his/her position description with his/her supervisor. If the Employee wishes to pursue the matter further, he/she may request a desk audit as provided for in Section 3.0 of this Article, file a grievance as appropriate, or file a classification appeal in accordance with Section 6.0 of this Article and 5 C.F.R. 511, Subpart F. Prior discussion with an Agency official is not required before an Employee either requests a desk audit or files a grievance or classification appeal.

Section 3.0 Desk Audits

Section 3.1
Desk audits may occur by request of an Employee or the Union or at the discretion of the Agency. Employees may request a desk audit by notifying their supervisor. Upon such notification, the Agency will either acknowledge receipt of the request within five (5) calendar days or provide an estimate of the additional time needed to reply.

Section 3.2
On a Management initiated desk audit, the Employee(s) who is the subject of a desk audit, and the Union, will be provided timely notice by the Agency prior to the desk audit. Notices will identify the Employee(s), position, the reason the audit is being conducted, and propose a time for the audit.

Section 3.3
While a desk audit is in process, the Agency will not reassign duties for the sole purpose of avoiding

reclassification of the position.

Section 3.4
During an audit, the Employee and Union representative may discuss the audit with the Employee's supervisor and other involved Agency officials (e.g., Human Resources staff). Upon completion of the audit, the Agency shall designate an official to discuss the findings with the Employee and the representative.

Section 3.5
As appropriate, desk audits will be performed at the Employee's workstation.

Section 3.6
When a desk audit is conducted, it will be completed within thirty (30) to sixty (60) days of the Union or Employee request. This time frame may be extended by mutual consent.

Section 4.0 New Classifications

Section 4.1
Classification decisions rendered by the Agency or OPM having the effect of establishing a grade level that did not exist before within an occupation will be forwarded by the Agency to the Union with the basis for that decision.

Section 4.2
A promotion resulting from the application of a new classification standard or correction of a classification error will normally be effected no later than the beginning of the second pay period following a Management decision to promote the incumbent(s), provided he or she meets any applicable qualification, performance, or other requirements for the position in questions.

Section 5.0 Downgrades

Section 5.1
An Employee whose position is reclassified to a lower grade which is based in whole or in part on a classification decision is entitled to a prompt written notice from the Agency. This notice will be issued to affected Employees within ten (10) calendar days of the decision. This includes Employees who are eligible for retained grade or pay. The notice will explain:

1. The reasons for the reclassification action;
2. The Employee's right to appeal the classification decision to the Agency (if the Agency has an established appeals system and it has the authority to review the classification decision), or to OPM as provided by regulations, if such appeal has not already been made;
3. The time limits within which the Employee's appeal must be filed in order to preserve any retroactive benefits under 5 C.F.R. 511.703; and,
4. Any other appeal or grievance rights available under applicable law, rule, regulation, or this Agreement.

Section 5.2
For a downgraded position, the Employee's pay and grade will be maintained in accordance with law and regulations.

Section 5.3
Employees who have been downgraded as a result of a classification action while serving under a career or career-conditional appointment (or one of equivalent tenure) shall be entitled to priority noncompetitive consideration for return to prior grade prior to a vacancy being filled by competitive promotion under Article 28, Merit Promotion. Such Employees shall be entitled to priority referral and consideration only to vacancies for which the downgraded Employee is highly qualified up to the grade level or the equivalent level of the position from which downgraded.

A. A listing of the ten most senior highly qualified downgraded Employees will be referred to the selecting official before a competitive promotion certificate is issued and before referral of other candidates not entitled to preferred placement by applicable regulations (e.g., reassignment eligibles). If there are less than ten highly qualified status eligibles, all highly qualified eligibles will be referred. The seniority of highly qualified candidates is determined by Service Computation Date (SCD).

B. If the list of downgraded Employees contains five or more highly qualified status eligibles, selection from among those eligibles will be mandatory, unless persuasive reasons for nonselection are provided in writing to the Head of the Agency or designee.

Section 5.4
The impact of any notice of downgrading will be negotiated with the Union prior to implementation, in accordance with Article 12, Mid-Term Bargaining.

Section 6.0 Classification Appeals

Section 6.1
Employees may appeal classification decisions that result in a reduction in their grade or pay through Article 22, Grievances, or through the administrative process provided for under 5 C.F.R. 511.101 et seq. Other classification disputes concerning the establishment or change the title, series, grade, or pay system of a position will be processed under 5 C.F.R. 511, Subpart F.

Section 6.2
Employees or their designated representative may file an appeal with OPM to challenge either the appropriateness of the occupational series or grade of the Employee's position or the inclusion or exclusion of their position from 5 U.S.C. 51 by either the Agency or OPM. However, Employees who suffer reductions in grade or pay in part or wholly because of reclassification may opt to resolve disputed classification issues through Article 22, Grievances.

Section 6.3
Classification appeals will be processed in accordance with 5 C.F.R. 511, Subpart F, for General Schedule Employees; applicable Agency rules; and the provisions of this Agreement, as appropriate. The Agency will provide Employees and their designated representatives with copies of procedures for filing classification appeals through the Agency and OPM channels upon request.

Article 28: Merit Promotion

Section 1.0 Purpose and Policy

The Parties agree that the purpose and intent of the provisions contained herein are to ensure that merit promotion principles are applied equitably and in a consistent manner to all employees without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, age, or sexual orientation and shall be based solely on job-related criteria. This Article sets forth the merit promotion system, policies, and procedures applicable to Bargaining Unit positions at NIEHS.

Section 2.0 Actions Covered By Competitive Procedures

In accordance with 5 C.F.R. 335.103, competitive procedures will apply to the following types of personnel actions:

1. Promotions, except those listed in Section 3.0 of this Article.
2. Temporary promotions for more than 120 calendar days.
3. Details over 120 calendar days to higher graded positions or to positions with known promotion potential greater than the Employee's present position.
4. Selection for training required for promotion.
5. Selection for positions that provide specialized experience needed for promotion.
6. Reassignment or demotion to a position with greater promotion potential than the position previously held. Exceptions are actions permitted by reduction-in-force regulations and reassignment of an intern or trainee as part of the training and development plan.
7. Transfer to a higher-grade position never previously held.
8. Reinstatement to a permanent or temporary position at a higher grade level or with more promotion potential than a position previously held in a permanent position in the competitive service.

Section 3.0 Actions not Covered by Competitive Procedures

In accordance with 5 C.F.R. 335.103, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2.0 above:

1. Career ladder promotions are permitted when an Employee is appointed or assigned to any grade level below the established full performance level of the position (i.e. the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any Employee who entered the career ladder by:
   a. Competitive procedures;
   b. Competitive appointment from a certificate of eligibles (through the Office of Personnel Management (OPM) or delegated examining authority); or,
   c. Non-competitive appointment under special authority; e.g. conversion of Student Career Experience Program student or Federal Career Intern, appointment of former ACTION Volunteers or Peace Corps personnel (must clear ICTAP through an announcement), conversion of Veterans Readjustment Act (VRA) appointees, and Presidential Management Fellows.
2. Promotion based on reclassification when:
   a. No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or,
   b. The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:

i. The Employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are absorbed into the new position, and the former position is abolished);
ii. The new position has no promotion potential;
iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the unit; and,
iv. The accretion is supported by a written analysis of the position (which may involve an audit with the Employee and/or the Employee's supervisor, or other fact gathering method).

3. Permanent promotion to a position held under a temporary promotion when:
   a. The assignment was originally made under competitive procedures;
   b. It was known to all competitors at the time that the assignment may lead to a permanent position.
4. Temporary promotion of an Employee for less than 120 days; or for more than 120 days to a grade level previously held on a permanent basis, unless the Employee was demoted for reason related to performance or misconduct.
5. Placement as a result of priority consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
6. Reduction in force placements which result in an Employee receiving a position with higher promotion potential.
7. Promotion to a grade previously held on a permanent basis in the competitive service, from which the Employee was separated or demoted for other than performance or conduct reasons.
8. Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having no higher promotion potential than the potential of a position an Employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.
9. Promotion resulting from successful completion of a training program for which the Employee was competitively selected.
10. Selection from the re-employment priority list at the same or lower grade level than the position from which separated.
11. Reinstatement to any position if a career or career conditional Employee who served under a career SES appointment consistent with 5 C.F.R. 335.103(c)(3).
12. Promotion as a legal remedy as ordered and agreed upon in a legal or administrative proceeding.
13. Details for one hundred twenty (120) days or less to a higher graded position or to a position with known promotion potential.
14. Any non-competitive action authorized by law or existing government-wide regulation.

Section 4.0 Temporary Promotions

A. The Parties agree as a matter of principle that Employees should be paid at rates commensurate with the duties to which they are assigned (equal pay for equal work).

B. If an Employee is absent for a period of time, his/her duties may be assigned to another Employee of any grade level. When an Employee is assigned to higher grade duties and the assignment is anticipated to last fifteen (15) days or more, the Employee shall be given consideration for a temporary promotion. Such assignments for less than fifteen (15) days may be covered by detail in accordance with applicable regulations.

C. Employees selected for temporary promotions must meet the requirements for basic eligibility in accordance with applicable regulations of OPM. They need not however, be selected under competitive promotion procedures unless the promotion is for more than 120 days.

D. Temporary positions that are expected to last more than 120 days will be advertised and filled using competitive selection.

E. The use of repetitive 120 days or less (noncompetitive temporary promotions) will not be utilized to avoid merit procedures, or the requirements of this Article.

F. Employees may be detailed, in accordance with applicable regulations, between specialized position categories to take care of situations such as temporary workload imbalances or to prevent the need for reductions in force.

G. Upon termination of a temporary promotion, the Employee will be returned to the position from which he/she was promoted, at the pay rate to which he/she would have been entitled had he/she not received the temporary promotion.

H. A temporary promotion may not be made solely:
    1. For training or evaluation of an Employee in a higher-graded position;
    2. To give an Employee a trial period before permanent promotion;
    3. To decide among candidates for permanent promotion; or,
    4. To train an Employee in higher-grade duties.

Section 4.1 Effective Date
Temporary promotions for qualified and eligible Bargaining Unit Employees will take effect on the 16th day that an Employee is assigned to perform the duties of a higher graded job. This includes an Employee who has been officially detailed to a higher graded position for fifteen (15) consecutive days or an Employee who has been assigned and performed all the duties of a higher graded position for fifteen (15) consecutive days.

Section 4.2
Supervisors shall refrain from rotating or scheduling assignment of Employees for the purpose of avoiding temporary promotions on the 16th day.

Section 5.0 Priority Consideration Before Using Competitive Procedures

Section 5.1 Special Considerations – Involuntary Downgrades
The Agency shall create and maintain a “special consideration” file regarding NIEHS Employees who were involuntarily downgraded without personal cause (i.e., non-disciplinary reasons). Applicable Employees may voluntarily submit their names and pertinent documentation to this file.
Employees who were downgraded without personal cause (i.e., who were or are in grade retention status) are entitled to consideration for re-promotion before using competitive procedures. This applies to positions at the Employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade. The Agency agrees to use, as appropriate, Employees in the “special consideration” file for such purposes.

Upon request by either the Employee or Union, the selecting official will provide a reason in writing for any non-selection under this Section.

Section 5.2 Priority Consideration

If, due to an administrative/procedural error, an applicant fails to receive proper consideration for a merit promotion vacancy announcement, the following procedures will take place:

1. If the affected certificate(s) is still active and a selection has not been made, the selecting official is notified immediately and the certificate is amended to include the applicant; or,
2. If the affected certificate(s) has expired and no selection was made, the individual is not entitled to receive priority consideration; or,
3. If a selection has already been made from the affected certificate(s), the individual must receive priority consideration for the next appropriate vacancy announcement open at NIEHS (at the same series, grade, promotion potential and geographic location). The individual eligible for priority consideration must be considered by the selecting official(s) before other applicants are ranked or referred for selection.
4. If an individual is referred as a priority consideration eligible and another applicant is selected for the position, the individual is no longer entitled to priority consideration. As long as no selections are made, the individual continues to be eligible for priority consideration for merit promotion vacancies. Documentation of consideration by the selecting official and reasons for any non-selection must be maintained as part of the vacancy case file.

The selecting official must have legitimate, job-related reasons for non-selection. The Employee may request a written explanation for the non-selection.

The selecting official must justify in writing any non-selection under this section. The Employee will be given three (3) business days to rebut the reasons for non-selection and will receive a written response to the rebuttal. During this rebuttal period, the vacancy will remain open.

Section 5.3 Union Notification

In order to assure compliance with this section, the Union will be furnished statistics on priority considerations granted, exercised, and the results. Statistics will be kept and provided to the Union twice per year on the first day of February and November. The Union will also be notified in writing of each individual priority consideration completed.

Section 6.0 Area of Consideration

The Agency will consider the use of an area of consideration limited to the local commuting area prior to opening competition to all sources, when applicable.

Section 6.1 Expanding Areas of Consideration

When the area of consideration is not expected to produce an adequate number of best-qualified candidates for the selecting official's consideration, Management can expand the area of consideration. The vacancy announcement will identify the expanded area of consideration.

Section 6.2 Reducing Area of Consideration

When solicitation throughout the normal area of consideration would be impractical because of operational needs, Management can reduce the area of consideration. The announcement package will contain the reduced area of consideration documentation.

Section 7.0 <u>Vacancy Announcements</u>

Section 7.1
The Agency will clearly post vacancy announcements on the Agency's website.

The Agency will ensure that all Employees who do not have a computer assigned to them to perform their regularly scheduled duties will be provided access to a computer and printer in order for all Employees to have access to all vacancies announced on the Employer's web site.

In addition, the Agency will notify Employees of vacancies through the "All-Hands" email system.

Announcements shall be posted for at least seven (7) calendar days before the closing date.

Section 7.2
Vacancy announcements will include, as a minimum:

1. Will be published on USAJOBS when filling vacancies through the competitive procedures described in this plan;
2. Are to be open a minimum of seven (7) calendar days; and,
3. Must include as a minimum the following information:
    a. Announcement number, opening and closing dates, and organization and geographic location of position;
    b. Area of consideration;
    c. If the position is being advertised as open continuous, cut-off dates for receipt of applications based on closing date of the vacancy;
    d. Point of contact for vacancy, including mailing address, e-mail address and telephone number;
    e. Number of positions available;
    f. Position title/series/grade and salary range, including identification of full performance level of the position;
    g. Work schedule; if part-time, must include hours per week;
    h. A summary of the duties of the position;
    i. Complete minimum qualification requirements including selective factors (if applicable), applicable educational requirements, and any other factors that must be met in order to qualify for the position;
    j. A statement that indicates that qualification requirements must be met within thirty (30) calendar days of the closing date of the vacancy announcement;
    k. For positions that have a minimum education requirement or allow applicants to be determined as basically qualified based on their education, a statement indicating the requirement to submit transcripts;
    l. A description/definition of specialized or qualifying experience;
    m. Whether relocation expenses will be provided;
    n. Statement indicating that additional vacancies may be filled if they arise;
    o. Statement indicating that applicant information may be shared with additional areas of the organization if additional vacancies arise;
    p. Evaluation method(s) to be used;
    q. Supporting documentation receipt requirements;
    r. If the position requires clinical privileges, the following statement must be included: "The selected individual is required to obtain and maintain medical staff clinical privileges;"

s. Any unusual conditions of employment, e.g., shift work, frequent travel, physical exam, etc.
t. When the area of consideration is government-wide, Veterans' Employment Opportunities Act (VEOA) information, including documentation required for proof of eligibility;
u. CTAP and ICTAP (if applicable) information, including documents required for proof of CTAP/ICTAP eligibility and the definition of "well-qualified;"
v. Privacy Act information;
w. EEO statement;
x. NIH Ethics statement;
y. Reasonable accommodation statement;
z. Relay service information;
aa. Background investigation statement;
bb. Selective Service statement; and,
cc. Statement of Bargaining Unit status

Section 7.3 Open and Continuous Announcements
Open continuous announcements and announcements for standing registers may be used.

Section 7.4
If a vacancy announcement has been posted and any information is later found to contain a substantial error or is subsequently changed (i.e., area of consideration, duty station, grade change, career ladder of the position) or if there is a change in the factors by which the candidates will be evaluated, the announcement must be reposted citing the change and whether or not the original applicants need to re-file in order to be considered. Posting time and distribution shall be the same as the original vacancy announcement.

Section 7.5 Cancellation
Notice of cancellation of vacancy announcements will be posted in the same areas and methods as the announcements and will include the reason for cancellation.

Section 8.0 Employee Applications

Section 8.1 Filing an Application
To be considered for a vacancy, an Employee must adhere to the requirements as described in the announcement. The NIH will not accept hardcopy applications for employment. All applicants are required to use the on-line application process to apply for vacancies within the Agency. Alternatively, applicants may use the optional method of completing a Form 1203FX and faxing it into the system.

Where an area of automatic consideration is used, an Employee need not file unless the announcement specifies that an application is necessary in order to address specific assessment criteria.

Section 8.2 Electronic Application Training
A. The Agency will give Bargaining Unit Employees access and instructions so they may use Agency computers to complete automated applications under this article. Access includes a reasonable amount of time during an Employee's working hours to prepare or modify his or her application.

B. The Agency will provide appropriate training on how to file for a vacancy and how to complete the appropriate form(s). The Agency will make instructional material on the promotional process available to Bargaining Unit Employees.

Section 8.3 Time Limits

The time limits for filing for a posted vacancy are as follows:

1. Open Continuous Announcements - An Employee may file at any time as outlined on the vacancy announcement.
2. Individual Announcements - In those instances where only electronic applications are utilized, the closing date reflected on the vacancy announcement will be the acceptance deadline.

Section 8.4 Delayed Filing

If an Employee's filing of an application is delayed beyond the closing date because the Employee was awaiting information that a Management official had agreed to furnish which was required in order to complete the application, the Employee will have three (3) workdays to submit the application following receipt of the information. The Employee should attach to the late application a brief note by his or her supervisor verifying the delay.

Section 8.5 Absence During Posting Period

A. Employees within the area of consideration, who are absent during the posting period for legitimate reasons, may be considered for vacancies during their absence. Reasons that may be considered include such things as:
    1. Approved Leave;
    2. Details;
    3. Training courses;
    4. Official business;
    5. Military service;
    6. Compensable injury;
    7. Service in public international organizations;
    8. Intergovernmental Personnel Act assignments; or,
    9. Service in State or Local governments.

B. Prior to departure, an Employee should complete an application with a written request and submit it to his/her Servicing Human Resources Office who will ensure that the application is considered for vacancies for which the Employee is eligible. Employees, who so desire, may provide information so that they can be contacted during their absence and provide additional information if needed.

Section 8.6 Absence During Entire Posting Period

Employees temporarily absent on approved leave, detail, at training courses, or on official business for an entire posting period may, upon their return, review position vacancies announced and closed during their absence and make application for such vacancies in which they are interested. Such late applications must be submitted within three (3) workdays after return to duty and must be accompanied by a statement prepared and signed by the Employee, and also signed by the Employee's supervisor, explaining the dates and reason(s) for the absence. Employees filing delayed applications under this provision will be considered only for those vacancies for which well-qualified candidates have not yet been identified.

Section 8.7 Multiple Applications
When an Employee applies for, or been automatically considered for, more than one announcement, he/she will be bound by the first promotion or reassignment (in the case of a career ladder) for which the Employee has reported unless:

1. Employee has accepted a reassignment and another vacancy leads to a promotion to a higher grade;
2. Another vacancy is in a career ladder or a trainee position leading to a higher grade;
3. He/she has accepted a temporary promotion or reassignment and the other position is permanent or temporary, with a later expiration date; or,
4. The other position is outside the commuting area.

Section 8.8
Any Employee may compete for both Wage Grade and General Schedule positions.

Section 9.0 Establishing the Best-Qualified List

Section 9.1
To be eligible for promotion or placement, candidates shall meet the minimum qualification standards prescribed or approved by OPM and selective placement factors identified as essential for successful performance within thirty (30) days after the closing date of the announcement or thirty (30) days from the referral from a standing register. Ineligible applicants shall be notified in writing of the determination of ineligibility prior to submission of the referral list to the selecting official.

Section 9.2
Assessment criteria used to evaluate candidates must be fair, job related, and applied equitably.

Section 9.3 Vacancy and Pre-Recruitment Workforce Planning
A. Prior to recruiting for Bargaining Unit positions, the selecting official, in consultation with their servicing HR Specialist, an NIH Office of Equity, Diversity, and Inclusion (EDI) staff member, and a Union representative should determine the appropriate recruitment strategy to ensure a diverse pool of qualified applicants.

B. The Union will be notified and invited to send a representative when the selecting official requests a Strategic Recruitment meeting.

C. A purpose of the meeting will be to collaboratively identify the best approaches to fill the position that will attract a diverse and well qualified pool of applicants.

Section 9.4 Evaluation Criteria
A. The method(s) used to evaluate applicants must be identified in the vacancy announcement. The evaluation process assures that the selection is made from the best-qualified applicants. Evaluations must be based on job-related requirements and applied fairly and consistently. Evaluation methods may include the use of crediting plans or rating guides, questionnaires, and/or other assessment tools such as structured interviews and performance exercises.
B. The evaluation process may be performed by the HR Specialist (or Assistant); subject-matter experts (SMEs); or a Qualifications Review Board (QRB), Using the assessment tool(s) designated for the vacancy, the HR Specialist or panel members review each applicant's background to assess the degree to which the applicant possesses the required knowledge, skills, and abilities of the position.

In doing this, they must consider the applicant's quality and type of work experience, education and training, awards and accomplishments, and related outside experience. Based on this review, a point value is assigned for each evaluation criterion, and an overall rating is ultimately assigned to each applicant.

Section 9.5

A. Panel members must be at or above the grade level of the position being filled; should know the requirements of the position being filled; may not be applicants for the position; and may not be in the direct line of supervision of the job to be filled.

B. They must not be related by blood, adoption, marriage to any applicants considered for the position or any other appearance of a conflict of interest.

C. The panel will be provided guidance on any procedures and regulations for rating and ranking applicants.

Section 9.6

In an effort to ensure diversity and meet affirmative action goals, a sufficient number of best-qualified applicants will be referred.

Section 9.7 Workgroup

Semi-annually, a working group constituted under the auspices of the Labor-Management Committee (as defined in Article 2, Labor-Management Cooperation), will perform workforce and trend analyses to identify factors and practices that can contribute to inequities in the representation, advancement, and treatment of individuals within the Agency's workforce.

A. The working group will develop recommendations for consideration by the Committee to improve the fair and equitable treatment of all applicants for all positions, based on merit principles and the principles of equal employment opportunity, including ways to strive to achieve MD-715 objectives pertaining to recruitment, promotion, and retention.

B. The working group will not be a forum for the resolution of individual grievances. In carrying out this task, the working group will include representatives from the Union, Management, EEO, and Human Resources.

Section 9.8 Determining Best-Qualified

A. Promotion eligible candidates will be rated against the competencies set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process.

B. When more than ten (10) candidates are rated as eligible, best-qualified candidates will be determined by using the ranking factors listed in the vacancy announcement in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automated hiring system or promotion panel/ranking official.

C. The Human Resources Specialist may refer fewer applicants if it is determined that a significant difference exists in the applicants eligible for referral, or a natural break occurs. Additionally, the Human Resources Specialist may refer more applicants depending on where a significant difference

or a natural break occurs. In this case, all applicants within this group will be deemed best-qualified, regardless of the number of applicants being referred, and any individual(s) may be selected.

D. When there are ten (10) or fewer basically qualified applicants per grade level, formal rating and ranking is not required, and all qualified applicants will be referred in alphabetical order to the selecting official for equal consideration among all of those referred.

E. If the best-qualified list is less than or more than ten (10) applicants normally referred, the case file must be clearly documented as to the reason(s) why the list was reduced or expanded.

F. The best-qualified threshold score will be set prior to the close of the vacancy. The best-qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in the scores; i.e., two (2) or more points.

G. Personnel lists, subject matter experts, panels, or selecting officials, may distinguish the best-qualified candidates based on job-related criteria, knowledge, skills, or abilities. A certificate of best-qualified candidates, listed alphabetically, is referred to the selecting official along with their applications. Competitive candidates are listed separately from noncompetitive candidates.

H. If there are no best-qualified candidates and the selecting official, with the concurrence of the human resources representative, determines that it is impractical to expand the area of consideration, then the qualified candidates may be referred in alphabetical order. If the human resources representative makes such a decision, the reason(s) why further expansion of the AOC is impractical must be fully documented in writing and included in the Merit Promotion case file.

Section 9.9 Referral Application Referral

A. *Competitive Applicants:* Applicants must be listed in alphabetical order without their scores. A separate certificate must be issued for each grade level and geographic location advertised unless it is an interdisciplinary position.

B. *Non-Competitive Applicants:* Applicants eligible for non-competitive consideration will be identified on a referral certificate/list separate from the list of promotion applicants. Selection may be made at any time from either list.

C. Should the original area of consideration fail to produce a sufficient amount of highly qualified applicants, the selecting official may decide to re-advertise the position using a wider area of consideration. Selecting officials have the right to select or not select and to consider applicants from any appropriate recruitment source (e.g., merit promotion certificate, reassignment, transfer, reinstatement, delegated examining certificate, etc.).

Section 10.0 Selection Procedures

Section 10.1 Interviewing

A. To further ensure fairness and equity in the hiring process, managers must develop standard job-related questions for each vacancy. Follow up questions may be asked.
B. Selecting officials and/or HR staff may receive requests for reasonable accommodation for the interview process from applicants with disabilities. Requests for reasonable accommodations should

be responded to quickly and effectively. The NIH Disability Employment Program Manager, EDI, may be contacted to assist with these provisions.

C. If interviews are used, they must be job-related, reasonably consistent, and fair to all candidates. Also, if interviews are used, all candidates will be offered an interview if reasonably available, in person or by telephone where circumstances warrant.

D. When considering applicants from a Certificate, if one applicant is interviewed, the Agency will interview all BUE applicants when feasible.

Section 10.2 Selection

A. Selections must be based on job-related requirements and applied fairly and consistently.

B. The selecting official has the right to select or not select any candidates referred. However, the selecting official will give consideration to the candidates' qualifications, without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying handicapping condition, sexual orientation, or age. The selection shall be based solely on job-related criteria.

C. Nothing in this section prevents Management from selecting from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Recruitment Act eligibles.

D. If a vacancy cannot be filled for any reason, or Management has decided not to fill or to cancel the vacancy announcement, once a list of candidates has been certified for the vacancy, the Agency will give an Employee who has made inquiry under this Section or their designated representative the reason why the position cannot now be filled.

E. A Merit Promotion Plan vacancy announcement shall not be canceled for the purpose of avoiding conformance with the merit promotion plan or this Agreement.

Section 10.3

A selecting official will normally render a decision within two (2) pay periods. When a decision has been made, the selecting official will notify the HR Office who will review the selection. The staff of the HR Office will notify the selectee. The HR representative will answer any questions and arrange for the appropriate start date. The HR office (labor relations official) will be responsible for notifying the Union of the selection, upon request.

Section 10.4 Release and Notification of Applicants

The Human Resources Office will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an Employee will be released no later than one (1) complete pay period for promotions, following the selection. When local workforce and program conditions permit, an Employee will be released no later than two (2) complete pay periods for reassignments, following the selection. When an Employee is nearing the end of a waiting period for a within-grade increase, consideration should be given to releasing the Employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the Employee.

Section 11.0 Employee Information

Section 11.1 General
All applicants who apply for a vacancy will automatically be notified in writing by the appropriate personnel office as to whether an application was received and whether selected/non selected for a vacancy for which he/she applied.

All applicants who apply for a vacancy and are not selected may contact the Human Resources Office will be provided the following information upon request:

1. Whether the Employee met minimum requirements;
2. Employee's relative standing in numerical listing;
3. What the best-qualified List cutoff score was, if applicable;
4. Whether or not the Employee was on the best-qualified List, if applicable;
5. In what areas, if any, they can improve to increase their chances for future selection to the position in question.

Section 11.2 Information Regarding a Selection
The designated Human Resources Specialist will provide the information in this section in a reasonable period of time. Only HR may transmit information concerning a selection to any applicant or authorized person. The selecting official will not discuss the promotion action until after the Human Resources Office has reviewed the selection and notified the selecting official that an offer may be made to the selectee(s).

Section 11.3 Promotion Records
A file sufficient to allow reconstruction of the action must be kept for two (2) years on each merit promotion action. Information must be made available as required by laws, regulations, and agreements. At a minimum, the file should contain the following information:

1. Vacancy announcement or method of recruitment, including minimum qualification requirements;
2. Information on the process used to evaluate applicants, such as KSAs, including how each candidate was rated and ranked;
3. How the best-qualified category was established;
4. Name(s) and position(s) of individual(s) who determined best-qualified group;
5. All applications and appraisal forms submitted;
6. The promotion certificate; and,
7. The name of the selectee.

Section 12.0 Development of Career Pathways

A. The Parties will explore various means of enhancing career opportunities including but not limited to career ladders, administrative movement, etc.

B. The Parties are committed to establishing career ladder positions within the organization in those situations where positions and functions can be grouped in a way compatible with program and work considerations.

C. The Agency will determine when to offer career development programs to prepare for potential future jobs or assignments. Such programs will be offered depending on the availability of funds and the needs of the Agency.

D. The Agency will publicize all career development programs when they are announced. Announcements will contain adequate specific application instructions.

E. The Parties agree that during the development and enhancement of career opportunities that diversity, fairness, and equity shall be strong considerations.

Section 13.0 Career Ladders

Section 13.1 Policy
It is the policy of the Agency to provide appropriate opportunities for Bargaining Unit Employees to develop and advance in their careers.

Section 13.2 Career Ladder Plans
The Parties are committed to establishing career ladder positions within the organization in those situations where positions and functions can be grouped in a way compatible with program and work considerations. Career ladder plans will be developed that are tailored to the complexity of the job duties and that will permit individuals to proceed at their own pace in learning and assuming the fuller range of duties. If a career ladder plan is developed the criteria which an Employee must meet in order to be promoted will be outlined.

A. A career ladder plan may be established for each career ladder position.

B. A copy of the plan will be given to each Employee upon entry into the career ladder position and when he/she is promoted to a new level of the career ladder plan.

C. The career ladder plan will outline the objective criteria for each grade level which an Employee must meet in order to be promoted.

D. The Employee will also be advised of his/her earliest date of promotion eligibility. In addition, the Employee will be provided with a copy of any revised career ladder plan within thirty (30) days of such revision.

Section 13.3 Maximum Opportunity
A. Career ladder positions help Employees to develop to successfully perform higher-level duties through training and incremental assignment of more complex work. The responsibilities assigned to the entry levels of career ladder positions will involve more basic skills and knowledge, as compared to the journey level responsibilities. The responsibilities at each level of the career ladder position will be conveyed to Employees through the position description and career ladder plan.

B. Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. Upon placing an Employee in a career ladder position, the supervisor will discuss the job requirements and expectations for the Employee to reach the next higher level. The supervisor will hold these discussions at each level of the Employee's progression within the career ladder.

Section 13.4 Career Ladder Advancement
At the time the Employee reaches his or her earliest date of promotion eligibility, the Agency will decide whether or not to promote the Employee.

A. If an Employee is certified as successful and is meeting the promotion criteria in the career ladder plan, the Agency will certify the promotion which will be effective at the beginning of the first pay period after the requirements are met.

B. If an Employee is not meeting the criteria for promotion, the Employee will be provided with a written notice at least sixty (60) days prior to the earliest date of promotion eligibility. The written notice will state what the Employee needs to do to meet the promotion plan criteria.
    1. If the Employee is making progress, the supervisor will ensure that he or she has the opportunity to acquire pertinent skills and knowledge and to demonstrate that he or she meets promotion requirements as soon as is feasible.
    2. If the Employee is experiencing problems, the provisions in Paragraph 2 of this Section are applicable.

C. In the event that the Employee met the promotion criteria, but the appropriate Management official failed to initiate the promotion timely, the promotion will be retroactive to the beginning of the first pay period after the pay period in which the requirements were met.

D. Any time a supervisor and/or Employee recognize the Employee's need for assistance in meeting the career ladder advancement criteria, the supervisor and Employee will develop a plan tailored to assisting the Employee in meeting the criteria. The plan should include all applicable training as well as any other appropriate support. At the request of the Employee, the Union may provide assistance.

E. If a non-probationary Employee fails to meet the promotion criteria after the appropriate assistance, the Agency will:
    1. Provide the Employee with additional time to meet the promotion criteria,
    2. Assign the Employee duties commensurate with his or her current grade:
    3. The career ladder plan may be suspended and the Employee will remain at the level he or she had attained within the career ladder; or
    4. The Employee may be assigned to another position at the same grade and step.

Section 13.5 Progression Within a Career Ladder
Career ladders are not automatic; an acceptable level of performance must be demonstrated for progression. Employees in career ladders will clearly demonstrate the ability to perform at the next higher grade level before being promoted to the next grade in the career ladder. Once the promotion has been made, supervisors will assign work at the new grade level.

Section 13.6 Timing for Career Ladder Promotions
At the time an Employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision to promote or not to promote. This decision will be made in a timely manner.

Section 13.7 Ongoing Feedback
The supervisor will periodically provide feedback to the Employee about their performance in the career ladder position.

Section 13.8 Failure to Meet Promotion Criteria
Employees not meeting the criteria for promotion will be counseled by their supervisor regarding areas needing improvement before the promotion can be effected in accordance with applicable law, rules, or regulation.

Section 14.0 Compensation
An Employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

Section 15.0 Information on Promotion Actions
Upon completion of the selection process, the Union may request the information used by the Agency to make the selections. The Agency will provide the requested information consistent with the requirements of law.

Section 16.0 Maintenance of Records
Unless otherwise noted, all records are to be kept for two (2) full fiscal years in accordance with NIH Policy 2300-335-1- NIH Merit Promotion Plan. All records (e-mail and non-e-mail) pertaining to this Article must be retained and disposed of under the authority of the NIH Manual Chapter 1743, "Keeping and Destroying Records," Appendix 1, NIH Records and Control Schedule. If either policy changes, the Agency shall adhere to Article 12, Mid-Term Bargaining.

Any manual changes of applicant scores shall be specified and identified by the HR Employee who made such changes along with a rationale for each change.

OHR staff may access NIH Vacancy Case File Checklist on the NIH Portal.

Records maintained shall also include notes and/or questions by the selecting official and/or interview panel regarding the interview documentation of consideration by the selecting official and reason(s) for any non-selection for candidates under priority consideration.

Article 29: Within Grade Increase

Section 1.0 Policy

Section 1.1
Employees will receive a Within-Grade Increase (WIGI) upon completion of the required waiting period, provided:

1. They have achieved an acceptable level of competence, defined as "Level 3: Achieved Expected Results," or an equivalent ratings level, (performance under Article 18, Performance Management); and,
2. They have not received an equivalent increase in pay during that required waiting period.

Section 1.2
Denial of a WIGI is not to be used as a punitive measure for an act of misconduct in lieu of appropriate disciplinary actions.

Section 1.3
A notice of a proposed adverse/disciplinary action that is not based on performance is not a bar against a favorable determination of acceptable level of competence for purposes of WIGI.

Section 2.0 Procedures for WIGI Determinations

Section 2.1
When an Employee has been assigned to a current supervisor for fewer than ninety (90) days, and that supervisor cannot adequately assess the Employee's performance, the supervisor shall secure the written views of the Employee's prior supervisor before making a performance determination. In the event the prior supervisor is unavailable (e.g., retired, transferred, deceased, etc.) the supervisor shall secure the written views from someone in Management that has direct knowledge of the Employee's performance. The previous supervisor, if possible, shall initial the rating form to signify that his/her views were provided to the rating supervisor.

Section 2.2
Normally, a WIGI will be effective on the first day of the first pay period following the end of the required waiting period.

Section 2.3
An Employee will be notified:

1. During the most recent progress review, as described in Article 18, Performance Management; or,
2. At any time during the waiting period when a supervisor's evaluation leads to a conclusion that an acceptable level of competence is not being met, the supervisor will provide the Employee with performance assistance in accordance with Article 18, Performance Management; and,
3. In no event later than at least sixty (60) calendar days before the end of the required waiting period for eligibility for a WIGI that his/her performance is below an acceptable level of competence and that unless his/her performance improves, the WIGI will be denied.

Section 2.4 Denials
If at the end of the required waiting period, the Employee's overall performance or summary rating is not at the Level 3: Achieved Expected Results, or an equivalent rating level, for the purpose of approving the WIGI, the Employee will be given a written notice which will include:

1. A statement that the Employee's work has been reviewed;
2. A statement that the Employee's work has been determined to be of less than an acceptable level of competence;
3. Identification of the areas/elements in which the Employee's performance failed to meet Level 3, or an equivalent rating level, for that particular performance element and examples of how to improve;
4. A statement that the Employee has the right to request, in writing, a reconsideration not more than fifteen (15) days from the Employee's receipt of the negative determination;
5. The name and title of the official to whom the Employee may submit a request for reconsideration;
6. A statement that the Employee may have a Union representative when presenting a request to the reconsideration official;
7. A statement that the Employee and the Union representative, if designated, may request reconsideration of the basis for the negative determination in person and/or in writing;
8. A statement that an Employee and/or his/her representative shall be granted a reasonable amount of official time (Union representative) or duty time (Employee) to review material relied upon to support the negative determination and to prepare a response to the determination. The Employee and/or representative shall be given a minimum of four (4) hours. Additional time may be granted as needed; and,
9. An explanation that the Employee may be considered for a WIGI at any time during the next fifty two (52) calendar weeks if the Employee demonstrates an acceptable level of competence.

Section 2.5 Reconsideration
A decision on reconsideration will be made within thirty (30) calendar days from the date of the request or from the date of an oral presentation to the reconsideration official, whichever is later. If the reconsideration official determines that the Employee has met an acceptable level of competence, the WIGI will be effective as of the first day of the first pay period after that determination.

Section 2.6
If the reconsideration official upholds the negative determination, the Employee may file a grievance under Article 22, Grievances. The grievance would be filed at the final step of the grievance procedure.

The Employee will have forty five (45) workdays to file a discrimination case with the Equal Employment Opportunity Commission (EEOC), or thirty (30) days to file an appeal to the Merit Systems Protection Board (MSPB).

Section 3.0
After a WIGI has been withheld, the Agency may grant the WIGI at any time after it determines that the Employee has demonstrated sustained performance at an acceptable level of competence. In such cases, the WGI will become effective the first day of the first pay period after the acceptable determination is made. The supervisor and the Employee shall meet to discuss the Employee's progress or lack thereof ninety (90) days after the withholding date and at the end of each ninety (90) day period thereafter until the redetermination decision is made. Performance at or above Level 3: Achieved

Expected Results, or an equivalent ratings level, for twelve (12) weeks is sufficiently sustained performance to warrant the granting of a WIGI.

Article 30: Safety, Health, and Wellness

Section 1.0 General

Section 1.1
The Employer and the Union agree to cooperate in a continuing effort to prevent and minimize, to the fullest extent practical, all risks to the health, safety, and well-being of Employees in all areas under the Employer's control.

Maintaining safe and healthful work environments, as a shared value by the Union and Agency, is necessary for the accomplishment of the Agency's mission and contributes to a high quality of life for Employees. The Agency will provide and maintain conditions and places of employment that are free from recognized hazards and unhealthful working conditions, consistent with the applicable requirements of 29 U.S.C. § 668 *et seq*. (The Occupational Safety and Health Act of 1970), Executive Order 12196, 29 C.F.R. 1960, and other applicable safety and health codes.

Section 1.2 Health and Safety Standards
The Agency and the Union agree that government wide safety and health regulations and this Agreement will be used for guidance in establishing safety and health instructions and procedures for all work performed at NIEHS. In addition, the NIEHS Health and Safety Manual will be used to ensure that the Institute's programs and activities meet the requirements of health, safety, and environmental regulations issued by Federal, State of North Carolina, and local agencies. Where existing laws and regulations are not adequate to ensure protection of Employee health or safety, nationally recognized sources of health and safety criteria will be utilized. The NIEHS Health and Safety Manual does not override the language herein. Furthermore, changes to the Health and Safety Manual that involve work conditions shall be fully negotiated with the Union as appropriate. The Union does not waive any of its rights.

The Parties recognize that the Agency may seek the Secretary of Labor's approval for alternative and supplementary standards under 29 C.F.R. 1960. The Agency shall notify the Union in accordance with Article 12, Mid-Term Bargaining, prior to the submission of any alternate standards to the Secretary of Labor.

Section 1.3
Nothing herein will prevent the Union from initiating additional negotiations to address safety, health, or wellness during the life of this Agreement for issues not covered by this Agreement.

Section 1.4
The Agency shall maintain a readily accessible health and safety website that provides up-to-date information on NIEHS health and safety programs and procedures for elimination of safety and health hazards. Appropriate health and safety information will be provided to Employees during Employee orientation, health and safety courses, and through electronic communication.

Section 1.5
A. The Agency shall, on a periodic and recurring basis (typically annually), perform analyses to determine patterns of injuries and illnesses that occur at NIEHS facilities. The analyses will examine patterns of injuries or illnesses found in a given occupation and will include such factors as the general conditions under which the affected Employees' jobs are performed, the processes and

procedures involved in the performance of those jobs, and any unusual factors that may have contributed to injuries or illnesses.

B. The analyses and associated recommendations to prevent or correct the conditions that contributed to the injury or illness will be made available to the Health and Safety Committee and the Union President.

Section 1.6
No Employee will be subject to restraint, interference, coercion, discrimination, or reprisal for filing a report of an unsafe or unhealthful working condition or for participating in occupational safety and health program activities or because of the exercise by an Employee on behalf of him/herself or others of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, 29 C.F.R. 1960, or any provision of this Agreement.

Section 1.7
The Agency will provide copies of, in a timely manner as prescribed by 29 C.F.R. 1910.1020, the results of any workplace exposure monitoring or testing conducted within the Agency whenever an Employee or designated Union representative requests a copy of such records.

Section 2.0 Health and Safety Committee
Within forty five (45) days of the effective date of this Agreement, the Health and Safety Committee will be established. The Health and Safety Committee will consist of a diverse representation of Employees from across the Institute. Membership will be kept to a manageable size – no more than twelve (12) in total. The Union will be permitted to appoint a maximum of three (3) members on the Committee to serve a duration as determined by the Union.

Section 2.1
The Agency will maintain a Health and Safety Committee. The purpose of the Committee shall be to promote occupational safety and health in all areas of the Institute for the benefit of all employees and visitors. This purpose shall be accomplished by:

1. Reviewing, evaluating, and providing advice on pertinent Employee health and safety policies and practices.
2. Promoting Employee assistance and wellness programs and services.
3. Working on other Employee health and safety issues jointly submitted by the Union and Agency.

Section 2.2
Time spent serving as a Union representative on the Health and Safety committee, which would include time spent discussing, researching, or developing health and safety related issues, will be considered duty time.

Section 2.3
Meetings will be scheduled at least three (3) times a year or more often if required to discuss important matters.

The Committee's advisory comments and recommendations on issues raised at the meetings will be submitted to the Associate Director for Management for consideration. All opinions, including dissenting opinions, will be reflected in the advisory recommendations.

Section 2.4
Union representatives, especially those appointed to the Health and Safety Committee, are encouraged to attend any occupational safety and health training provided by the Agency, including both introductory and specialized courses and materials that will enable Union representatives to function appropriately in ensuring safe and healthful working conditions and practices in the workplace.

For those that are available and on-hand, the Agency will provide electronic access to and/or copies of safety and health manuals and publications to the Union upon request.

Section 2.5
Union participation in the Health and Safety Committee is not to be construed as a waiver of the Union's right to collective bargaining.

Section 3.0 <u>Personal Protective Equipment</u>

Section 3.1
Personal protective equipment (PPE), as required by appropriate Federal and/or state government (or its subdivisions) standards to protect Employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to Employees required to wear PPE.

Section 3.2
Assessments to determine the need for PPE will be conducted by the Agency for each work task that presents a potential hazard to an Employee. These assessments will also evaluate the need for and feasibility of engineering controls or other devices and work practices designed to reduce workplace injuries and illnesses or eliminate the need for PPE. Upon request, the Union will be provided all supporting information used in the assessment, including findings, conclusions, and decisions, and any documents and data used as a basis for the decision. When assessments result in a determination that PPE is not warranted, the Agency will consider requests for reconsideration upon notice by the Union. The Agency will provide a substantive response to the Union's positions, giving explanations as to why a type of PPE is not needed or required.

Section 3.3
When assessments determine that PPE is appropriate, the Agency will give the Union notice and an opportunity to bargain over the types, sizes and/or styles of PPE that will be made available to affected Employees in order to maximize Employee comfort and protection. The Agency will invite the Union to pre-decisional discussions on such issues.

In urgent or time critical situations where a delay would adversely affect the health or safety of an Employee the Agency may implement such PPE as appropriate. The Agency shall provide a written explanation to the Union regarding the time dependent nature, specifying the urgent need for PPE, and why implementation was vital to safety or health. The Union will then have full and complete rights to bargain post-implementation and any outcomes will be applied retroactively. Such situations are expected to be rare.

Section 3.4
At a minimum, the Agency will provide Employees training and information on PPE provided. The Agency will give the Union advance notice of any training it intends to provide to allow the Union to

determine if it will make recommendations on improving the training and/or submit proposals on procedures for implementation and appropriate arrangements for adversely affected Employees.

Section 3.5
The Agency will provide, at no cost to the Employee, safety glasses (plain or prescription) whenever an Employee performs tasks or works in an area posing the potential for damage or injury to the eyes. Employees needing prescription safety glasses will provide a recent prescription (less than two (2) years old).

Section 4.0 Unsafe/Unhealthful Conditions

Section 4.1
Any Employee or Union representative who believes that an unsafe or unhealthful working condition exists in any NIEHS worksite has the right to report such condition to any Agency supervisor, manager, executive, the Health and Safety Branch, the Health and Safety Committee, and/or the Union. Reports of imminent danger situations will be handled according to Section 5.0 of this Article. An inspection of potentially serious and other conditions will be made within the timeframe established by applicable regulations (ref. 29 C.F.R. 1960. 28 (d) (3); currently three (3) working days for potentially serious and twenty working days for other conditions). An inspection may not be necessary when a hazardous condition is immediately abated.

Section 4.2
When the Agency or other appropriate authority determines that a dangerous or potentially dangerous condition exists at a worksite, Employees at that worksite will be notified as soon as practicable so that precautionary steps can be taken.

Section 4.3
The Agency shall post a notice of unsafe or unhealthful working conditions as required by Occupational Safety and Health Administration (OSHA) regulations and instructions. The notice shall be posted, at or near the location of the hazard and shall remain posted until the cited condition has been corrected. Such notices shall contain a warning and description of the unsafe or unhealthful condition and any required precautions to the full extent required by applicable laws, rules, and regulations. Simultaneously with the posting, the Agency shall deliver copies of the notice to the Union and the Health and Safety Committee.

Section 4.4
The Health and Safety Branch will promptly evaluate Employee reports of unsafe or unhealthful working conditions in accordance with 29 C.F.R. 1960. The Union will be notified when the evaluation indicates the presence of a serious hazard as defined in 29 C.F.R. 1960.2(v) that could potentially impact Employees.

Section 4.5
The Agency shall promptly abate any unsafe and unhealthful working condition. Toward this end, any equipment, devices, structures, clothing, supplies, tools, or instruments that are found to be unsafe will be removed from service, locked-out, and/or tagged-out or rendered inoperative, as appropriate.

Section 4.6
In the event of a serious unsafe or unhealthful working condition, the employer shall take all precautions to protect the safety and health of Employees which may include the evacuation of an area. Employees will not be permitted to reenter that area until it is determined by the Health and Safety Branch and/or other appropriate authorities that it is safe to do so. The Union President shall be notified as soon as possible regarding the particular emergency situation.

Section 4.7
An abatement plan will be prepared if the abatement of an unsafe or unhealthy working condition will not be possible within thirty (30) calendar days. Such plan shall contain a proposed timetable for the abatement and a summary of steps being taken in the interim to protect Employees from being injured as a result of the unsafe or unhealthy working conditions. The Health and Safety Committee and the Union President will be consulted regarding the development of the abatement plan and will be kept informed of subsequent progress on implementing the plan.

Section 4.8
If the abatement plan cannot be immediately implemented, the Agency shall inform affected Employees of the interim measures that will be instituted for the protection of the Employees.

Section 4.9
If the conditions cannot be immediately corrected, Employees will be assigned work in a safe and healthy area, or will be excused without charge to leave until the condition is corrected.

Section 4.10
Working alone in certain circumstances, situations, or environments is unsafe and requires special arrangements to minimize potential risks.

If the nature of the work performed after normal hours makes an operation relatively safe (e.g., recording data, operating an instrument, counting plates), a telephone call or visual check during a guard's inspection tours are generally adequate. Such work tasks are typically part of a written operating procedure of long standing and involve routine procedures that experience has shown to be safe.

Work of a clearly hazardous nature (e.g., tasks involving high energy, toxic, flammable, cryogenic, or high pressure materials) must not be conducted alone. Such activities must be scheduled during normal working hours or performed when another worker capable of helping in an emergency is present.

Administrative or clerical Employees and others working in low-hazard locations shall not be alone longer than two (2) hours without an established safety check procedure. The procedure may be part of a guard's standard inspection tour, or it may consist of a phone call or work (e.g., coffee) break with a contact person. The procedure must be prearranged to assure assistance to an ill or injured worker in need of help.

Work involving entry into confined spaces must never be conducted alone and never without the appropriate safety equipment.

Section 4.11
When Employees operate a government vehicle over public roads, highways, or interstate throughways the Agency shall ensure that vehicles are used according to Department of Transportation (DOT) safety

rules and regulations including, but not limited to, prescribed limits on consecutive hours of vehicle operation, vehicle weight, length and width restrictions, and proper labeling and placarding.

Section 4.12
The Agency has the responsibility to provide adequate protections and take measures to reduce the risk and prevent heat-related illnesses and deaths. The Agency will ensure that adequate work breaks (work-rest regimens) and supplies of potable water are available to Employees required to work out of doors in high heat conditions, as defined by the ACGIH Threshold Limit Value for Heat Stress and Heat Strain (latest edition). The Agency shall consider potential environmental hazards, clothing, and type of work as well as the individual susceptibilities regarding heat when evaluating the risk to worker safety and health. Based on these factors some Employees may need more water or rest breaks than others, and should be provided necessary rest and water to keep heat stress low.

Section 4.13
The Agency will make every reasonable effort to avoid using pesticides or other chemicals (e.g., carpet glues, HVAC cleaning agents, paint, or other like construction or maintenance chemicals) that may be hazardous in any Agency building or Agency leased building.

The Agency will develop an integrated pest management (IPM) plan to eliminate the need for pesticides. Such substances will only be used as an absolute last resort. The Agency shall avoid using pesticides or hazardous materials in break rooms and other areas where Employees eat or drink.

Whenever pesticides or potentially hazardous substances are used, the Agency will provide advance notice to Employees, unless an exigency occurs, a minimum of two (2) days prior to application. Employees with special health needs will be reasonably accommodated. A paramount concern will be for the Employee's safety and health. The Agency will ensure adequate notification to Employees during and after application.

The Agency will make every attempt to isolate Employees from potentially hazardous substances. It is the Agency's responsibility to prevent and mitigate risks to Employees regarding the use of pesticides or potentially hazardous substances in its buildings and leased buildings.

When Employees have a reasonable belief of harm regarding a potential hazardous exposure they should report such concerns as specified in Section 4.1. The Agency will provide options to mitigate the hazard and will consider any options offered by the Employee or Union.

Section 5.0 Imminent Danger Situations

Section 5.1
The term "imminent danger" means any conditions or practices in any workplace that are such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures (ref. 29 C.F.R. 1960. 2(u)).

Section 5.2
An Employee may decline his or her assigned task because of reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a

reasonable belief that there is an insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

Section 5.3
Regarding imminent danger situations: Employees should immediately ensure their own safety and then as soon as possible contact an Agency manager, supervisor, health and safety personnel, or security guard.

Employees may file a report of the situation with the Department of Labor and may also request an inspection of the situation.

Section 5.4
The supervisor or manager shall request an inspection by the Health and Safety Branch for any report of an imminent danger situation. The Union will be notified immediately by the Agency of any report of an imminent danger situation so that it may provide representation and assistance to Employees making reports and given an opportunity to be present during any inspection. Employees and the Union will be told when the imminent danger situation will be inspected. Inspections of imminent danger situations will occur within twenty-four (24) hours as required by applicable regulations (ref. 29 C.F.R. 1960. 28(d)(3)).

Section 5.5
The Agency will notify the Employee and the Union in writing of imminent danger inspection findings and determinations within fifteen (15) days after the completion of the inspection. Findings will be provided with an explanation of such findings or determinations in plain language.

Should a determination be made that the condition does not pose an imminent danger and the Employee is given an order to return to work, continued refusal by the Employee may be justified based on available information that would support a reasonable belief that the imminent danger continues to be present.

If the conditions cannot be immediately corrected, Employees will be assigned work in a safe and healthy area, or will be excused without charge to leave until the condition is corrected.

Section 5.6
No Employee shall be subject to restraint, interference, coercion, discrimination or reprisal for reporting an imminent danger situation or for declining to perform an assigned task based on a reasonable belief that the threat is imminent, that it poses a risk of serious bodily harm or is life-threatening, and that there is insufficient time within which to eliminate the hazard (ref. 29 C.F.R. 1960. 46(a)).

Section 6.0 Work-Related Injuries and Illnesses

Section 6.1
Employees have the right and are encouraged to report any and all injuries that are work-related to a supervisor or manager and the Health and Safety Branch. Upon receiving a report of serious work-related injuries and illnesses, the Agency shall promptly notify the NIEHS Health and Safety Committee and Union President. The incident will be investigated by the HSB and the results provided to the NIEHS Health and Safety Committee and Union President.

Section 6.2
The Agency will take appropriate action to ensure that assistance is available to Employees in preparing necessary forms and documents for submission to the Office of Workers' Compensation Programs (OWCP). Additionally, Employees will be informed of their rights under the Federal Employees' Compensation Act, as amended.

Section 6.3
For accidents as defined at 29 C.F.R. 1960.29, the Agency shall forward to the Union any investigative reports of accidents involving Employees within twenty-four (24) hours of the report's completion.

Section 6.4
Annually, the Agency will provide copies to the Union of the following:

OSHA form 300A	(by May 1 or per regulation)
OSHA form 300	(by May 1 or per regulation)
NIEHS Injuries and Illness Report	(when provided to Management)

Information regarding the Agency's occupational safety and health program as referenced in 29 C.F.R. 1960 will be provided to the Union upon request. Other information and forms such as OSHA form 301 that are not publicized shall be given to the Union upon request for such issues as grievances, EEO complaints, or other similar matters.

Section 7.0 Personal Security

Section 7.1
The Agency shall provide adequate security to all Employees.

Section 7.2
The Agency shall provide to all Bargaining Unit Employees a lockable file drawer and key as a part of all new furniture installations in office areas for storing personal property. If an Employee does not have an office area or lockable file drawer with key, the Agency will meet with the Union upon request to negotiate provisions for the storage of personal property on a case-by-case basis.

Section 7.3
Security Alerts shall be issued as soon as reasonably possible to Bargaining Unit Employees for incidents at or in parking areas in close proximity to Agency facilities (owned or leased) at which Employees work that come to the attention of the Agency and are confirmed, and as permitted, by local or other law enforcement that involve: (1) armed robberies (attempted or actual); (2) assaults (simple or aggravated); (3) murder (attempted or actual); (4) rape (attempted or actual); (5) shootings (attempted or actual); (6) vandalized or stolen automobiles; (7) abductions (attempted or actual); and (8) car-jackings (attempted or actual).

In those situations involving isolated incidents or a targeted individual that would not endanger other Employees, Management may determine to keep this information on a need-to-know basis.

Confidential and sensitive information will be kept restricted by Management per applicable regulation or law.

Section 7.4
Labels with appropriate emergency numbers will be provided on or in the vicinity of all office telephones.

Section 8.0 Workplace Violence Prevention

Section 8.1
It is the employer's obligation to provide a safe and secure working environment for Employees. The Agency is committed to providing a work environment for all employees that is free from violence, threats of violence, harassment, intimidation, or other disruptive behavior. The Agency and Union agree to work together to prevent workplace violence and to minimize the occurrence and effects of violence in the workplace.

Section 8.2
The Agency shall provide processes, procedures and programs to prevent and respond to incidences of workplace violence, to include access to the Agency's CIVIL program as described at: http://hr.od.nih.gov/hrguidance/civil/default.htm. The Agency will engage the Union in pre-decisional involvement and negotiate, as appropriate, any process, procedure, or program related to workplace violence.

Section 8.3
The Agency shall notify the Union of all verified incidences of workplace violence involving Bargaining Unit Employees subject to the limitations of all privacy rights.

Section 8.4
All Employees who report harm resulting from an incident of workplace violence shall:

1. Have access to immediate first aid and transportation to the nearest medical facility, as appropriate;
2. Have access to emotional support, including but not limited to traumatic stress debriefing and counseling under the Employee Assistance Program; and,
3. Be provided with information on filing a claim for workers' compensation benefits.

Section 9.0 Emergency Preparedness

Section 9.1
The Agency shall have emergency preparedness plans to safely and promptly respond to both man-made and natural events at all Agency facilities including any Agency leased facilities. The emergency planning information for Employees available at http://junction.niehs.nih.gov/divisions/management/safety/manuals/health_safety/chpt2/index.htm shall be maintained and regularly updated to provide the following:

1. Descriptions of the actions to be taken by Employees during emergency situations;
2. Procedures for the efficient evacuation of personnel from NIEHS facilities including:
   a. Emergency worksite evacuation plans tailored to meet the unique features of each worksite;
   b. Methods to provide the same level of protection to Employees with special needs as all other Employees by addressing the concerns of Employees who may need assistance during an emergency;

   c. The identification of a cadre of volunteer Employees to assist in the effective evacuation during an emergency;
   d. At a minimum, annual evacuation drills;
3. Details on the organization of emergency response responsibilities;
4. Shelter-In-Place (SIP) protocols; and,
5. Information on suggested contents of personal safety kits to keep at work.

Section 9.2
The Agency shall provide an annual notification to all Employees of the emergency preparedness plans for Employees available on the Agency's web pages. Such information will also be provided in new Employee orientation sessions and introductory health and safety training courses.

Section 9.3
The Parties agree that it is the Agency's responsibility to designate emergency and mission critical Employees whose normal duties involve work assignments necessary to carry out the essential functions of the Agency during emergencies. The Agency, with input from the Union, will to the fullest extent possible protect the health and safety of the Employees performing such work.

Section 9.4
Proposed modifications to the emergency evacuation procedures will be submitted to the Union for review and comment. The Agency will respond substantively in writing to all comments made by the Union within fifteen (15) days of the Union's submission. The Union may demand bargaining on any matters that are within the scope of bargaining, in accordance with Article 12, Mid-Term Bargaining.

Section 9.5
The Agency shall make reasonable efforts to assure that each worksite has adequate personnel, including volunteer Employees, available to administer cardio-pulmonary resuscitation (CPR). The Parties will negotiate the process by which Employees will be solicited separately. The Agency will provide any necessary equipment and/or supplies for Employees administering CPR. Training for CPR certification and/or recertification will be at no cost to Employees.

Section 9.6
The first concern when an Employee is injured on the job is to make certain that the Employee gets prompt emergency medical aid. Doubts over whether medical attention is necessary will be resolved in favor of arranging medical aid.

Section 9.7
When it is necessary to assist an Employee to return home or to a medical facility because of illness or incapacitation, the Agency will arrange for transportation. If a co-worker volunteers to transport the Employee, and it is safe and medically appropriate, there will be no charge to leave for the co-worker. The Employee should notify and receive approval from their supervisor before transporting the ill or incapacitated Employee. No Employee will be required to transport another Employee due to illness, incapacitation, or otherwise.

Section 9.8
The Agency shall maintain adequate first aid supplies at each worksite. All Employees will have reasonable access to these supplies.

Section 9.9
The Agency shall ensure that there is an emergency notification system at the worksite that allows immediate notification of Employees of emergency situations.

Section 10.0 Hazardous Materials

Section 10.1
The Agency will provide ready access by Employees to Material Safety Data Sheets (MSDS) for all hazardous materials where such materials are used or stored. Access will be provided through an on-line MSDS system or paper copies as appropriate. Upon request, the Health and Safety Branch will provide Employees with MSDS sheets and other information regarding hazardous materials.

Section 10.2
Where practicable, the Agency will substitute hazardous chemicals and materials with less hazardous chemicals and materials.

Section 10.3
On a regular basis Employees will be provided information on the safe handling and disposal of hazardous chemicals and materials used in the worksite.

Section 10.4
Upon request, the Agency will report to the NIEHS Health and Safety Committee on the compliance requirements and training needs of persons handling hazardous chemicals, the types and quantities of hazardous waste generated, disposal requirements, and the Agency's performance in all these areas in the facilities under their jurisdiction.

Section 10.5
All Employees working with hazardous chemicals and materials at work may request an evaluation be conducted of their potential exposure and will be informed of their exposure to each hazard, the amount of exposure, the level of safe exposure (if there is a standard), and the risks associated with the hazardous chemicals and materials to which they were or are potentially exposed.

Section 11.0 Asbestos

Section 11.1
It is the policy of NIEHS to provide a safe and healthful workplace free from recognized and significant risks of serious injury or illness associated with exposure to asbestos fibers. It is also NIEHS policy to limit Employees and contractors indoor exposure to airborne asbestos fibers to levels at or below the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL), currently 0.1 fibers/cm3. A goal of NIEHS is to have asbestos-free buildings for all its Employees.

The Agency shall establish and maintain a comprehensive Asbestos Operations and Maintenance (O&M) Program for managing asbestos-containing materials (ACM) within NIEHS main campus facilities. The Union President or designated representative shall be provided a copy of the Asbestos O&M Program. The Health and Safety Branch (HSB) will continue to administer the Asbestos O&M Program by providing on-going management oversight of work practices and training to ensure that:

1. Asbestos-containing materials are identified, locations are labeled with appropriate Asbestos Warning Signs and ACM is maintained in good condition.

2. Accidental or uncontrolled releases of asbestos fibers are prevented.
3. The condition of ACM at NIEHS is periodically monitored, at least annually.
4. Renovations and repair work involving any utility systems, equipment or areas containing ACM are performed in accordance with the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) regulations.
5. Employee exposures to airborne asbestos fibers are maintained below the OSHA permissible exposure limit (PEL) of 0. 1 fibers/cm^3.
6. The NIEHS Asbestos O&M Program is periodically reviewed and updated to reflect any changes in the removal or condition of ACM.
7. In the event of the disturbance of ACM, asbestos fibers are properly cleaned up.

Section 11.2
For any Employees whose job tasks involve working with asbestos-containing materials, the Agency will adhere to the OSHA 29 C.F.R. 1910.1001 Asbestos Standard. The Agency will provide a comprehensive Asbestos Program that will include exposure assessment and monitoring, posting of asbestos warning signs, engineering and work practice controls, protective clothing and respiratory protection, information and training, housekeeping methods, medical surveillance and recordkeeping.

Section 11.3
In the event Employees who are not classified as asbestos workers under the OSHA Asbestos Standard are exposed to an accidental release of friable asbestos, the Agency will take the following immediate actions:

1. Evacuate any Employees present in the area and restrict access;
2. Investigate the incident;
3. Perform air monitoring and other sampling;
4. Immediately cleanup all impacted area ;
5. Notify and communicate to Employees the potential exposure levels;
6. Make arrangements for the exposed Employees to consult with an occupational health physician if requested;
7. Provide written documentation of the incident to Employees and the Union; and,
8. The Agency agrees to adhere to applicable OSHA and EPA standards to ensure exposed areas are safe for Employees before reoccupation or access.

Section 11.4
The Agency will inform all affected Employees of this Section regarding asbestos.

Section 12.0 <u>Ergonomic Stressors</u>

Section 12.1
The Agency shall provide a comprehensive ergonomics program to eliminate or reduce ergonomic stressors in the workplace by:

1. Offering training and providing available information to Employees on how to reduce and eliminate repetitive motion injuries and musculoskeletal discomfort or strain in the laboratory, office, shop and other work environments. The Agency will identify an Agency point person who can provide information or assistance.
2. Providing ergonomic assessments of laboratory tasks, computer workstations and other work environments. Such assessments will include an evaluation of means to prevent potential musculoskeletal or other ergonomic problems and to ensure visual comfort.

3. Recommending and encouraging Employees to limit periods of continuous repetitive motion or staying in a static posture for extended periods of time. Employees performing high repetition tasks (such as the extended use of computers, typing, pipetting, etc.) or tasks that require long periods of static posture will be permitted to:
   a. Alternate tasks whenever possible, mixing non-computer-related tasks into the workday.
   b. Take rest breaks (up to ten (10) minutes each hour) to stand, stretch, and move around.
   c. Should Employees need additional work break time due to the ergonomic stress of their job tasks they will discuss with their supervisors or Health and Safety personnel to find strategies to alleviate such stress.
4. Recommending and providing computer and accessory equipment such as keyboards, keyboard trays, chairs and ergonomically designed furniture that provides comfort and support to the user.
5. Providing wrist supports and other ergonomic equipment as indicated by the findings of an ergonomic evaluation conducted by the Health and Safety Branch.

Section 13.0 Indoor Air Quality

Section 13.1
Employees are entitled to work in an environment containing safe and healthful indoor air quality. The Agency shall provide safe and healthful indoor air quality by conforming to laws, guidelines, regulations, and/or policies issued by Federal regulatory agencies such as OSHA, EPA, and GSA.

Section 13.2
On-site investigations/inspections will be conducted when a problem concerning indoor air quality or building related illness is formally brought to the Agency's attention. These investigations/inspections shall meet the criteria of the GSA Federal Property Management Regulation and other nationally recognized codes and guidelines (such as the American Society of Heating, Refrigerating and Air Conditioning Engineers, or the American Conference of Government Industrial Hygienists.)

Section 13.3
The Agency shall eliminate or control all known and potential sources of microbial contaminants or mold by assessments and appropriate response to all areas where water collection and leakage has occurred including floors, walls, roofs, HVAC cooling coils, drain pans, humidifiers containing reservoirs of stagnant water, air washers, fan coil units, and filters. Such responses will normally require prompt cleaning and repair of contaminated areas. The Agency shall also:

1. Clean and disinfect or remove and discard porous organic materials that are contaminated (e.g., damp insulation in ventilation system, water damaged ceiling tiles and carpets); and,
2. Clean and disinfect non-porous surfaces where microbial growth has occurred with detergents, microbicides, or other biocides and insuring that these cleaners have been removed before air handling units are turned on. In any leased space the Agency will deal with the lessor and/or GSA to achieve these objectives.

Section 14.0 Renovation and Construction
Wherever the Agency decides to alter the physical work site of Employees represented by the Union, the Union will be notified in advance in accordance with Article 12, Mid-Term Bargaining. In addition to the requirements negotiated in mid-term agreements, the Agency shall:

1. To the extent possible, isolate areas of significant renovation, painting, carpet laying, etc., from occupied areas that are not under construction;

2. Perform this work during evenings and weekends when such areas cannot be sufficiently isolated;
3. Ensure that concentrations of contaminants are sufficiently diluted prior to occupancy; and,
4. Supply adequate ventilation during and after completion of work to assist in dilution of contaminant levels.

Section 15.0 Wellness Program

Section 15.1
Employee wellness and the investment in programs to maintain Employee health contribute directly to sustained productivity and reduction of lost Employee time due to illness. Therefore, the Agency will facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, health screenings, and exercise.

Section 15.2
To advance the goal of a healthy workforce the Agency will periodically survey the health and fitness resources currently available to Employees, survey Employees on their preferences, design additional or improved health fitness offerings to Employees, and design and implement a marketing strategy to Employees to publicize health and fitness resources and events.

Section 15.3
There are four (4) pillars of health: physical activity, nutrition, prevention, and healthy choices. The Agency agrees to develop, promote, and improve upon workplace practices and wellness programs that foster the four pillars of health to help ensure a productive workforce.

Section 15.4
Under 5 U.S.C. § 7901, agencies are authorized, within the limits of available appropriations to establish and operate physical fitness programs and facilities designed to promote and maintain Employee health. Budget permitting, the Parties agree to continue the NIEHS health and fitness program along with all current health and wellness offerings. It is agreed that enhancements or improvements to this program will be sought on an ongoing basis. Changes in this program will be negotiated with the Union per the mid-term bargaining Article.

The Department of Health and Human Services (HHS) recommends that adults participate in physical activity for at least twenty (20) to thirty (30) minutes most days of the week to gain health benefits. Healthy Employees are more productive Employees; therefore, the Agency will encourage Employee participation in fitness and wellness activities by supporting flexible work schedules and creating environments that encourage active and healthy lifestyles (e.g., providing showers and locker rooms, bike racks, walking / running trails, exercise facilities, and healthy vending machine choices). The Agency agrees that such flexibilities will be granted on a fair and equitable basis in consideration of workload or staffing needs.

Employees shall be permitted to participate in Agency sponsored wellness events. The Agency will grant excused absence to Employees to participate in Agency sponsored preventive health activities, such as health fairs, health screenings, health and wellness seminars, and smoking cessation and stress reduction classes unless it would create an adverse impact upon the mission of the office or group.

The Agency and the Union agree to explore options to create, develop, and improve physical activity and wellness programs as well as Employee workplace flexibilities for participation in physical fitness activities. Promotion of physical activity as part of worksite health programs will be a key part in the Agency and Union partnership.

Section 15.5
The Agency agrees to provide Employees a variety of nutritional, healthy food choices in its cafeteria and vending services.

Whenever feasible, food offered to Employees will be fresh local products rather than frozen, canned, or dried products. In general, as based upon cost reasonableness, organic food products, natural, and locally grown foods will be the preferred choice in cafeteria and vending operations. Signs shall notify patrons when local, natural, or organic products are in use. The Agency will work with the Union to develop and improve upon ways the Agency can offer/provide food for Employees that are healthier and more environmentally sustainable.

Organic foods are foods that are produced using methods that do not involve modern synthetic inputs such as synthetic pesticides and chemical fertilizers, do not contain genetically modified organisms, and are not processed using irradiation, industrial solvents, or chemical food additives. In general, the U. S. Department of Agriculture (USDA) definition of organic used in its organic certification process is acceptable.

Natural foods are assumed to be foods that are minimally processed and do not contain any hormones, antibiotics, sweeteners, food colors, or flavorings that were not originally in the food.

"Local" is defined as the total distance that the final product is transported is less than 100 miles from the origin of the product.

Section 15.6
To the extent practicable, the Agency will ensure that all food offered in the cafeteria and/or vending machines provides a description of ingredients (especially if the food contains nuts, wheat, or gluten or other allergy causing ingredients) and caloric content as well as breakdown of fat, carbohydrates, and protein.

Section 16.0 <u>Nursing Mothers and Lactation Program</u>
The Parties agree that the health and wellbeing of our Employees is critically important. Returning to work after a having new baby can be difficult, especially for women who choose to breastfeed. The Nursing Mothers and Lactation program serves to ensure support and worksite assistance for nursing mothers so that their babies remain happy and healthy. One purpose of this program is to provide the emotional support and worksite assistance nursing mothers need to make the return to work the least stressful possible. The Union and the Employer recognize the importance of breastfeeding and encourage support from managers, supervisors, and co-workers.

Section 16.1 <u>Locations</u>
A. There shall be a minimum of three (3) lactation rooms throughout NIEHS space. They shall be located as follows: one (1) in the main or Rall Building; one (1) in the Keystone Building; one (1) in the Clinical Research Unit.

B. There are two (2) treatment rooms in the Health Unit, located in Building 101 (Room E 111) that may be used by nursing mothers as a rest area. These rest areas are not dedicated lactation rooms and their use must be coordinated with the Health Unit Nurse.

C. The Parties agree that whenever renovation, justified need and/or budget will permit, another lactation room in the Rall Building (i.e., Main Campus, Building 101) will be considered. The Agency shall negotiate with the Union as appropriate. The Agency agrees to routinely monitor the program to assess where improvements can be made.

D. The Union shall be permitted to visit the lactation rooms upon request and when available. Whenever lactation rooms are moved to another location the Union will be notified and may bargain as appropriate.

Section 16.2 Lactation Room Features

A. At a minimum each lactation room will meet the following basic requirements:
    1. Private locked room or other space (not restroom);
    2. A minimum of eighty (80) square feet of space;
    3. Clean, safe environment;
    4. Rooms shall have a microwave, table, chair, sink, paper towels, and a trash can;
    5. Electrical outlets with surge protector to expand the outlets to (six) 6;
    6. Chair and table for a breast pump;
    7. Hospital grade breast pump (durable pump that more than one mother can use safely), which is approved by FDA and is BPA/DEHP free (the Agency agrees to periodically survey participants as to their preference of breast pump and consider such information when purchasing a new pump);
    8. Instructions on how to use the breast pump;
    9. Small refrigerator exclusively for expressed milk storage during the day with a freezer storage area for at least one (1) freezer pack;
    10. Phone and phone number to contact NIH Lactation Consultants or other Lactation Consultants;
    11. Rooms shall have an area for reading material and posting information;
    12. Rooms shall be cleaned and maintained by contract custodial staff; and,
    13. The NIEHS Health Unit Nurse shall ensure the rooms are clean and organized.

B. Agency will provide breastfeeding information factsheets in each lactation room and have a web page (http://junction.niehs.nih.gov/divisions/management/safety/health/nursing/index.htm) on the NIEHS internet that is fully and easily accessible by any/all BUEs that includes at a minimum:
    1. Prenatal information on breastfeeding;
    2. Information regarding postpartum assistance in the hospital, at home, and back at work;
    3. Phone number of NIH Lactation Consultants; and,
    4. Links or information regarding mother-to-mother support groups.

Section 16.3 Access to NIH Services

Employees shall have equivalent services and/or have full use and access to the NIH Nursing Mothers Program (http://www.ors.od.nih.gov/sr/dohs/Resources/nursing/Pages/lactation.aspx) which includes:

1. Telephone support while on maternity leave, providing advice and problem-solving during the first critical weeks;

2. Return-to-work consultation;
3. Onsite lactation rooms in various buildings, all equipped with breast pumps; and,
4. Prenatal breastfeeding education classes taught at various locations on campus (Bethesda campus).

Section 16.4 Use of Employee Offices

Employees may use their offices in lieu of the lactation room(s). For those Employees who have difficulty meeting aspects of scheduling or other parts of the Nursing Mothers Program or prefer to use their office, they shall be permitted to have a lock placed on their office so they can use their office rather than the lactation room(s). For those Employees who have cubicles, they shall be granted access to a nearby vacant and available office for use as appropriate.

Section 16.5 Lactation Room Guidelines

A. Employees must register with the NIEHS Lactation Program to use the room on an ongoing basis. There is no fee for use of the lactation room. To register for ongoing use of a lactation room the lactation program agreement form must be completed.

B. The person whose name appears on the schedule at a designated time has priority to use the room at that time. The schedule may be accessed online. An Employee wanting to be added to the schedule must contact the NIEHS Health Unit Nurse.

C. Employees are responsible for placing their names on the schedule. The Agency agrees to make the schedule easily accessible and easy-to-use. Normally, Employees should schedule no more than three (3) time slots per day (with no more than thirty (30) minutes per slot). Additional scheduled time slots shall be on a space available basis. However, if Employees need additional time slots, the Employee may use the NIEHS Health Unit or their own office, if desired.

D. If the nursing mother needs to make a change to the schedule they are responsible for making the change. Employees are expected to notify the NIEHS Health Unit Nurse if they need to discontinue use of the lactation room.

E. Employees, when on extended leave (more than two (2) weeks), may be removed from the schedule to make room for another person needing to use that time slot in the lactation room. If arrangements are made in advance and the leave is less than two (2) weeks, the Employee's time slot will be held. Time slots cannot be held if leave is longer than two (2) weeks and there is heavy demand for use of the room. The Employee shall be placed back on the schedule when their leave has ended.

F. Employees must provide their own collection bottles and double-pumping type of hook-up tubing, all of which will need to be compatible with the Agency's hospital grade electronic breast bump. For those Bargaining Unit Employees who show a need, the Union agrees to assist in paying for kits or collection equipment compatible with the Agency's breast pump. Employees may use their own breast pump if desired.

G. It is the responsibility of everyone using the lactation room to assure that the area has been cleaned sufficiently for the next user. Paper towels, soap, and water will be made available to each client for cleaning up spillage. Employees should notify the NIEHS Health Unit Nurse if cleaning materials are

not available. If a nursing mother uses the Agency breast pump, she should prepare the pump for the next user by wiping the connection with alcohol pads provided.

H. The Agency shall provide the lactation program agreement online and ensure that it is easily accessible to Employees.

I. The Agency shall also send an email notice to all Employees periodically regarding the nursing mothers/lactation program.

J. The Agency shall ensure that applicants to the program shall be granted a key to the most nearby lactation room normally within two (2) business days. In the interim, the Employee may use the lactation room when it is unoccupied, their office, or any other nearby private location designated by the Agency.

K. The Agency shall provide a copy of this language/section regarding the Nursing Mothers Program when Employees complete the Lactation Program Agreement.

Section 16.6 Breast Milk Storage/Removal Policy

Breast milk may be stored in a dedicated lactation refrigerator. Each nursing mother will be required to label the expressed breast milk with her name, and date. The breast milk can then be placed in the designated refrigerator in a second box-like container which separates the stored breast milk from that of other clients. NIEHS will not be responsible for the security and integrity of breast milk placed in the lactation refrigerator. NIEHS and its Employees or contractors will not be held responsible for any adverse event allegedly attributable or related to breast milk stored in the health center. At the conclusion of the workday, each client will remove her stored breast milk from the dedicated lactation refrigerator. Any milk that is left in the dedicated lactation room will be discarded.

Section 16.7 Time

Employees shall be granted appropriate duty time or administrative leave for nursing/lactation issues regarding all matters mentioned herein. The Agency acknowledges that due to the location of some lactation rooms and sometimes challenges involved in nursing that twice (30) minutes twice a day is common during an eight (8) hour day.

Section 16.8 Participation

To participate in the program, Employees must:

1. Contact NIEHS Health Unit at 541-4689 or 541-0338.
2. Complete a NIEHS Lactation Program Agreement certifying that they understand and agree to the Lactation Program policies and procedures, and send either electronically or via interoffice mail to the NIEHS Health Unit.
3. Contact the Health Unit Nurse to sign out a key and to gain access to the Lactation Rooms calendar.
4. Before using the pump, Employees should notify the NIEHS Health Unit Nurse regarding any nipple or breast redness, pain, cracking, discharge, or other evidence of possible infection. Women with mastitis should be seen and cleared by their personal physician for use of a breast pump before continuing with the program.

Section 16.9 Lactation Program Agreement

NIEHS LACTATION PROGRAM AGREEMENT

I have received and reviewed information on the NIEHS Lactation Program, including its purpose, content, policies, and procedures. I've had an opportunity to ask questions and have all of them answered to my satisfaction.

I understand that, if available, I will be able to have access to and use of an electronic breast pump and a refrigerator dedicated exclusively to the storage of expressed breast milk. I also understand that it is my responsibility to provide and care for containers, necessary kits, tubing, or other accessories to collect and store my breast milk.

I agree to follow the NIEHS Lactation Program policies and procedures on access to and use of an electronic breast pump, and I agree to use the electronic breast pump according to the manufacturer's instructions. I also agree to follow the NIEHS Lactation Program policies and procedures on collection, labeling, and storage of my expressed breast milk. I accept the responsibility to remove all my stored breast milk by the end of each day or otherwise have the stored milk discarded by NIEHS Health Unit staff. I will notify the NIEHS Health Unit Nurse before using the pump if I have nipple or breast redness, pain, cracking, discharge, or other evidence of mastitis. If I have or develop such a problem, I will see my personal physician for his/her written clearance before continuing with the program.

NIEHS and its Employees or contractors will not be held responsible for any adverse event allegedly attributable or related to breast milk stored in the health center. I understand that if I choose not to store my milk in the dedicated lactation room refrigerator and instead put my breast milk in my own insulated container, I take full responsibility for my breast milk as I remove it from the NIEHS site.

Name _____
(Please Print)

Signature _____

Date _____ Start Date: _____ Bldg./Room #_____

Ext. _____ Email address: _____

Send via interoffice mail to: **NIEHS Health Nurse**

Article 31: Employee Assistance Program

Section 1.0 Policy
The Parties agree and recognize that some Employees in the work place may experience situations in their personal lives such as divorce, death or financial problems that impact their ability to perform their duties in an acceptable manner. The Parties further recognize that some Employees may suffer from treatable illnesses and disorders that occur as a result of alcohol, drug and substance abuse. Therefore, it is the policy of the Agency and the Union to work together to encourage troubled Employees whose performance and conduct are adversely affected to seek counseling assistance or medical treatment.

Section 2.0 Employee Assistance Program
The Agency agrees to establish an Employee Assistance Program (EAP) and make this service available to all Employees at no cost. The EAP will be staffed with professional counselors who will assist Employees in addressing problems that have had an adverse effect on their job performance, and health.

Section 2.1
The Parties will encourage Employees to seek employee assistance and recognize that in addition to Section 1.0 above, the EAP can be important in preventing and intervening in workplace violence incidents; delivering critical incident stress debriefings; and providing assistance to Management and Employees during Agency restructuring or other major organizational transitions or developments.

Section 2.2
The EAP services provided by the Agency will consist of the following:

1. Confidential, free short-term counseling to identify and assess problem(s) and help Employees in problem solving;
2. Referral, where appropriate, to a community service or professional resource that provides treatment and/or rehabilitation;
3. Follow-up services to help an Employee readjust to his or her job during and after treatment, e.g., back-to-work conferences;
4. Training sessions for managers and supervisors on handling work-related problems that may be related to substance abuse or other personal, and/or health-related problems; and,
5. Briefings to educate Management and Union officials on the role of EAPs.

Section 2.3
Supervisors should offer the availability of the EAP to Employees who are experiencing situations that have adversely affected an Employee's performance and conduct; however, supervisors will not attempt to diagnose Employee problems; e.g., alcohol or drug abuse, depression, etc.

Section 2.4
The Agency will publicize the availability of EAP services to all Employees (such as by sending emails, maintaining websites and posting information regarding the EAP in those areas that are frequented by Employees such as break and lunch rooms, bulletin boards, etc.). The information will include, at a minimum, the telephone number, location, and hours of operation of the EAP. The Agency will publicize the EAP via All-Hands email at least once a year and include written EAP information in Employee orientation materials.

Section 3.0 Voluntary Participation and Employee Responsibility
Although the existence and functions of the EAP will be publicized to Employees, no Employee will be required to participate or be penalized for declining referral to the program. Further, participation in the program will not jeopardize an Employee's job security or promotion opportunities.

Participation or non-participation in the EAP does not relieve the Employee's responsibility for their job performance and conduct, nor does it relieve supervisors of their responsibility under personnel management regulations to deal with unsatisfactory performance and conduct matters.

Section 3.1
Employees who coordinate visits to the EAP with supervisors will be considered to be on official duty while meeting with the EAP counselor for assessment and referral services. Employees will be excused from duty without charge to pay or leave to meet with an EAP counselor for up to the maximum number of sessions provided under the program. In these cases, verbal notification to the supervisor is sufficient. Employees will only be required to state they are "using EAP services," or other similar language. No other requirement or information is necessary for the Employee to be excused.

Employees participating in the EAP through self-referral without the supervisor's knowledge will use sick or annual leave or LWOP for visits to the EAP during work hours. Supervisors are strongly encouraged to grant such requests. If the supervisor requests or demands a reason for the requested leave:

1. The Employee may cancel the leave request without any further explanation, or,
2. The Employee may simply state they have a scheduled appointment for the reason and the request shall be granted unless the Employee's absence would cause a substantial disruption to the Agency mission during that time.

The Employee shall not need to provide any information or a note from the EAP counselor upon return to their duty station.

Any Agency personnel who is made aware of or ascertains that an Employee is using EAP services shall keep such information strictly confidential. Information about sessions or discussions with the EAP cannot be disclosed without explicit written permission from the Employee. Applicable regulations (42 C.F.R. 2) require confidentiality of alcohol and drug abuse records, and they provide penalties for unlawful or unauthorized release of information.

Section 4.0 Confidentiality of the Program
The Parties recognize that all confidential information and records concerning an Employee's counseling and treatment through the EAP will be maintained in accordance with The Privacy Act of 1974 (5 U.S.C. § 552a).

Section 4.1
Any information or reports from the counselor may be released only with the written consent of the Employee and only to those individuals that the Employee specifically identifies in the written consent. At the initial session, the EAP counselor will discuss with the Employee the confidential nature of EAP records along with the limited situations where information discussed in counseling may be disclosed to others.

Disclosure without consent is only permissible in a few limited instances, such as the following:

1. To medical personnel in a medical emergency;

2. In response to an order of a court of competent jurisdiction;
3. To comply with Executive Order 12564, "Drug Free Federal Workplace;"
4. An EAP provider is required by law to report incidents of suspected child abuse and neglect (in some States, elder and spouse abuse) to the appropriate State and local authorities; and,
5. An EAP provider may make a disclosure to appropriate individuals, such as law enforcement authorities and persons being threatened, if the Employee has committed, or threatens to commit, a crime that would physically harm themselves or another person. Any such disclosure will not identify the Employee as an alcoholic or drug abuser.

Section 5.0 Confidentiality and its Relationship to Unacceptable Performance, Disciplinary and Adverse Action

Information about Employee participation or discussions with the EAP cannot be disclosed without the Employee's permission.

The Agency recognizes that any information obtained from the EAP with the Employee's authorization may not serve as the basis for disciplinary or adverse actions unless required to enforce the law in clear or imminent danger situations, i.e., "duty to warn," or terms of last chance agreements; see Article 21, Discipline and Adverse Actions. Disciplinary actions shall be based on conduct or performance problems, not participation in a counseling program.

Section 5.1

If an Employee receives a proposed disciplinary or adverse action, and the Employee notifies the Agency for the first time that

1. S/he has a substance abuse problem that significantly contributed to the misconduct; and,
2. S/he seeking the services of the EAP;

Management will consider placing the proposed action in abeyance for a period of not more than one (1) year while the Employee undergoes treatment under terms and conditions agreed to by the Employee and the Agency. This provision only applies in the first instance of substance abuse and does not apply if severe, egregious or criminal misconduct is involved.

Section 5.2

When a decision is made by the Agency to hold an action in abeyance in accordance with Section 5.1 above, and there are no further instances of related performance or conduct problems at the end of the specified period, the Agency will rescind and close the pending action.

Section 5.3

Should the Employee violate any terms of the agreed upon conditions or is involved in additional misconduct during the abeyance period, the proposed action will continue to be processed in accordance with the procedures outlined in 5 C.F.R. 752 and Article 21, Discipline and Adverse Actions, of this Agreement.

Section 5.4

Should an agreement be reached between the Employee and the supervisor to hold a disciplinary or adverse action in abeyance, the Employee will not be required to forfeit his or her statutory rights to appeal an Agency decision should the Employee fail to comply with its terms.

Section 6.0
It is agreed that before the Employer implements any type of drug testing program, the Union will be notified. If the Union requests negotiation, drug testing will not begin until negotiations are completed.

Article 32: Medical Determinations

Section 1.0 Scope
Any requirement for an Employee to provide the Agency with medical documentation to support an absence of leave or a request for a work place accommodation will be requested and obtained in accordance with 5 C.F.R. 339.

The Parties agree that this Article shall cover those situations where Employees have a long-term or serious medical or health matter. This Article excludes short-term absences for purposes of attending to routine medical or dental appointments or infrequent medical absences of five (5) days or less.

The Agency agrees that its procedures and decisions regarding medical determinations shall be fair and equitable as well as consistent and unbiased. Medical documentation shall be limited to the relevant health or medical condition.

Section 2.0 Definitions
For purposes of this Article, the following definitions apply:

1. *Accommodation* is reasonable accommodation as outlined in 29 C.F.R. 1613.704.
2. *Medical condition* is a health impairment which results from injury or disease, including psychiatric disease.
3. *Medical documentation or documentation of a medical condition* means a statement from a licensed physician or other appropriate practitioner which provides information the Agency considers necessary to enable it to make an employment decision. See Section 5.0 of this Article.
4. *Medical standard* is a written description of the medical requirements for a particular occupation based on a determination that a certain level of fitness or health status is required for successful performance.
5. *Physician* is a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed service to conduct examinations.
6. *Practitioner* is a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Section 3.0 Medical Examination
The Agency may require an Employee to undergo a medical examination only under those conditions authorized by this Article or in accordance with 5 C.F.R. Subpart C, 339.301.

Jobs that require a medical examination will contain this requirement in the position description. Management will provide Employee position descriptions upon request to the Union when a medical examination is authorized.

Employees have the right to be examined by a physician of their choice.

In the event the Employee does not choose to be examined by a personal physician or practitioner, then the Agency shall designate the examining physician.

When the Agency orders or offers a medical examination under the provisions of the prevailing regulations, it shall inform the Employee in writing the reason for ordering or offering the examination and the consequences of failure to cooperate.

Section 3.1
The Agency shall provide, in writing, specific reasons to the Employee as to the necessity of such an examination and the rights of the Employee. Such information provided to the Employee will be made available to the Union upon request in a sanitized form.

All medical examinations ordered (or offered per 5 C.F.R. 339.302) pursuant to this Article shall be at no cost to the Employee and performed on duty time at no charge to leave. Such medical evaluations shall be conducted by a physician or health practitioner within fifty (50) miles of NIEHS, RTP, NC.

Section 3.2
The Agency may offer a medical examination when an individual has made a request for medical reasons for a change in duty status, assignment, or working conditions or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) and the Agency, after it has received and reviewed medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.

Section 3.3
In the event the Employee does not choose to be examined by a personal physician or practitioner, then the Agency shall designate the examining physician.

Section 3.4
All medical examinations ordered or offered pursuant to this Article shall be at no cost to the Employee and performed on duty time at no charge to leave.

Section 4.0 Procedure
In all discussions with any Management official regarding a medical determination, the Employee shall be entitled to Union representation. Prior to any discussion, the Employee shall be notified of this right, given an opportunity to contact and discuss the matter with the Union representative, and be permitted the right of representation in such discussion.

Section 5.0 Medical Documentation
Any medical documentation requested by the Agency in order to make an informed management decision regarding an Employee's performance, conduct or ability to remain in a position because of medical reasons, will be consistent as outlined in 5 C.F.R. 339.104(a) through (g), Subpart A, as applicable. The documentation will be strictly limited to what is pertinent to the Employee's situation.

Section 5.1
When there are reasonable grounds to believe that a health problem is causing performance or conduct problems, including recurring unexplained absences from the workplace, the Employee shall be given an opportunity to provide medical evidence documenting the health problem affecting their performance or conduct, and an opportunity to voluntarily initiate an application for disability retirement on their own behalf.

Section 5.2
The Agency will offer the Employee an opportunity to submit medical documentation from his or her personal physician or practitioner directly to the Agency's designated physician. The Agency must review and consider all such documentation. If the Employee is in the process of securing documentation from

his or her personal physician or practitioner, the Employee will be afforded a reasonable time to make an appointment with that physician and obtain the relevant documentation. This documentation should be provided within thirty (30) days of the Agency's initial request.

Extensions will be granted on a case-by-case basis, based on the Employee's diligent and good faith efforts.

Section 5.3
If the Agency determines documentation establishes the Employee is medically fit to remain in the position as provided in 5 C.F.R. 339, then the Employee will not be referred for further evaluation.

Section 5.4 Release of Medical Documentation

Section 5.5

A. The Agency agrees that all medical information or documentation furnished by the Employee to the Agency and any subsequent personal information included with an application for disability retirement are confidential will be subject to the Privacy Act of 1974 (5 U.S.C. § 552a) and disclosure will only be made to those individuals who have a need to know in order to make informed management decisions regarding the Employee's performance, conduct, or request for an accommodation or specifically authorized by the Employee.

B. The Employee will provide a signed release which will accompany all medical documentation. The release will identify who is authorized to review the medical documentation and for what purpose. Should further release be required, the Agency will inform the Employee of the necessity for the release. The Agency agrees that an Employee's medical documentation will not be released to anyone other than specified without the prior consent of the Employee.

C. Any medical documentation that is provided to the Agency by an Employee will be secured and only accessible to those officials who have authorization to review the documentation.

D. Any medical documentation will be kept separate from the individual's personnel file. Upon request, the Agency will provide the Union with its procedures for handling medical information, which should clearly reflect how confidentiality will be maintained.

E. Whenever the Agency requests medical documentation from an Employee, the Agency shall provide the Employee with a copy of any approved medical evaluation protocol, applicable standards and requirements of the position, and a detailed position description of the duties of the position including critical elements, physical demands, and environmental factors.

   It is incumbent upon the Agency to clearly and specifically state, in writing, medical information that is needed from the Employee or physician. Similarly, for any supplemental or insufficient information, the Agency shall explain in detail information that is needed or how the medical documentation must be completed to be acceptable.

   The Agency agrees to provide to the Employee or Union specific written explanation of any additional request for medical information.

The Agency agrees to process requests related to medical information in a prompt fashion.

Section 6.0 Inability to Perform Assigned Duties
When the Agency determines, as a result of a review of medical documentation or the results of a medical examination, that an Employee:

1. Cannot perform their regularly assigned duties,
2. Retains the capacity to do other work at the same grade or pay level within the work location or the same commuting area, and,
3. Otherwise meets the minimum qualifications for an available position that the Agency seeks to fill,

the Agency will make every effort to reassign the Employee to another position within the Agency at the same grade for which the Employee qualifies and in which he or she can perform in the same commuting area, fully utilizing any available FTE to accommodate an Employee.

In the event a position at the same grade is not available, the Agency will determine if other positions exist at a lower grade for which the Employee qualifies and can perform the assigned duties. If a position exists, the Union and/or the Employee will be notified of the availability of the position and given the opportunity to accept the position through a voluntary change to lower grade. If the Employee accepts the position, pay will be fixed in accordance with applicable rules and regulations.

Section 6.1
The Agency shall consider the use of detail assignments for accommodation purposes.

The Agency shall consider any available alternative prior to determining demotion or termination.

Section 7.0 Counseling
When the Agency determines that the medical evidence reveals:

1. The Employee is totally disabled for service in their current position, and,
2. Reasonable accommodation for another position cannot be made, including reassignment or other alternatives,

the Agency shall promptly so advise the Employee and provide appropriate counseling, including seeking other Federal employment in the area.

Section 7.1
When a disabled Employee meets existing disability retirement requirements, the Agency shall counsel the Employee concerning disability retirement and provide all necessary paperwork.

The Agency shall expedite such applications with all due speed and will complete processing through NIEHS normally within five (5) days as long as all forms are complete. The Agency shall also provide the Employee and Union with contacts at NIH and Office of Personnel Management (OPM) who are involved in the disability retirement process.

In the event that an Employee is unable to file on his/her own behalf, the Agency may initiate, with notice to the Employee, an application for the Employee in accordance with applicable laws and regulations.

The Agency shall provide the Employee proper notice, in accordance with 5 C.F.R. 831.1204(b), and shall permit the Employee thirty (30) days in which to respond in writing.

Section 8.0
In the event a position cannot be located for the Employee, the Agency will notify the Employee of his/her right to apply for disability retirement prior to initiating any personnel actions against the Employee. If the Employee elects to file for disability retirement, the Agency will authorize the Employee sick leave, annual leave or leave without pay pending the receipt of a decision from OPM. The Agency will also work with the Employee for voluntary leave from other Employees. Such actions will be carried out promptly and without delay.

Section 8.1
If the evidence and performance records establish that the Employee retains the capacity to perform satisfactorily in a vacant lower graded position which the Agency seeks to fill within the Employee's commuting area, the Employee will be informed of their option to request such a demotion. The Parties agree that demotion is generally one of the last options to pursue before termination.

Section 9.0 Accommodation
The Rehabilitation Act of 1973, as Amended, requires that agencies provide reasonable accommodation to disabled individuals, absent undue hardship. Executive Order 13164 provides substantial leeway in the ways in which reasonable accommodation requests may be made and processed.

The Agency agrees to be a model employer regarding Employees with disabilities and to jointly work with the Union regarding improved work conditions for Employees with medical conditions. See Article 25, Equal Employment Opportunity, for specific information regarding accommodation.

Article 33: Light Duty

Consistent with the mission and depending upon the work that an Employee is capable of performing, the Employer will provide temporary assignment of an injured or otherwise incapacitated Employee to light duty. The Employee will furnish a brief physician's certificate in compliance with Article 32, Medical Documentation, describing the work the Employee can perform and stating the expected duration of the injury or temporary incapacitation.

Light duty is considered work that is mainly sedentary and involves no or very slight exertion. Lifting, pulling, or working in high or low temperatures is not light duty.

Article 34: Temporary Indoor Environmental Conditions and Inclement Weather Procedures

Section 1.0
The Parties recognize that there are certain circumstances that may call for the Employer:

1. To release the Employees after beginning of the workday,
2. To delay opening of the facility on a workday, and,
3. Not to open the facilities on a workday.

Section 2.0 Inside Temperature and Ventilation
The Parties agree that malfunctioning or inadequate cooling, heating, or ventilating equipment, particularly when combined with outside temperatures, can create temporary abnormal working conditions that might warrant adjustments in work schedules or the workday as outlined above. In these situations, Management recognizes its responsibility to give prompt attention to the problems and to take corrective actions so as to minimize any discomfort that may result for Employees. Management further recognizes its responsibility to minimize the adverse effect on Employees by utilizing appropriate measures to improve inside temperature and/or ventilation. Management also recognizes that in extreme situations where the conditions are apt to persist for extended periods of time and where substantial inconvenience and Employee discomfort could result, it has a responsibility to take other actions. These include but are not limited to temporarily assigning Employees to other work areas within the Institute or to release Employees on administrative leave or otherwise alter the workday or work schedule. The Union shall be responsible for bringing any matters covered under this Section to the attention of the appropriate supervisor or other Management officials in the Institute when such conditions may adversely affect Employees.

Section 3.0 Inclement Weather
The Parties recognize that occasionally snow, ice accumulation, or other weather conditions may necessitate an alteration in the workday for Employees.

A. The Parties recognize the benefit of establishing and maintaining a systematic plan for decision making in regard to inclement weather and the notification of that decision to its Employees.

B. The Parties agree that Management officials are responsible for consulting among themselves and with appropriate safety authority, (e.g., Highway Patrol, Dept. of Transportation, National Weather Service) to determine when weather or other environmental conditions require Employees not to be present at their work place for safety reasons.

C. When adverse weather or environmental conditions necessitate an alteration in the workday for Employees, notifications and announcements will come directly from the Employer. Information on late opening or all day closures will be made available through the following:
    1. Call-in telephone number with recorded message(s)—including an additional 1-800 (or toll-free) telephone number for Employees;
    2. All-hands email message(s);
    3. Posting on the NIEHS home pages for the external public (internet) and internal Employee (intranet) web sites.

When power outages from such events as ice storms or hurricanes affect the general NIEHS commuting area the Agency will broadcast alterations of the work day on AM radio. The employer will use at least one AM radio station that has, at a minimum, the signal strength to reach the widest possible coverage of NIEHS Employees (e.g., at least eighty (80) miles in any direction from NIEHS). These AM radio stations will be communicated, along with the other methods above, to all NIEHS Employees at least once a year.

D. The Parties agree that a plan shall be developed and maintained that addresses the Employer's need to designate emergency employees whose normal duties involve critical work assignments necessary for safe access to NIEHS facilities; the protection of government property; and, ongoing research activities.

Management, with input from the Union, will identify those Employees that are necessary to accomplish this work

Management will, with input from the Union, undertake to utilize contractual Employees when possible, cost and other factors considered.

These Employees receive annual written notification of their emergency status.

Article 35: Travel

Section 1.0 General

Section 1.1
The nature of the mission of the Agency is such that it might be necessary for Bargaining Unit Employees to travel officially on behalf of the government.

Section 1.2
Negotiable changes to the Federal Travel Regulations are subject to collective bargaining between the Agency and the Union. Toward this end, the Agency shall give the Union notice of proposed negotiable changes to the regulations in accordance with Article 12, Mid-Term Bargaining.

Negotiated agreements must comply with applicable federal laws and regulations. In the event of a conflict between this agreement and law, government-wide regulation, then law or government-wide regulation shall control.

Section 1.3
When Employees travel on official business requiring written orders/authorization, i.e., travel for more than twelve (12) hours, orders/authorization will be prepared and allowances authorized consistent with the applicable law, rule, regulation, and the terms of this Agreement.

Section 1.4
Travel Orders/Authorization shall be issued in advance of the date on which the travel is to begin, except in cases of urgent or unusual situations. In the absence of such circumstances, orders/authorization will be issued sufficiently in advance to permit the Employee to complete all travel arrangements prior to the travel, including lodging arrangements, obtaining transportation requests or tickets, and advance funds if applicable.

Section 1.5
When Employees travel locally and written orders/authorization are not required, such travel will be paid consistent with applicable law, rule, regulation, and the terms of this Agreement.

Section 1.6
Compensation during travel is governed by applicable law, rule, regulation, and Article 15, Overtime, of this Agreement.

Section 1.7
The Agency agrees to notify the traveler far enough in advance to allow time for necessary travel arrangements.

Section 1.8
When an eligible Employee is involuntarily reassigned to a duty station beyond the commuting range of fifty (50) miles, the Agency will cover all mandatory relocation expenses as specified in the Federal Travel Regulation. The Agency will also pay all reasonable discretionary moving expenses.

Section 2.0 <u>Government Travel Charge Cards</u>

Section 2.1
The Agency may exempt Bargaining Unit Employees who are not frequent travelers from using a Government contractor-issued travel charge card (GTC), and the Agency may authorize one or a combination of the following methods of payment, in accordance with the law:

1. Personal funds, including cash or personal charge card; or,
2. Travel advances.

Section 2.2
Bargaining Unit Employees shall not be required to do the following in order to perform their jobs:

1. Apply for personal credit;
2. Submit to a contractor-performed credit check;
3. Have unreasonable cost burdens imposed on him/her;
4. Have his/her personal credit rating compromised and/or adversely affected unless the Employee becomes delinquent on his/her account, or,
5. Waive his/her constitutional rights and other rights, which include but are not limited to the Privacy Act, laws, and federal statutes.

Section 2.3
The Agency shall take reasonable steps to assure that Bargaining Unit Employees are protected from any adverse impact caused by their use of the GTC for official travel purposes, consistent with applicable regulations, GTC policy and the terms of this Agreement, including but not limited to:

1. Steps to assure that unit members will not be required to pay any part of disputed billing items to the contractor pending resolution of that dispute, provided that the Employee has filed the dispute in accordance with Federal travel policy and the GTC card member agreement; and,
2. Steps to assure that, so long as the unit member reports the loss of their GTC as required by the GTC card member agreement, the Employee will incur no charges associated with that loss; and
3. Steps to ensure that the contractor that provides the GTC will not disclose any credit history information, including but not limited to information on any delinquent payments, involving unit members, to credit bureaus or otherwise to the public unless the contractor has filed suit in a court of law to collect such delinquent payments, or taken other legal methods of collection.

Section 2.4
When an Employee cannot obtain a GTC because of a lack of credit history or because he/she is found to have unsatisfactory credit history, the Employee's travel will be paid through suitable alternate methods available to the Agency.

Section 2.5
To the extent that the Agency negotiates Employee agreements directly with GTC contractors, the Agency will bargain all negotiable aspects of such agreements as required by law, rule, regulation, and the terms of this Agreement.

Section 3.0 Scheduling Travel

Section 3.1
To the maximum extent practicable, the Employer will schedule and arrange for the travel of Bargaining Unit Employees to occur during normal working hours within the Employee's regularly scheduled work hours.

Section 3.2
If circumstances require the Employee's presence at the travel location on a Monday, too early to permit travel that day, the Employee may perform the travel on the preceding day (Sunday), leaving home or the duty station at a reasonable time. In this event, subsistence reimbursement will be allowed to start with the departure time. A determination of a reasonable departure time will be at the discretion of Management. Special consideration for Friday travel will be given to BUEs who must travel across more than one time zone. In this event, subsistence reimbursement may be allowed to start with the departure time, but at a minimum will be limited to that which would have been payable if the departure was made on Sunday.

Section 3.3
When it is foreseeable that an Employee will be away from their normal duty station for more than twelve (12) hours, Employees will not be required to travel without appropriate TDY orders or other written authorization.

Section 3.4
When travel results from an event that cannot be scheduled in advance, such travel may be considered official duty hours pursuant to appropriate provisions of Article 15, Overtime, and statute. Except for emergency situations, Employees must request compensatory time for travel in advance.

Section 3.5
If the travel is expected to require Employees to be absent from their posts of duty for three (3) or more months, Employees will be given at least thirty (30) days notification of their travel and expected date of departure, when practicable.

Section 3.6
Employees who are assigned to training or duty away from their regular assigned posts of duty, and elect to return home during non-work day, they will be reimbursed for travel not to exceed the amount reimbursable for the per diem had they remained away from home.

Section 3.7
Except in unusual circumstances, Employees will not be required to stay away from their duty stations two (2) consecutive weekends.

Section 4.0 Per Diem Allowances

Section 4.1
The per diem allowance covers two categories of expenses: 1) lodging and 2) meals and incidental expenses (M&IE). Employees' lodging expenses are authorized up to the established lodging rate and reimbursed based on actual lodging costs within that rate. M&IE is a daily payment instead of reimbursement for actual expenses for meals and related incidental expenses. The per diem allowance

is separate from certain transportation expenses and miscellaneous expenses. The per diem allowance also covers the reimbursement of miscellaneous charges, including taxes and service charges where applicable, associated with lodging and M&IE as allowed by applicable law, rule, regulation, and the terms of this Agreement.

Section 4.2
Per diem rates will be established according to applicable law, rule, or regulation.

Section 4.3
In instances where an Employee is in a travel status and the Employee's actual and necessary subsistence expenses are in excess of the established per-diem allowances for one (1) or more calendar days, the Employee may file a request**,** and may be authorized**,** actual expense under the provisions of the applicable regulations. Normally Employees will request approval above the per diem in advance.

Section 5.0 Advances

Section 5.1
Employees may be advanced travel funds in amounts consistent with applicable law, rule, regulation, and the terms of this Agreement for travel. Such advances will be based on an estimate of reimbursable travel expenses.

Section 5.2
Any Employee traveling on official business may be entitled to an advance of funds to cover per diem, lodging costs, or actual subsistence expenses, mileage for use of a privately owned vehicle, and all other costs incidental to official travel not directly billed to the Agency or charged to a government travel charge card. Travel advances will be made available prior to the date of departure to those Employees who make timely application.

Section 5.3
In cases of emergency job related travel, the Agency will make every reasonable attempt to accommodate travelers needing an advance.

Section 5.4
Employees with unused advance funds at the conclusion of travel will remit such funds within a reasonable amount of time, normally within fifteen (15) days, or will have the remaining funds deducted from their travel reimbursements.

Section 5.5
An Employee in a long-term travel status shall be allowed to carry over, at the end of the month, all or part of the cash advance as may be necessary to cover monthly travel expenses.

Section 5.6
An Employee in a long-term travel status will account for any outstanding advance when travel is complete and final vouchered.

Section 5.7
Employees will be given ample written warning prior to the Agency levying any interest, penalty or other monetary charge because of delinquent repayment of unused travel advances. Such warning will be

sufficiently in advance to give Employees a fair opportunity to avoid the assessment of penalties, interest, or other charges. In the same notice, Employees will also be informed of the options for re-payment, given an explanation of the process of requesting waivers, and the date by which interest may be charged. In the same advance notice, Employees will also be told of the amount of interest that would be charged, the method of accrual, the interest rate, the way(s) in which any delinquencies could be involuntarily collected, and how they might challenge assessment decisions made by the Agency, including use of the grievance/arbitration procedures under Article 22, Grievances, and Article 23, Arbitration. Any grievance under this subsection may be initiated at the step prior to arbitration.

Section 6.0 Temporary Lodging

Section 6.1
Employees on TDY assignments will not be required to lodge in government housing. Travelers are required to consult with and utilize their travel support staff in their Divisions or use the NIH Travel Management Center to make lodging reservations. Those who violate this regulation may not be reimbursed for lodging expenses. If travelers choose to stay with friends or family while in official travel status, they will not be entitled to lodging reimbursement. If meals are not provided in the government lodging arrangement, the Employee will also be given the non-lodging portions of the appropriate per diem.

Section 6.2
Employees on TDY assignments must use the NIH Travel Management Center to make lodging reservations for official duty travel, unless a policy exception applies. They may choose lodging options from the available lodging choices within the TDY assignment area at the GSA established lodging rate.

Section 6.3
Bargaining Unit Employees traveling on official business for any purpose will not be required to share a room.

Section 7.0 Promotional Items

Section 7.1
Employees may keep promotional benefits and materials received from a travel service provider for personal use, if the items are obtained under the same conditions as those offered to the general public and at no additional cost to the Agency in accordance with applicable law, rule, regulation, and the provisions of this Agreement.

Section 8.0 Reimbursements

Section 8.1
Employees are expected to submit written claims for reimbursements within five (5) days of completed travel and, with good cause, shall be submitted within (10) days after completion of travel. For long-term or continuous travel, Employees are expected to submit written claims every thirty (30) days. Employees will receive appropriate instruction and assistance on filing reimbursement claims.

Section 8.2
Employees who submit complete travel voucher documents and who certify their vouchers will be reimbursed all undisputed portions of their reimbursement claims within thirty (30) calendar days after submission of a voucher.

Section 8.3
If a portion or the entire claim for expenses submitted by Employees for reimbursement is denied, the undisputed amount shall be paid to Employees. Employees shall receive a written notification from the Agency of all disallowed expenses at the time they are notified of payment of undisputed expenses or not more than seven (7) calendar days later. This notice shall:

1. State the reason(s) in detail as to why expenses were disallowed;
2. State that Employees have the right to request reconsideration of expenses if they have additional information;
3. State the name of the Agency official to whom reconsideration may be requested; and,
4. Explain the process of Employees challenging disallowances.

Section 8.4
Any disputed disallowances of reimbursement claims may be resolved through the grievance/arbitration procedures of Article 22, Grievances, and Article 23, Arbitration, of this Agreement or through current published policy.

Section 8.5
The Agency shall pay Employees late payment fees for all reimbursements that are not paid within thirty (30) days of Employees' submission of proper claims to designated Agency officials. Late payments shall be calculated in accordance with applicable law, rule, regulation, and the provisions of this Agreement.

Section 8.6
In accordance with the Federal Travel Regulation, the late fee paid to Bargaining Unit Employees shall be calculated in the manner chosen as the uniform practice for all Agency Employees.

Section 9.0 Accommodating Special Needs
Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Agency shall provide reasonable accommodations to Employees with special needs by paying for additional travel expenses. Such accommodations must be requested and approved in advance of travel, with the exception of unusual and unforeseen circumstances encountered during travel. Depending on the circumstances, these additional expenses may include, but not be limited to:

1. Transportation and per diem expenses incurred by a family member or other attendant who must travel with the Employee to make the trip possible;
2. Specialized transportation to, from, and/or at TDY duty locations;
3. Specialized services provided by a common carrier to accommodate Employees' special needs;
4. Costs for handling baggage that is a direct result of Employees' special needs;
5. Renting and/or transporting a wheelchair;
6. Premium-class accommodations when necessary to accommodate Employees' special needs; and,
7. Services of an attendant, when necessary, to accommodate Employees' special needs.

Section 10.0 Privately Owned Vehicles (POVs)

Section 10.1
Ownership or use of a privately owned vehicle is not a condition of employment. Their use by Employees for official government business is entirely and strictly voluntary. Employees' use or non-use of their POVs is a non-merit factor; therefore, it is an improper consideration regarding an Employee's performance appraisal.

Section 10.2
If an Employee is either unable or unwilling to use his or her POV for official government business, it is the Agency's responsibility to provide transportation.

Section 10.3
When an Employee volunteers the use of his/her POV and that use is authorized by the Agency, the maximum applicable mileage allowance and related expenses allowed by applicable law, rule, regulation, and the provisions of this Agreement will also be authorized.

Section 10.4
Mileage calculations between permanent duty stations and alternate duty point(s), and return directly to permanent duty stations are fully reimbursable with no offsets.

Section 10.5
If an Employee travels to an alternate duty point(s) outside the local area of the permanent duty station, the Employee will be reimbursed for authorized mileage and parking expenses. This includes travel by the Employee to and/or from his/her residence, if applicable. The local area is defined as a mileage radius of fifty (50) miles with the PDS at the center. This definition applies only to this Article and is not to be confused with competitive areas for RIF or commuting areas for recruitment and staffing purposes.

Section 10.6
When commuting to or from an alternative duty point(s) within the local area, Employees will be reimbursed for the total miles traveled less their normal commuting mileage.

Section 10.7
An Employee authorized to use his/her POV will not be required to carry a passenger(s).

Section 10.8
The Agency will, when justified, grant compensatory time for travel to an Employee in connection with necessary emergency repairs to a privately owned vehicle authorized for official travel use. In such situations, the Employee will, as soon as practicable (within an hour, if possible), notify the supervisor of the situation and obtain appropriate instructions.

Section 11.0
In compliance with applicable regulations and budget permitting, during travel where the traveler has used reasonable judgment or where an emergency situation arises and the Agency has discretion with regard to travel, every effort shall be made to exercise that discretion in the Employee's favor unless it would cause an undue hardship for the Agency.

Article 36: Reduction in Force

Section 1.0 General
A reduction in force (RIF) will comply with all government-wide regulations in effect as of the effective date of this Agreement, and the provisions of this Agreement.

Section 2.0 Avoidance of RIF

Section 2.1
To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Agency's mission, the Agency will resort to a RIF only after all other options have been exhausted.

Section 2.2
To minimize the adverse impact on Employees, the Agency shall, whenever possible, accomplish the goals otherwise achieved by a RIF through attrition and cost reduction efforts before abolishing positions.

Section 2.3
Prior to conducting a reduction in force, the Agency shall conduct a cost study to determine whether instituting a furlough, a retraining program for affected Employees, or reducing staff through attrition would be more cost-effective than conducting a RIF. Before initiation, the Union shall be consulted as to methodology. When Management is provided the results of the completed study, a copy will be provided to the Union and the Union shall be given an opportunity to provide comments at least thirty (30) days before the RIF is announced.

Section 3.0 Information to Be Provided to the Union

Section 3.1
The Agency will notify the Union of any reduction in force as far in advance of notification to affected Employees as is possible. The information to be provided to the Union will include:

1. The specific reasons why the Agency considers a RIF to be necessary;
2. The competitive area in which the RIF will be conducted;
3. The competitive levels to be initially affected;
4. The number and work location of Employees involved;
5. The retention registers that were created for the RIF;
6. The proposed effective date; and,
7. All proposals considered, adopted, or rejected before deciding to conduct a RIF, and the reasons for the adoption or rejection.

Section 3.2
The Agency will also provide updated information to the Union concerning the RIF as soon as such information becomes available including, but not limited to, additional positions affected, the names of affected Employees, revised dates, and listings of job offers made.

Section 3.3
Competitive areas to be used in the reduction-in-force will be negotiated by the Parties following the information provided to the Union in Section 3.1. Normally, the competitive area will be that which is most beneficial to unit Employees. Impasses will be resolved in the manner provided by law.

Section 4.0 Information Provided to Employees

Section 4.1
If early retirement or buy-out opportunities are offered to Employees prior to the issuance of RIF notices, the Agency will provide a briefing(s) for Employees. Eligibility requirements, and the application processes will be explained. The effects of a buyout or early retirement on severance pay, reemployment, and continued health insurance coverage will be presented. A representative of the Agency will take Employee questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all Employees who were invited to the briefing. In addition, the Agency will designate someone who will receive and respond to additional Employee questions. A representative of the Union will be invited to attend these briefings, and will be given thirty (30) minutes at the conclusion of the briefing to speak with the Employees without any Management representative being present.

Section 4.2
The Employer agrees to provide affected Employees as much notice as practicable up to ninety (90) days but in no case will such notice be less than thirty (30) calendar days. All such notices shall contain the information required by the Office of Personnel Management (OPM) regulations. When a general notice is issued to Employees, a specific notice will be given the Employee no less than ten (10) calendar days preceding the effective date of the reduction.

Section 4.3
Within two (2) business days of when specific RIF notices are distributed, the Agency will provide a briefing(s) for the affected Employees to explain the RIF process. The Agency will explain how RIF retention is determined, the scope of the particular reduction in force, Employee placement opportunities, severance pay computations and services to Employees who are designated for separation in the RIF. A representative of the Agency will take Employee questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all Employees who were invited to the briefing. In addition, the Agency will designate someone who will receive and respond to additional Employee questions. A representative of the Union will be invited to attend these briefings, and will be given thirty (30) minutes at the conclusion of the briefing to speak with the Employees without any Management representative being present.

Section 5.0 Furloughs

Section 5.1
If the Agency places an Employee(s) on furlough for more than thirty (30) days in a reduction in force, the Employee will have the option to serve the furlough on a discontinuous or continuous basis so as to qualify for unemployment compensation.

Section 5.2
Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated to the extent permitted by law and regulation when appropriations are approved.

Section 6.0 Employee Personnel Records

Section 6.1 Employee Verification
As far in advance as possible of an anticipated RIF, the Agency will notify Employees of the need to review their personnel records and ensure that these records are complete and accurate. This notice will advise Employees to ensure that their records are up to date concerning:

1. Veteran's preference;
2. Three (3) most recent performance ratings of record received during the previous four-year period;
3. All periods of federal civilian and military service;
4. Completed training;
5. Current licenses and certifications; and,
6. Experience gained outside Federal service.

Section 6.2
The Agency will expeditiously resolve any discrepancies raised by the Employee.

Section 7.0 Use of Vacant Positions

Section 7.1 Filling Vacancies
In order to minimize displacement actions that would result from a reduction in force, the Agency will be diligent in searching for vacancies and offering lateral assignments to vacant positions that the Agency otherwise intends to fill to qualified Employees who would otherwise be released from their competitive level.

Section 7.2 Restricting Outside Hiring
The Agency will not fill any vacant position in the Bargaining Unit through outside hiring or through promotion as long as there are Employees facing separation in the RIF who are both qualified and available to fill that position.

Section 7.3 Waiving Qualifications
The Agency will exercise all discretion granted by law and regulation to waive non-mandatory qualifications in order to place Employees who are affected by the RIF in continuing positions.

Section 8.0 Services to Employees Released in a RIF

Section 8.1 Placement Offers
A. The Agency will be diligent in providing Employees with all placement opportunities available under law and regulation.

B. Employees who receive job offers will have a reasonable amount of time to respond as to whether they will accept or decline the offer. The time will be not less than fifteen (15) days for a local position, and thirty (30) days for a position requiring relocation.

C. Relocation of Employees, occurring as a result of any action under the RIF, will be deemed in the best interest of the government and such Employees will be provided with relocation time, reimbursement, and all other benefits provided by law, rule, regulation and/or which are within the discretion of the Agency.

D. When the Agency assigns an Employee to a position which requires a move to another geographic area, the Employee will be allowed to locate housing and make related arrangements at the new work location. Provided all applicable regulations are satisfied, the Employee shall be placed in a travel status for such trips and shall receive travel and per diem expenses.

E. Employees reassigned to a different commuting area who relocate will be allowed up to ninety (90) calendar days as necessary to report to work. If the gaining activity is within the Bargaining Unit, the Employee may be allowed additional time where circumstances relating to the move are beyond the control of the Employee.

F. The Agency will notify Employees of the services available under its Career Transition Assistance Plan (CTAP) and how to obtain them.

G. The Agency will notify Employees of the services available from other agencies under the Interagency Career Transition Assistance Plan (ICTAP) and how to obtain them.

Section 8.2 Unemployment Compensation

A. The Agency will invite representatives of the Unemployment Insurance Agencies from all states in which Employees would file claims to come to the Agency and make presentations regarding benefits, eligibility requirements, and application procedures.

B. Employees who are to be released from their competitive level will receive four (4) hours of administrative leave in order to apply for unemployment benefits.

Section 8.3 Severance Pay

The Agency will notify all Employees who are separated in a RIF of their rights to receive severance pay under law and regulation. Those who are eligible to receive severance pay will get an estimate of the amount of severance pay that they will receive, and information on how these payments will be made.

Section 8.4 Employment outside the Agency

Those Employees who cannot be placed within the Agency will receive aggressive assistance in finding employment outside the Agency, whether in another Federal agency, a State or local government, or the private sector. This assistance will include, but not be limited to:

1. Resume writing;
2. Access to any inter-agency job centers;
3. Coaching in job search and interview techniques;
4. Assistance in obtaining copies of performance evaluations; and,
5. Duty time to visit inter-agency job centers or attend job interviews.

Section 9.0 Transfer of Function

Section 9.1 Definition
A Transfer of Function (TOF) means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected. A TOF is also the movement of the competitive area in which the function is performed to another commuting area. In a TOF, the operation of the function must cease in one competitive area and must be carried on in an identifiable form in another competitive area where it was not being performed at the time of transfer.

Section 9.2
When the Agency determines that a TOF is necessary, the Agency will inform the Union as far in advance as practicable, but not less than fifteen (15) days prior to such action, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action. At that time, the Union may initiate bargaining in accordance with Article 12, Mid-Term Bargaining.

Section 9.3
The Agency will identify which positions will transfer with the function in accordance with Office of Personnel Management regulations in effect as of the effective date of this Agreement.

The Agency will:

1. Inform Employees as fully and as soon as practicable of plans for the transfer of functions and the governing regulations;
2. Notify the Employees in writing of the proposed action in sufficient time so that the Employee will be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, whenever possible the Employee shall have no less than thirty (30) days to accept or reject the position offered;
3. Make reasonable effort to place affected Employees in vacant budgeted positions for which they qualify;
4. Actively assist and counsel affected Employees in seeking placement opportunities with other Federal Agencies or elsewhere in the immediate area;
5. Counsel Employees on individual rights relating to such matters as retirement and severance pay; and,
6. Place the name of each individual Employee who so wishes on a list for consideration for those vacancies for which he/she is qualified so that priority consideration will be given in the appointment process.

Section 9.4
Employees whose positions have been designated as transferring with the function will be notified in writing as soon as possible but no less than thirty (30) days prior to such action. The notice will state that the Employee is being offered the opportunity to volunteer for transfer with his or her position to a new competitive area. The notice will further state:

1. The name and location of the new competitive area;
2. The complete address of the new work site;
3. The applicable salary, including locality pay, of the Employee's position at the new work site;

4. A statement that the Employee is free to decide whether to accept the offer of the opportunity to volunteer for transfer with his or her position;
5. A statement that should the Employee be selected to transfer with his or her position, the Agency will pay moving expenses and pay for house hunting trips in accordance with statute and government-wide regulation;
6. A statement that it is possible that not all volunteers will be able to transfer with their position;
7. A statement that should the Employee choose not to transfer with his or her position, or if the Employee is not selected to transfer despite having volunteered, the Employee may be separated from his or her current position by adverse action procedures; and,
8. The deadline for responding to the offer of transfer; provided that this date will be no less than thirty (30) days from the date of the notice.

Section 9.5
If there are not enough qualified volunteers from among those affected Employees, the Agency will solicit qualified volunteers from the rest of the current competitive area.

Section 9.6
If the total number of Employees who volunteer for transfer exceeds the total number of Employees required to perform the function in the competitive area that is gaining the function, preference will be given to the volunteers with the highest retention standing. In the event there are not enough volunteers for the transfer Employees with the lowest retention standing will be selected for involuntary transfer.

Section 9.7
The Agency will not fill any vacant position in the Bargaining Unit through outside hiring or through promotion as long as there are Employees facing separation in the TOF who are both qualified and available to fill that position. Adverse action notices will not be issued pending a review of available vacant positions.

Section 9.8
The Agency will provide the Union with the number of available FTEs Agency-wide when a transfer of function or RIF is planned. This information will include the specifics of the available FTEs as to where in the organization such FTEs may be placed or are existing. Similarly, the Agency will provide the Union with all vacancy announcements in effect at the time of the RIF or TOF.

Section 9.9
The Agency will make every effort to pay for Employee's moving expenses and other related expenses in compliance with government regulations.

Section 10.0 <u>Additional Negotiations</u>
Nothing in this Article will prevent the Union from initiating additional negotiations when a reduction in force or transfer of function is announced.

Article 37: Contracting Out/Privatization

Section 1.0 General
The Agency agrees to consult openly and fully, to the extent allowable under law, with the Union regarding any review of a function for contracting out within the Bargaining Unit. In accordance with Executive Order 13522, the Agency agrees to involve the Union on pre-decisional contracting out matters to the fullest extent practicable. This Article applies to any and all contracting out actions and/or reviews.

Section 2.0
When the Agency anticipates contracting out of work presently being performed by Bargaining Unit Employees, regardless of how the contract is to be implemented, the Union will be notified as early as possible in the process as possible per Section 1.0 above and government regulation. The notice will include general information concerning the Employees who may be affected.

Section 2.1
When the Agency determines that Unit work will be contracted out, the Agency will notify the Union to provide an opportunity to negotiate as per Article 12, Mid-Term Bargaining.

Section 3.0
At all phases of the A-76 or contracting out process the Agency agrees, as permitted by law and regulation, to provide timely information, meet with Employees, and supply any appropriate training materials to Employees who may be affected by such decisions. Such information should include an overview of the contracting out process, including (but not limited to) procedures, Employee rights, roles of Agency personnel, and applicable laws, rules, and regulations governing the contracting out process.

Section 4.0
All training materials and other resources, including training classes, provided to Agency personnel involved with an Office of Management and Budget (OMB) Circular A-76 study will also be provided to two (2) representatives designated by the Union.

Section 5.0 FAIR Act Inventories

Section 5.1
When the Agency anticipates an A-76 contracting out study, or if the Union requests, the Agency shall provide to the Union an electronic copy of the latest Agency FAIR Act Inventory submission to NIH for all BUEs. This shall include a crosswalk of all BUE positions of the Agency to the functional listings on the FAIR Act Inventory.

Section 5.2
The Parties agree that the Union and all potentially affected Employees may challenge the HHS inventory decisions in accordance with OMB Circular A-76, Attachment A, D. INVENTORY CHALLENGE PROCESS and applicable law, rules and regulations. Upon publication of OMB's Federal Register notice stating that the HHS inventory is available, an interested party shall have thirty (30) working days to submit a written inventory challenge.

Section 6.0 Pre-Decisional Involvement
Within three (3) calendar days of when the Agency is notified that an Agency function has been selected for potential study under OMB Circular A-76 that will potentially impact BUEs, the Agency will notify the Union of such decision. The Agency shall meet and confer with the Union regarding any proposed study of a function to be considered for contracting out that affects work currently or last performed by Employees within the Bargaining Unit. The Agency shall share with the Union the functions performed by potentially impacted BUEs, including inherently governmental and commercial functions as identified in the latest Agency FAIR Act Inventory submission to NIH required by OMB Circular A-76. The Agency shall also provide a crosswalk between the positions of potentially impacted BUEs and the functional listings on the Agency's FAIR Act Inventory submission to NIH.

The Parties acknowledge that at the beginning of preliminary planning under OMB Circular A-76, a decision about conducting a study has not been made and the positions to be considered for competition have not been determined.

Section 6.1
At the beginning of the preliminary planning process, the Agency shall provide the Union a list of all potentially affected Bargaining Unit Employees with the following information about each: job title, grade, step, work unit, length of Federal service, veteran status, disability status, gender, race, and age. In the case of a contracting out action and/or review outside the A-76 process, the Agency shall provide the above information at the beginning of the review for contracting out.

When a decision has been made to proceed with an A-76 competition by the formal public announcement, the Agency shall provide the Union the final list of affected BUEs and will include the above information for each.

The information shall be provided for every Employee performing a function related to the work reviewed for contracting out. The Agency shall provide this information in electronic format to the Union, and whenever possible, in Excel format.

In the case of a contracting out action and/or review outside the A-76 process that will adversely impact work currently or last performed by Bargaining Unit Employees, the Agency shall notify the Union at the beginning of the review for contracting out and provide the above information for all potentially affected Bargaining Unit Employees.

If such a contracting decision will adversely impact work currently or last performed by Bargaining Unit Employees or change Employee working conditions, the Union will be allowed to submit alternatives to such adverse action or change in working conditions. The Agency will consider these alternatives and provide a written response to the Union regarding these alternatives within fifteen (15) calendar days.

Section 6.2
If (or when) available, the Agency shall provide the Union with the tentative schedule for preliminary planning, development of the performance work statement (PWS) and solicitation, development of the most efficient organization (MEO), and source selection at the beginning of the preliminary planning phase. The Agency shall provide the Union with all subsequent modifications to the tentative schedule.

Section 6.3

A. The Agency will provide the Union and allow affected Employees to review all pertinent documents that may be legally released to the Union as they become available during the A-76 process.

B. Regarding notification of a public announcement of competitive sourcing, when BUEs are involved, the Union shall be notified of when the public announcement will be made. Prior to making the public announcement, here is the order in which all Parties are notified:
    1. Union Leadership;
    2. Executive Officer(s);
    3. Incumbent Service Provider Company;
    4. Affected Employees;
    5. FedBizOpps

Section 7.0

When requested and available, the Agency will provide the Union, in a timely manner, copies of pertinent information concerning all cost studies, specifically to include:

1. The invitation for bid (IFB);
2. Request for quotation (RFQ), or request for proposal (RFP);
3. Abstract of bids;
4. Correspondence from higher authority directing the cost study;
5. Correspondence from Department of Labor regarding certification of a wage rate;
6. The performance work statement; documents setting forth the estimated dates for the contracting out process;
7. All changes to the performance work statement;
8. All bidder questions and activity answers related to the performance work statement.

Section 8.0

The Agency shall provide the Union with copies of all notifications sent to Congress regarding contracting out activities and/or studies at the same time these notices are provided to Congress.

Section 8.1

Copies of additions, changes, deletions, and supplements to OMB Circular A-76; Agency-level procurement regulations and policies; Agency-level regulations and policies concerning the implementation of OMB Circular A-76; and Federal statutory procurement provisions applicable to the Agency will be forwarded to the Union as soon as they are made known to the Agency.

Section 9.0

If a unit work is contracted out and unit Employees are displaced, the Employer will make every reasonable and credible effort to minimize the impact on Employees including retraining affected career Employees. The Employer shall consider retention of permanent Employees through analysis of attrition patterns and restricting new hires.

Section 9.1

When Employees are adversely affected by a decision to contract out, the Agency will make maximum effort to find available positions for Employees. This effort will include:

1. Giving priority consideration for available positions within NIEHS;
2. Establishing an employment priority list and a placement program; and,
3. Paying reasonable costs for training and relocation that contribute to placement.

The Union retains the right to additional procedures and arrangements for adversely affected Employees regarding specific decisions by the Agency to contract out the work of Bargaining Unit Employees as they occur.

Section 10.0
The Agency shall provide the Union and affected Employees with frequent briefings when relevant information becomes available during preliminary planning, the duration of the competition, and the post-competition transition phase that is not prohibited by A-76 regulations. Such briefings will include but not be limited to:

1. Update on actions taken;
2. Action scheduled to take place; and,
3. Tentative schedule for the entire A-76 review and/or other process.

Section 11.0 <u>Direct Conversions</u>

Section 11.1
In Direct Conversions or when a competition decision is made to award to the private sector, affected Employees who do not secure alternative employment (either directed reassignment or voluntary placement), will have the Right of First Refusal.

The Agency shall ensure that Employees who are potentially involved in the competition process (e.g., serving on a competition team) have been fully informed prior to commencing work on any documents that their Right of First Refusal may be forfeited as a result of their participation. Employees shall be allowed to decline participation to preserve their Right of First Refusal.

Article 38: Parking

Parking in all parking lots will be on a first come first serve basis except for Rall Building Lot B, which is reserved for various purposes as follows:

1. *Handicapped:* Handicapped parking places will be provided in sufficient numbers and placements that are most convenient to the work site, in full accordance with state and local laws.
2. *Union:* Four (4) reserved parking spaces.
3. *Other Reserved Spaces:* There will be a minimum of six (6) carpool spaces. The remainder of the lot will continue to be set aside for such purposes as visitors, government vehicles, service vehicles, security, and/or other special needs.
4. The Union will notify security of authorized vehicles permitted to park in Union parking spaces.

Article 39: Child Care/Elder Care

Section 1.0 Policy and Purpose
Working parents and other Employees may have special child care or elder care needs during working hours. The Agency will continue its efforts to support and foster child care and elder care services for its Employees, consistent with this Agreement and the Agency's funding authorization.

Section 2.0 Child Care and Elder Care Activities
The Agency will continue to provide and/or support various activities in order to meet the ongoing child and elder care needs of Employees. These may include, but are not limited to, such things as child/elder care and parenting information and seminars, consortiums, resource and referral information, education and training workshops and activities, and counseling as available through the Employees Assistance Program, as provided in Article 31, Employee Assistance Program.

Section 3.0 Child Care Resources
Upon an Employee's request, the Agency will provide inquiring Employees with current listings of the qualified, licensed child care and elder care centers in the immediate area. Because of the broad range of child care and elder care needs, the Agency will provide specific information; e.g., age groups served, types of program offered, and special needs programs when compiling such listings.

Section 4.0 Child Care Subsidies

Section 4.1
In accordance with law, budget permitting, the Agency will provide a subsidy to Employees for the expenses associated with obtaining child care based on Section 4.3 of this Article. This subsidy applies to licensed providers.

Section 4.2
Eligibility for subsidies will be based on total family income as reported on the most recent federal tax return of the Employee applying for the subsidy.

To qualify for a subsidy you must:

1. Be a permanent eligible Employee (Civil Service) with dependent children living in your home from birth through age 13, or children who are disabled and under age 18.
2. Have a total adjusted household income of $70,000 per year or less.
3. Use care that is licensed and or regulated by state and/or local authorities.
4. Work full time.

NIH Contractors, Fellows and Title 42 Visiting Scientists are not eligible for this program by Federal law.

Section 4.3
Child care subsidy benefits are limited to $5,000.00 per year, per family.

Subsidy Benefits

NIH Employee's Total Adjusted Family Income *	Percentage the Participant's Child Care Expenses Plan will Pay**
More than $70,000	0%
$55,001 - $70,000	20%
$40,001 - $55,000	40%
$40,000 or less	50%

* Refers to total adjusted household income on IRS Tax Return Form 1040.

** This program includes a benefit cap of $5,000 per family per year, and participant's benefits under this plan will be reduced by the amount of other state or local child care subsidies received by the participant.

Section 4.4
The Parties agree to re-open this Article if the subsidy and/or household income changes. Such changes will be bargained under Article 12, Mid-Term Bargaining.

Section 4.5
The Agency will provide the child care subsidy to all eligible Employees fairly. Each eligible Employee will be entitled to the maximum subsidy allowed by law, budget permitting.

The Agency agrees to encourage the use of the NIH subsidy program for applicable Bargaining Unit Employees (BUEs). In addition, appropriate Management personnel shall assist BUEs with application and the related subsidy process. Applications will be accepted and considered in the order they are received.

Section 4.6
The Agency agrees to sponsor an annual workshop or similar organized effort encouraging local agencies to provide information to Employees about available financial childcare/eldercare resources. Employees shall be permitted to attend or utilize these efforts during duty time.

Section 5.0 Provision of Child Care Facility

Section 5.1
The Agency shall continue to provide, maintain, or support a child care facility, including space, office equipment, playground equipment, telephones, and maintenance services capable of serving approximately 200 children. This facility will be located conveniently for Employees. All such equipment and services shall be maintained for the duration of this Agreement. The space and services, as defined by law, will continue to be provided, regardless of the selected child care provider.

Section 5.2 Tuition
The tuition charged for enrollment in the child care facility will be applied fairly and equitably to all Agency Employees without regard to BUE status.

Section 5.3 Priority for Admission

Priority for admission to the child care facility will be applied fairly and equitably to all Agency Employees without regard to BUE status, race, color, religion, sex or national origin. Priority will be given as follows:

1. Children of Federal agency (EPA/NIEHS and other Federal agency) employees.
2. Children of visiting fellows, post docs, and other trainees on stipends at these Federal agencies, and First Environments Early Learning Center (FEELC) staff.
3. Contractors for EPA/NIEHS and non-federal siblings of past FEELC students.

Whenever a child from any of the abovementioned groups has a sibling attending FEELC they will gain priority status within that group.

Section 5.4 Administrative Leave to Attend Meetings

Each parent shall be allowed up to two (2) hours of administrative leave per month to attend meetings of the Facility.

Section 5.5

Refer to MOU on Pesticides and FEELC facility in Appendix 7.

Section 5.6

The Agency will work closely with the child care staff to ensure a healthful, nurturing, safe, and quality environment at the child care facility. This includes helping to ensure that the facility continues to receive high ratings from local, state, and/or federal certification organizations or groups.

Section 5.7

The Agency will help to ensure that the child care facility can adequately serve children with special needs.

Section 6.0 Elder Care Resources

The Agency will provide Employees with elder care resources guides to help Employees and caregivers with elder care dependent care needs services and providers located in the areas of the Agency's facilities. This information should promote the awareness and importance of elder care and aging services and programs by providing referral information on topics such as: care giving management, community resources, Federal and national organizations, financial assistance and mortgage services, health and wellness services, home assistance and modification, insurance, legal matters, living options and publications.

Section 7.0 Leave and Arrangements

Section 7.1

Employees may use any combination of leave, LWOP, earned compensatory leave, and donated leave available to them in accordance with applicable laws, rules, and regulations to attend to an ailing family member, in accordance with the provisions of the Family and Medical Leave Act or Sick Leave, and as provided in Article 15, Overtime, and Article 13, Leave. The Agency will allow unscheduled leave for Employees who must attend an ailing or debilitated family member.

Section 7.2
Employees may use work life programs that may assist with child care or elder care responsibilities; for example, part-time employment, job sharing, leave, flextime, working shift changes, etc., in accordance with this Agreement. Employees will be permitted to contact child care and elder care providers during duty hours.

Section 7.3
A. It is agreed that the responsible official will grant emergency annual leave requests and consider emergency requests for leave without pay brought about by unexpected changes in child care arrangements, contingent upon operational exigency.

B. The Agency agrees to utilize programs that may assist Employees with child care needs; for example, part-time employment, job sharing, leave, flextime, etc.

Appendix 7: MOU on Use of Pesticides at First Environments Early Learning Center

Memorandum of Agreement
Between
AFGE 2923 and NIEHS
Use of Pesticides at First Environments Early Learning Center

Preamble
The Parties recognize the importance of the NIEHS mission related to scientific research and application of that knowledge to extend healthy life while reducing the burdens of illness and disability. A significant amount of NIEHS funded research has been conducted on the adverse effects of pesticides and how such chemicals may cause deleterious health consequences. The parties further recognize that children must be protected against environmental exposures that may cause a negative health impact. A precautionary approach regarding children's health and chemicals is essential.

Section 1.
The NIEHS does and will not pay or approve any application of any pesticide at the First Environments Daycare Center. The NIEHS will work closely with First Environments, EPA, and/or any contractors or other groups involved in operations at First Environments to help to create a pesticide free and nontoxic environment for the children and infants at First Environments. This will be accomplished through implementation of an integrated pest management system/program (IPMS) that is nontoxic and eliminates to the extent possible the use of pesticides. The IPMS shall be provided to the Union for comment.

Section 2.
Consistent with IPMS principles, pesticides shall only be used after all other non-toxic techniques have been exhausted. Any pesticides used shall be as least toxic as possible. No pesticide should be used for cosmetic or non-essential purposes.

Section 3.
The Parties agree that they shall work with EPA to ensure the following: Parents and employees of FEELC shall be notified at least 72 hours in advance of any planned pesticide use. Signs shall be posted 48 hours before and 72 hours after in the area of pesticide use. In the event of a pest emergency involving an urgent need to mitigate or eliminate a pest that threatens the imminent health or safety of a child or staff member such notification shall take place prior to application through an emergency notification to parents and staff. In such cases, posting shall be done at the time of application. In all cases, special precautions shall be taken to prevent exposure to infants, children, and others at FEELC. The Union shall be informed of any pesticide use and will be provided with any information used to make such a decision.

Section 4.
The Parties agree that IPM is a dynamic process that involves a community of personnel and whenever more preventative or stringent measures are put in place there is no need to re-negotiate this agreement. Instead such preventive measure shall become a part of this document. Similarly, the parties agree to monitor the progress of IPM practices stated herein to improve whenever applicable and/appropriate.

For the Agency:
/s/ Noreen E. Gordon 4 August 2011

For the Union:
/s/ Bill Jirles 4 August 2011
President, AFGE Local 2923

Article 40: Transit Subsidy

Section 1.0 Eligibility to Receive Transit Subsidy
All Employees are eligible to receive a transit subsidy from the Agency**.** Eligible Employees will receive up a maximum statutory limit or their actual commuting costs at the time the subsidy is paid, whichever is less, of the Employee's commuting costs for mass transportation or vanpools. This maximum will apply to all Employees, whether their work locations are considered inside or outside the National Capitol Region.

Section 2.0 Increase to Maximum Subsidy
The maximum amount of the transit subsidy will increase whenever the Agency is directed to increase it by law or Executive Order, as well as when the Agency is given discretion to increase the subsidy by Executive Order or law or regulation.

The increase will normally take effect within two (2) pay periods from when the Agency is directed or authorized to affect the increase.

Section 3.0 Applying for Transit Subsidy in RTP, NC

Section 3.1
Employees who wish to apply for the transit subsidy will self-certify their monthly costs for commuting via public transportation or vanpool.

Section 3.2
The Agency will process Employee requests to begin receiving a transit subsidy or change the amount of the subsidy normally within two pay periods of its receipt of the completed application form, and will notify the affected Employee by e-mail of the amount of the new transit subsidy and the date the new subsidy amount will commence.

Thereafter, participants will notify the NIEHS Transhare Program Coordinator by the fifteenth day of each month of their desire to continue in the Program for the next month and the form of that desired participation (i.e., monthly pass, "12 pack," or vanpool seat).

Section 3.3
Employees will complete the appropriate form as shown in Appendix 8 for application purposes. Employees will self-certify this form.

Section 4.0 Employees Represented at AFGE 2923 other than at RTP, NC

Section 4.1
All parts of this Article shall apply to non-RTP, NC represented Employees except Section 3.0.

Section 4.2
Employees shall complete NIH Form 2705-1 for application.

Section 4.3
Participants who withdraw from the NIH program will be given their NIH parking permit or a temporary parking permit as soon as possible.

Section 5.0

Section 5.1
The Union shall be notified of any denials or unapproved, i.e. “delayed,” applications within two (2) pay periods. “Delayed” means more than two (2) pay periods.

Section 5.2
Employees shall be permitted to withdraw from the transit/Transhare program at any time with no penalties.

Section 5.3
Bargaining Unit Employees will be considered first when there is an inability or difficulty to provide this privilege or related subsidy.

Appendix 8: Transhare Application

NIEHS TRANSHARE Program Application

Instruction: Complete, print, sign, and mail application to NIEHS Transportation Coordinator

1. Name - Last, First, Middle	2. NIEHS ID Badge No.
_____	_____

3. Current Pay Plan (*check one)*	4. Mail Drop:	5. Work Phone No.	6. Campus/Room #
GS☐ GM☐ WG☐ Other:☐ _____	_____	_____	_____

7. Transit Commuter Benefit (*check one)*

Vanpool Seat☐ 31 - day Regional Bus Pass☐ (frequent riders using bus ≥ 4 trips/wk.) 12-regional Bus "Go-passes" ☐ (For infrequent riders, ≤ 3 trips/week)

8. City, or town of origin: _____

9. Signature and Certification: I certify that I am employed by the NIEHS; I will be using the NIEHS TRANSHARE Program benefit for my commute to and/or from work; I will not transfer the fare to anyone else; and to the best of my knowledge and belief, all of my statements are true, correct, complete and made in good faith. A false, fictitious, or fraudulent certification will rendor me subject to criminal prosecution under U. S. Code, Title 18, Section 1001, civil penalty action providing for administrative recoveries of up to $5000 per violation, and/or agency disciplinary actions up to and including dismissal. Additionally, your Transhare privileges may be suspended for up to 6 months.

Passes will be available at the 101 security office, one order each month. The TRANSHARE user must date and sign the log sheet for the passes. If any special needs arise or a rider decides to ride more frequently, one must see NIEHS Transportation Coordinator. The rider is only allowed one pass "order" each month. An expired 31 day pass must be returned in order to receive a new 31-day pass.

Date: _____

Privacy Act Statement: Public Law 101-509, Title IV - General Provisions, Section 629 (1990) authorizes the collection of the information on this form. The primary use is by Transhare program management and the NIEHS Security office to analyze participation. Additional disclosures of the information may be to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. In the event of litigation where the defendant is: (a) the department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the department determines that the claim, if successful, is likely to directly affect the operations of the department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected. Furnishing the information on this form is entirely voluntary; however, failure to do so will result in ineligibility to participate in the NIEHS Transhare Program.

Action Taken (see attachment for full explanation where applicable)

Approved! ☐ Conditional approval (note pending action) ☐ Disapproved (see attached) ☐

Placed on waiting list (pending notice) ☐ Incomplete Application ☐ Other (see attached) ☐

Authorized Signature: _____ Date: _____

Printed or typed authorization: _____

Article 41: Retirement

Section 1.0 Purpose
This Article shall be administered in accordance with 5 C.F.R. 831 and this Agreement. The purpose of this Article is to clarify certain policies covering retirement for all Employees in accordance with applicable law and regulation.

Section 2.0 Retirement

Section 2.1 Retirement Seminars
The Agency will provide a retirement planning program to be made available at least once per year. The retirement planning program shall include a pre-retirement training seminar as well as supplemental information materials and sources such as the Office of Personnel Management (OPM) web site and retirement counseling.

Section 2.2 Voluntary or Involuntary Separation

A. Employees who separate voluntarily or involuntarily (except by retirement) will be informed by the Agency of their right to file for disability retirement if they have at least five (5) years of civilian service that is creditable under the Federal Retirement System, the possibility of applying for a discontinued service annuity, and eligibility for deferred annuity at age sixty-two (62) provided they have had at least five (5) years of civilian service and leave their money on deposit with OPM.

B. Involuntary Separation
Employees who are involuntarily separated as a result of an inability to perform their assigned duties or misconduct which can be attributed to a disabling condition, will be notified by the Agency in the decision letter of their right to file for disability retirement within one (1) year after the date of separation.

Section 3.0
An Employee may withdraw a retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Agency in writing.

Section 4.0
The Agency will provide financial guidance relating to the Thrift Savings Plan (TSP) during new Employee orientation sessions. Additional information concerning investing in TSP will be made available on the TSP and/or Agency web site.

Section 5.0
Supervisory or Management approval or permission is not required or needed for retirement. Special retirements such as Voluntary Early Retirement Authority (VERA) are excluded from this section.

Section 6.0
There will be no discrimination, retaliation, coercion, or unfair treatment regarding any Employee who is planning or considering retirement. This includes Employees who are eligible for retirement.

Section 7.0
There is no timeframe that an Employee must give prior to commencing the retirement process or any advance notice that an Employee must provide regarding their retirement. Any information provided by the Employee to the Agency or their supervisor is considered professional courtesy.

Section 8.0
The Agency will ensure that human resource personnel involved in the retirement process will keep Employee retirement information confidential and private based on the request of the Employee. This means that they will not communicate or otherwise transmit the information in any form to others in the Agency.

Article 42: Student Loan Repayment Program

Section 1.0 Program Description
The Parties agree that it is critical to support programs that foster training and the development of a highly skilled and diverse workforce. The Agency funds research training, career development, diversity and capacity-building activities through a variety of programs at the undergraduate, graduate, postdoctoral and faculty levels.

The NIH Student Loan Repayment Program (SLRP) is established as a management tool to facilitate the recruitment and retention of "highly qualified" candidates and Employees. The SLRP authorizes the repayment of all or part of an outstanding federally-insured student loan obligation already incurred by a current Employee or a candidate to whom an offer of employment has been made. The decision to offer student loan repayment is an individual compensation determination that is made on a case-by-case basis based on organizational need, specific case justification, and budgetary limitations without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabilities. The SLRP is not an entitlement and is to be used only to the extent that is necessary for effective recruitment and retention purposes.

There is no restriction on the type or level of degree the individual was/is pursuing for which a loan was previously generated. Restrictions apply only to the type of loan taken out – the loan must be federally-made, insured or guaranteed and the loan must have been disbursed prior to the signing of a service agreement and approval of a SLRP payment.

Information on the NIH SLRP including eligible loans for repayment and maximum benefit levels can be obtained at: http://oma1.od.nih.gov/manualchapters/person/2300-537-1/. Release Date: 8/09/11.

Section 1.1
Upon request, the Agency will provide a listing of Employees (without names) who have been granted student loan repayment including Bargaining Unit status, job titles, grades, and total amounts of NIH benefits paid.

If the Agency establishes annual budgets for the SLRP, upon request, the Agency shall provide the budget amounts to the Union.

Section 2.0
On a yearly basis the Agency will notify Employees of student loan repayment opportunities and provide assistance in completing any process or procedure regarding such repayment of loans. Any denials will be reported promptly, normally within two (2) pay periods, to the Employee and will contain specific reasons for the denial. The denial will also specify how the Employee can correct or improve their application to obtain repayment approval. Employees will be given a reasonable amount of time during work hours to complete such applications. Loan repayment will be granted in a fair and equitable manner.

Section 3.0
As a part of Labor-Management cooperation, the Agency and Union will on a regular basis explore possibilities to fully utilize student loan repayment opportunities for Employees.

Section 4.0

Section 4.1
If there is an NIEHS committee or group regarding this authority the Union will have, at a minimum, one (1) member on it.

Section 4.2
Any BUE who is determined to be ineligible, given notice of repayment/refund, or terminated from this program will be given written notice of their rights to contact the Union along with the appropriate Union contact information, to the extent practicable, thirty (30) days prior to such action.

Section 4.3
Any BUE who will be terminated from this program will be given a thirty (30) day notice unless there are overriding factors that would preclude the thirty (30) day notice.

Section 4.4
To the fullest extent practicable, any BUE who must repay or refund an NIH/NIEHS student loan under this authority will be given a thirty (30) day notice and any debt collection will be eased.

Section 4.5
The NIEHS will consider, as a factor to justify the necessity of using this authority as a retention incentive, seniority, or the BUE's tenure with NIEHS.

Section 5.0
The Agency shall:

1. Operate this Program in compliance with merit principles and ensure fair and equitable application of the Program.
2. Consider the need to maintain a balanced and diverse workforce in selection of Employees for the Student Loan Repayment Program.
3. Consider IC needs and budget.

Section 6.0 Eligibility
For Bargaining Unit Employees the following criteria apply:

1. Permanent Employees;
2. Employees serving on term or excepted appointments with at least three (3) years remaining on their appointments;
3. Employees serving on excepted appointments that can lead to non-competitive conversion to term, career, or career-conditional appointments (e.g., Veterans Readjustment Appointments, Presidential Management Fellows);
4. Temporary Employees under 5 C.F.R. 315.704 who are serving on appointments leading to conversion to term or permanent appointments.

Section 6.1 Criteria
Decisions regarding applications for the SLRP shall be made in accordance with 5 U.S.C. § 5379. Criteria for student loan decisions are as follows:

Recruitment: Loan repayment may be authorized upon the determination that, in the absence of loan repayment benefits, the Agency would have difficulty filling a position with a highly qualified candidate.

Each determination for recruitment purposes (including the amount to be paid) must be made before the Employee enters on duty. The SLRP may not be used to recruit an individual from another Federal agency.

Evidence of recruitment need shall, when applicable, be based on:

1. The success of recent efforts to recruit suitable candidates for similar positions, including such indicators as offer acceptance rates, the proportion of positions filled, and the length of time required to fill positions.
2. Recent turnover in the same or similar positions.
3. Labor market factors that affect the ability to recruit for similar positions.
4. Need to fill position requiring highly specialized skills or qualifications.

The Agency shall consider the following criteria, when applicable, in determining the amount of the Student Loan Repayment:

1. The severity of the recruiting problem.
2. Salary levels reported in published salary surveys for comparable non-Federal positions.
3. The criticality of the position to be filled and the effect on the Agency if it is not filled or if there is a delay in filling it.
4. Current salary of the candidate.
5. Salary documented in a competing job offer (if available).
6. The disparity in cost-of-living between the candidate's current residence and the proposed duty station.
7. The projected cost of further recruitment efforts if the candidate does not accept the position.
8. The extent of the individual's past training and experience that serves to qualify him/her for the position.

Retention: Loan repayment may be authorized upon determination that, in the absence of loan repayment benefits, the Agency would have difficulty retaining a highly qualified Employee.
Evidence of retention need shall, when applicable, be based on:

1. The unique or high qualifications of the Employee or the special need for the Employee's skills that makes it essential to retain him/her.
2. The extent to which the Employee's departure would affect the Agency's ability to carry out an activity or perform a function that is deemed essential to the Agency's mission.

The Agency shall consider the following criteria, when applicable, in determining the amount of the Student Loan Repayment:

1. Salary levels reported in published salary surveys for comparable non-Federal positions.
2. Salary documented in a competing job offer (if applicable).
3. The criticality of the position and the effect on the Agency if the Employee were to leave.
4. The projected cost of recruitment and training associated with replacement of the Employee.
5. Employee's tenure with the Agency.

Section 6.2
Whenever there is no group or committee formed, the Union shall be notified whenever Management makes decisions (see Section 6.1) regarding BUEs and will be given an opportunity to provide input into loan repayment authorizations and amount determinations.

The Union's input shall be given serious consideration by the Agency.

Section 6.3 Service Agreements
To receive this benefit, Employees must sign a service agreement to remain with the Agency for at least three (3) years.

Section 7.0 Termination of Benefits
An Employee receiving student loan repayment benefits will be ineligible for additional student loan repayments for any of the following reasons:

1. Failure to maintain at least a "Level 3: Achieved Expected Results (AE)," or an equivalent rating level, or comparable level of performance;
2. Separation from the NIH for any reason before completion of the service agreement;
3. Violation of any of the conditions imposed by the service agreement.

Section 8.0 Failure to Complete a Service Agreement
An SLRP participant who voluntarily or involuntarily because of performance or misconduct fails to complete the initial three (3) year service agreement must refund the full amount of student loan repayments received during the three (3) years (5 C.F.R. 537), or a negative suitability determination under 5 C.F.R. 731.

Employees who fail to complete the period of service under an additional one (1) year service agreement (made after the initial three (3) year service agreement has been fulfilled, e.g., 4th year, 5th year) must refund the loan repayment amount made in the extension year only.

If an Employee fails to complete a service agreement and does not voluntarily reimburse the NIH, the debt will be recovered from the Employee under established debt collection procedures.

Section 9.0 Waiver of Indebtedness
Repayment shall be wholly or partially waived when it is determined that recovery would be against equity and good conscience or not in the public interest. In making this determination, consistency, fairness, and the cost to the taxpayer of recovering the debt must be considered.

The Employee may request a waiver in writing using the Waiver of Student Loan Indebtedness, Form NIH 2851-4, for consideration by the Director, OHR, through the IC Student Loan Repayment Review Committee (optional), the IC Director (or designee), the appropriate Operations Branch in the Client Services Division, OHR, and the NIH SLRP Coordinator. The request should include the reason the waiver is being requested, a copy of the Employee's Service Agreement, and verification of the exact amount of debt to be waived.

When an Employee is separated by death or disability retirement, or is unable to continue working because of a disability evidenced by acceptable medical documentation, repayment is automatically waived.

Article 43: Office and Other Space

Section 1.0
The Parties recognize the importance of office space and office environment as related to work performance, work productivity, and morale.

The Parties recognize that space and facilities are major resources available to Federal agencies to facilitate the accomplishment of their missions. Federal agencies are increasingly called upon to re-evaluate efforts to reduce costs and maximize utilization of Federal real property. The Agency and the Union established this Article to support the availability of space to optimize Employee performance, productivity and morale while conserving Federal funds by ensuring the efficient utilization of NIEHS occupied space.

The following primary considerations shall guide the configuration and assignment of space, in this order:

1. Health, safety, indoor environmental quality, and ergonomics;
2. Fair, equitable and consistent treatment of Employees;
3. Functionality for workgroups and individuals, resource efficiency, including energy efficiency and optimized space use.

Definitions

A. *Office/Workstation:* The term, "office," is used to refer to an Employee's work area whether it is an enclosed office or an open workstation.

B. *Net Assignable Square Foot/feet (NASF):* The area of a floor or other office area that is suitable (usable) for occupancy. NASF includes office areas, conference rooms, break rooms, file rooms and other space which may be assigned for use. This includes all corridors that are not designated for primary egress (required by code). NASF excludes vertical penetrations (stairwells, elevators, shafts) and building service space such as primary egress corridors, restrooms, janitorial closets, electrical closets, mechanical rooms and other non-assignable space. In calculating NASF, deductions are not made for columns and projections that are necessary to the building structure.

C. *Square Foot/feet (SF):* The width of a space multiplied by its length (e.g., 10' x 10' = 100 SF). In calculating assignable spaces, SF measurements spaces include the space consumed by interior walls and partitions. For example, if a wall within an assignable office suite is 5 inches thick, 2 ½ inches of that wall thickness would be calculated into the SF measurement for each adjacent room.

D. *Utilization Rate (UR):* The standard measure of space use efficiency, calculated by dividing the NASF area of an office suite, floor or building by the number of assigned occupants.

Section 2.0 Office Space Quality
To further the goal "to assure a quality working environment," the following office design principles will be followed:

1. Conference rooms, copy rooms, file rooms, and other similar space will be located on the inner core of the building to the extent possible.
2. All meeting spaces or conference rooms will be equally accessible to all Employees (with the exception of those conference rooms that are a part of another office and except where confidential or private files are located).

3. Indoor environmental quality will be enhanced through optimizing ventilation and thermal comfort, moisture control, illumination and use of low-emitting materials. Upon request, surveys or assessments in offices will be conducted and reported, and the appropriate improvements and/or remedies will be implemented in accordance with Article 30, Safety, Health, and Wellness. The Agency agrees to share its findings with the Employee.
4. To the extent possible, natural sunlight from windows into the interior of each floor will be maximized.

Section 3.0 Office Space Assignments

A. To promote efficiency and support the accomplishment of the Agency's mission, Employees in the same work group will typically be assigned to offices in close proximity to one another. However, the Parties agree that proximity is only one of several factors in determining where an Employee will be located, and there may be situations where proximity is of less importance.

B. Whenever Management determines there are feasible options in office layouts, Employees will be permitted to choose a preferred office layout or configuration among the available options. If it is later determined that the chosen layout cannot be provided, the Agency will provide the specific reason(s) in writing to the Employee.

C. To the extent practicable, whenever Employees are moved from one office/workstation to another, they will be given comparable space, furniture, number of walls, desk space, and windows.

D. If BUEs are given cubicles they shall be permitted to use vacant nearby conference rooms or offices to make private or confidential phone calls.

E. The Agency may assign space as needed during an emergency that would adversely impact health, security, or the mission of the Agency. The Agency would provide in writing the specific reason(s) to the Union of any such exigency. The Union would be given the option of negotiating any implementation or post-implementation issues as appropriate.

F. Other vacant office space throughout NIEHS space or leased space will be considered and used as appropriate.

G. Actual space assignments may vary to a small degree according to available building space and architectural design.

Section 4.0 Office Assignment Process

The following selection criteria apply when offices are vacated or when work group moves occur. All Agency Employees, including Bargaining Unit Employees, will be allowed to select their offices or workstation within the space allocated to their organization based on the following criteria:

1. Current grade and step;
2. NIH start date;
3. Federal service computation date;
4. In case of a tie, then a coin will be tossed

Part-time Employees working less than thirty (30) hours per week will be permitted to select offices last.

Reasonable accommodation, when applicable, will take precedence over all other space assignment criteria.

Recruited vacancies for which funding, an FTE, and official approval are available will be ranked after all federal Employees having the same grade as the lowest grade of the vacancy. (For example, if a GS 12/13 position is being recruited, the office for the position would be selected after all the current GS-12's in that particular organizational unit have had an opportunity to select offices.)

Functional requirements of each position shall also be considered. In some cases functional requirements may dictate an Employee being granted priority status in an office assignment. Such matters will be bargained in accordance with this CBA. At least fifteen (15) days prior to bargaining, the Agency shall provide the Union with any functional requirements of Employees affected. Functional requirements shall be based on the Employee's duties to effectively conduct their work in a quality workplace environment. Functional requirements include but are not limited to the need for privacy, work involving large volumes of sensitive material, and frequent office meetings. Such determinations will be objective and fair.

Section 5.0 Retention

Once an office is allocated to an Employee (other than on a temporary basis) they will be permitted to continue using that office unless:

1. There is a realignment or reorganization of the organizational unit for which they work (reorganization/realignment defined as: the creation of a new organization; or extensive modification to the current organizational structure, often involving drastic changes).
2. Employees will not typically be displaced to accommodate newly hired employees or employees who are promoted, reassigned, detailed, or affected by any personnel action that may have a bearing on this matter. If an exception is made in order to accomplish the mission of the Agency or higher level (Federal or Departmental) mandates, the Agency will provide an explanation in writing to the Union subject to the mid-term bargaining provisions of the CBA.
3. The Employee takes a new position.
4. It is determined that an error was made in originally placing the individual in that office space.
5. The Agency determines that there is a substantial or emergency issue that would adversely impact health, security, or the mission of the Agency. The Agency would provide in writing the specific reason(s) to the Union of any such determination. The Union would be given the option of negotiating any implementation or post-implementation issues as appropriate.
6. The Employee's work location and/or work schedule changes in accordance with Section 13.0 of Article 16, Telework.

Section 6.0 Alternative Workplace Options

Federal agencies have been encouraged to expand their use of telework to reduce their real estate footprint and real estate costs. Increasing the strategic use of telework is a high priority as evidenced by passage of the Telework Enhancement Act of 2010. Accordingly, the Parties agree to discuss options for

teleworkers that may include shared and/or smaller than usual offices. See Article 16, Telework, and Article 12, Mid-Term Bargaining.

The Parties also agree that "hoteling" and office sharing are useful tools that reduce the need for office space. Within ninety (90) days of the signing of this CBA the Parties will begin discussion or negotiation of a pilot project that will include these alternative workplace options.

Due to the sometimes frequent need for Employees to change their tour-of-duty that may be due to personal or family reasons the Parties agree that a full-time Employee's tour-of-duty shall not be the sole reason for an Employee to receive a smaller office but may be considered with other factors. Such matters shall be bargained as appropriate.

Section 7.0 Vacant Offices

A. When the Agency expects an office to remain vacant for four (4) months or more, the space may be offered to employees within the organizational unit for temporary use.

B. Employees, including BUEs, will be given an opportunity to temporarily occupy such a space in order, according to the priority for office choices described in this Article.

C. While temporarily occupying an office, the temporary occupant may not reconfigure office furniture except for ergonomic requirements such as computer keyboard trays and desk chairs, which may be moved from their original office to the temporary office.

D. The Agency will provide assistance for moving computers or government equipment required by the Employee to perform their work.

E. The Agency will not provide the services of a moving contractor to relocate the Employee's office/workstation contents in instances where a voluntary temporary relocation is requested.

F. Within ten (10) business days after receipt of notice that the Agency plans to assign an Employee to a space which is temporarily occupied, the temporary occupant will be required to vacate the temporary space and return to their previous location or an equivalent office/workstation identified by their supervisor.

G. If an Employee elects to move temporarily to an alternate space or elects to participate in a detail, the Agency is not required to hold the office for the Employee's return.

Section 8.0 Notification and Bargaining

In compliance with Executive Order 13522, the Agency shall involve the Union in office space matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. § 7106; provide adequate information on such matters expeditiously to Union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment. Such pre-decisional involvement will occur as early in the process as possible.

Nonetheless, the Union will be notified in writing at least fifteen (15) days in advance of any expected move or office space change affecting Bargaining Unit Employees. Notification will

identify the Employees affected and the estimated date of the move. The notification will also include a proposed floor plan, or layout indicating proposed space available for selection based on criteria in Section 4.0. This will be done in accordance with other applicable articles in this agreement and bargained to the extent required by 5 U.S C. 71.

Management will provide the Union with an accurate rank order of Employees (see Section 4.0 above) fifteen (15) days or more prior to an expected move.

The Parties shall follow these procedures, whenever practical, particularly for larger office moves:

1. The Employer and the Union will jointly determine the location of Bargaining Unit Employees that are in any jobs or positions whereby placement in proximity to their supervisor, co-workers, or staff they support is paramount.
2. Functionality requirements will be discussed or negotiated to the extent permitted by law.
3. Employees in the organizational units will select among offices using the selection process in Section 4.0 specified above.
4. To the extent under the law, physical moves and allocation of office space will not occur until the Union and Management have completed negotiations including any impasse procedures unless a delay in implementation would impede the Agency from performing its mission. The Agency shall provide evidence of any such impediment to the Union.

Section 9.0 Employee Moves (Office Contents)

A. When Employees are moved from one office/workstation to a different location, the standard (typical) practice is to relocate the occupant, not the furniture, as furniture belongs to the office/workstation, not to the occupant. An exception to this practice is that if requested, an Employee's desk chair and/or computer keyboard tray can be relocated from the Employee's current office/workstation to the new location.

B. When applicable, any furniture to be relocated (e.g., bookcases, filing cabinets, chairs, etc.) will be moved by a moving contractor. An Employee may choose to move their own personal belongings or have their personal belongings also moved by the moving contractor.

C. Employees will be given adequate time during their regular working hours to pack and unpack their belongings regarding their move to the new location.

Section 10.0 Break Rooms

The Agency agrees to provide the following where Employees reside:

1. Adequate space for Employees to store their lunches, prepare them, eat them, and clean-up afterwards.
2. Items:
   a. Refrigerators large enough to hold lunches and other spoilable items.
   b. Microwave ovens of sufficient size and sufficient space to provide cooking capability for all those assigned to the same lunch.
   c. Napkins or paper towels.
   d. Coffeemaker or dispensing machine or space for Employee provided coffeemakers.
   e. Sink with hot/cold running water.
   f. Filtered drinking water will be available without purchase.

g. The Agency will provide a vending machine or freezer that will have a selection of packaged healthy items such as yogurt and juices. Fresh fruit will also be available.
h. An adequate number of tables and chairs.
i. The Agency will provide ice machines. The ice will be produced from filtered water.

Section 11.0 Onsite Fitness Space and Amenities

A. The Agency will provide fitness space or access to an onsite fitness center where Employees are located. For Building 102 and the Warehouse, fitness equipment shall be provided (space permitting) as well as on-call shuttle service or other government-provided transportation to Building 101.

B. A shower facility and lockers will be provided.

C. An adequate number of bicycle racks will be provided at the Rall Building and at the Keystone Building. Racks will be either secured or heavy enough that they cannot be easily removed. Racks will be placed appropriately for ease of use and accessibility.

Section 12.0 Office Equipment and Environment

A. Existing ergonomic equipment, such as desk chairs, computer keyboards trays, telephone/accessories, will be relocated upon request by the Employee.

B. The indoor temperature in the office shall not fall below sixty five (65) degrees and in hot weather, adequate ventilation and air conditioning will be provided.

C. Upon request, heat and/or air-conditioning vents or exhaust will be evaluated, adjusted, or moved to the extent possible to ease any discomfort or possible health problems.

Section 13.0 Other Issues of Importance

Section 13.1 Handicap Accessibility

A. There will be at least one evaluation or assessment by a qualified professional regarding accessibility on a regular basis for buildings that house Bargaining Unit Employees. Management will make every effort to incorporate reasonable recommendations from the evaluation for accessibility. Recommendations and/or reports from such assessments will be given to the Union.

B. Any reasonable suggestions or proposals not implemented by Management will be considered once budget or overriding reason permits. Management will provide the Union with an explicit reason for not implementing any such recommendation.

C. Evacuation procedures are as described in Article 30, Safety, Health and Wellness.

D. Each floor will have at least one restroom for each sex that is fully handicapped accessible.

Section 13.2 First Aid

A. The Agency will ensure qualified government employees are participants on the NIEHS First Responder Team and have received advanced first aid and CPR training. There will be a fully equipped “trauma kit” with supplemental oxygen available for their use.

B. The Agency will provide sufficient, operational, and ample first aid supplies and/or equipment. The location of these supplies will be clearly marked and easily accessible. "Operational" means functional: fit or ready for use or service.

C. The Agency will provide an Automated External Defibrillator (AED) on each floor, mounted in or near the elevator lobbies.

D. Prior to the beginning of the move of any Employees, the first aid for facilities housing Bargaining Unit Employees will be fully equipped and available for use as agree to in Article 30, Safety, Health, and Wellness .

Section 13.3 Lactation Room
See Section 16.0 of Article 30, Safety, Health, and Wellness.

Section 13.4 Parking
A. Free parking spaces will be sufficiently provided for all Employees.

B. Parking lots will be sufficiently lit.

C. Sufficient or ample parking spaces will be provided for Employees, handicap spaces, government service vehicles, and carpool spaces with appropriate signage.

Section 13.5 Building Access
A. Barring exigency events or security issues, Bargaining Unit Employees with necessary security pass or ID will be granted 24/7 access to NIEHS buildings and facilities.

B. Union representatives with necessary security pass or ID will have access to the Union office at any/all times barring emergency situations to carry out their labor relations responsibilities.

C. The Parties agree that the Employee's personal identification verification (PIV) card or NIEHS ID badge shall not be used as a monitoring device. However, the Parties agree that there may be times that the PIV card may be used to verify that an Employee has accessed a campus, a building, a lab or office or a data system during an investigation or in an emergency or security event. Such information shall be provided to the Union upon request when it involves BUEs during any grievance investigation or process.

Article 44: Research Programs and Demonstration Projects

Section 1.0
For the purposes of this contract, "research program" means a planned study of the manner in which various public management policies and systems are operating (such as communications between the Union and Management), the effect of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"Demonstration project" means a project conducted by the Office of Personnel Management (OPM), or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. These are statutory definitions.

Section 2.0
The Parties agree that the Union will be provided an opportunity to comment to higher level authorities on proposed research programs or demonstration projects when appropriate.

Section 3.0
Any evaluation report handled pursuant to the Civil Service Reform Act, or similar reports under other authority, shall clearly reflect the position, input, and conclusions of both the Union and the Employer.

Section 4.0
The Parties agree that the Union shall have access to the information or data involved in such reports, the release of which would not be precluded by law or regulation.

Section 5.0
It is agreed that no Employee's career, pay, rights or benefits shall be adversely affected as a result of their participation in any research or demonstration project.

Section 6.0
Any research or demonstration project may not amend or waive any provision of this Agreement, except by mutual written consent of the Parties.

Article 45: Effective Date and Duration

Section 1.0 Effective Date
This Agreement shall take effect thirty (30) days from Agency Head review.

Section 2.0 Duration
This Agreement shall remain in full force and effect for five (5) years from its effective date. This Agreement shall automatically renew itself from year to year thereafter.

Section 3.0 Renegotiation
If either party desires to renegotiate any terms of this Agreement, it will furnish written notice to the other party, identifying the Articles that it wishes to change, not more than 120 or less than ninety (90) days prior to the expiration date.

Section 3.1
In the event such notice is given by either party, the Parties will begin negotiating ground rules for the new negotiations within sixty (60) days from the date of receipt of notice of the proposed changes. If negotiations are not completed by the anniversary date, the Agreement will be automatically extended until a new agreement is negotiated.

Section 4.0 Reopener
Either party may propose negotiations during the term of this Agreement to reopen this Agreement, but such negotiations may be conducted only by mutual consent of the Parties. Such negotiations shall be conducted in accordance with Article 12, Mid-Term Bargaining.

Section 5.0 Amendments and Modifications
This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Agreement.

Section 6.0 Publishing and Online
The Agency agrees to keep hard copies of this contract in small book format. In addition, the Agency will post the completed CBA online in two forms: 1) in .pdf format and 2) in a searchable text format with links to all articles and sections. The online CBA cannot be changed or altered in any way from the original unless mutually agreed to by both Parties. The online CBA will be easily found on both the NIEHS public web page and Employee intranet.

Section 7.0
The employer agrees to print this Agreement after final approval within sixty (60) days. The Union will be provided twenty (20) copies of the final Agreement and Management will ensure that there are additional copies available for Employees who request one.

Glossary of Terms

Drawn primarily from Office of Personnel Management's glossary

The Parties agree that the following terms are meant to be informative. If any differences arise between terms below and the CBA or past practice, those found in the CBA or used in past practice would govern.

Adverse Action. A removal/suspension for more than fourteen (14) calendar days, furlough without pay for up to thirty (30) calendar days or a reduction in grade or pay.

Agency. Within this CBA, Agency (or Employer) refers to the National Institute of Environmental Health Sciences, Department of Health and Human Services Research Triangle Park North Carolina.

Agency Head Review. Requirement that negotiated agreements be reviewed for legal sufficiency by the head of the Agency (or his/her designee). This must be accomplished within thirty (30) days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a negotiability petition or an unfair labor practice (ULP) charge with FLRA. If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings). During the thirty (30) day period, the incumbent union is protected from challenge by a rival union.

Agreement, Negotiated. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure.

Alternative dispute resolution (ADR). A set of programs that offer a variety of dispute-solving mechanisms to be used in place of formal, adversarial methods such as litigation. These alternatives are voluntary, and usually include the use of a neutral third party to help find mutually acceptable solutions.

Alternative worksite. A place away from the traditional worksite that has been approved for the performance of assigned official duties. It may be an employee's home, a telecenter, or other approved worksite including a facility established by state, local or county governments, or private concern.

Applicable Laws. The Authority has said that "applicable laws" within the meaning of 5 U.S.C. § 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"--i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

Appropriate Arrangement. One of three exceptions to management's rights. Under 5 U.S.C. § 7106(b)(2), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an excessive interference balancing test).

Arbitrability. Refers to whether an arbitrator has jurisdiction to decide a particular dispute. There are generally two forms of arbitrability determinations: procedural arbitrability rulings, in which the arbitrator addresses whether the moving party in a grievance followed the bargaining agreement's requirements; and substantive arbitrability determinations, where the arbitrator examines whether the

subject matter of the grievance is covered by the grievance/arbitration procedure. The distinction is important because the FLRA has different rules for reviewing exceptions to each type of arbitrability ruling.

Arbitration, Grievance. When the arbitrator interprets and applies the terms of the collective bargaining agreement--and, in the Federal sector, laws and regulations determining conditions of employment.

Arbitrator. An impartial third party to whom the parties to an agreement refer their disputes for resolution.

Assign Employees. A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

Assign Work. A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind and the amount of work to be performed; the manner in which it is to be performed; as well as when it is to be performed. It also includes "[t]he right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

(The) Authority. The Authority is a quasi-judicial body at the Federal Labor Relations Authority (FLRA) with three full-time Members who are appointed for five-year terms by the President with the advice and consent of the Senate. The Authority adjudicates unfair labor practices disputes, issues raised by representation petitions, exceptions to grievance arbitration awards, and resolves negotiability disputes raised by the parties during collective bargaining.

Automatic Renewal Clause. Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's open period of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of x number of years.

Back Pay. Pay awarded an employee for compensation lost due to an unjustified personnel action is governed by the requirements of 5 U.S.C. § 5596, the Back Pay Act.

Bargaining (Negotiating). A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context.

Bargaining Impasse (Impasse). When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by Federal Mediation and Conciliation Service mediators and the Federal Service Impasse Panel to help the parties settle impasses.

Bargaining Unit. Refers to the collective group of employees that are represented by a labor union.

Bargaining Unit Employee (BUE). Employee who is represented by a labor union. This term is different from a "union member" as union members are dues paying members of a labor union.

Binding Arbitration. 5 U.S.C. § 7121(b)(2)(A), requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

Budget. A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

Bypass. Dealing directly with employees rather than with the exclusive representative regarding negotiable conditions of employment of bargaining unit employees. A bypass is a violation of the Federal Service Labor Management Relations Statute.

Certification. The FLRA's determination of the results of an election or the status of a union as the exclusive representative of all the employees in an appropriate unit.

Collective Bargaining. Literally, bargaining between and/or among representatives of collectivities (thus involving internal as well as external bargaining); but by custom the expression refers to bargaining between labor organizations and employers.

Civil Service Reform Act of 1978 (CSRA). Legislation enacted in October 1978 for the purpose of improving the civil service. It includes 5 U.S.C. 71, the Federal Service Labor-Management Relations Statute.

Confidential Employee. An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates Management policies in the field of Labor-Management relations. Generally, confidential employees must be excluded from bargaining units.

Conditions of Employment (COE). Under 5 U.S. C. § 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters--(A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute*[.]"

"Covered By" Doctrine. A doctrine under which an agency does not have to engage in midterm bargaining on particular matters because those matters are already "covered by" the existing agreement.

Direct Employees. The FLRA or "Authority" has defined this right to include discretion "to supervise and guide [employees]… in the performance of their duties on the job." The right to direct, *by itself*, rarely is used as the basis for finding a proposal nonnegotiable. However, when combined with the right to assign work, it is the basis for finding proposals establishing performance standards nonnegotiable.

Discipline. A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified." It also encompasses the use of the evidence obtained during the investigation.

Efficiency of the service. The standard agencies must meet in supporting adverse actions. This term embraces a wide variety of considerations, including the efficiency and effectiveness of operations, the health, well-being and safety of federal employees and property, and the ability of the agency to serve the public interest effectively by maintaining its confidence.

Dues Withholding. Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the Federal Service Labor-Management Relations Statute) and may not be revoked except at yearly intervals, but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

Dues Withholding Recognition. A very limited form of recognition, under which a union that can show that it has ten percent (10%) of employees in an appropriate unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the exclusive representative of the unit.

Duration Clause (Term of Agreement). Clause in a collective bargaining agreement that specifies the time period during which the agreement is in effect.

Duty to Bargain. Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see "Midterm Bargaining") and (2) the *negotiability* of specific proposals. Disputes over the former usually are processed through the Authority's unfair labor practice procedure and frequently involve make-whole and status quo ante remedies. Disputes over the latter usually are processed through the Authority's no-fault negotiability procedure in which the Authority determines whether or not there is a duty to bargain on the proposal at issue.

Exceptions to Arbitration Awards. A claim that an arbitration award is deficient "on…grounds similar to those applied by Federal courts in private sector labor-management relations," or because it violates law, rule or regulation. Some of the "grounds similar to those applied by Federal courts" are: the award doesn't draw its essence from the agreement, the award is based on a nonfact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority.

Excessive Interference. A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable appropriate arrangements. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

Exclusive Recognition. Under the Federal Service Labor-Management Relations Statute, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the exclusive representative of the employees in a bargaining unit include, among other things, the right to negotiate

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

Exclusive Representative. The Union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the CSRA (See "Exclusive Recognition"). A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

Executive Order 13522. This Executive Order, "Creating Labor-Management Forums To Improve Delivery of Government Services," – was signed by President Obama and established a cooperative and productive form of labor-management relations throughout the executive branch.

Fair Representation, Duty of. The union's duty to represent the interests of all unit employees without regard to union membership.

Federal Labor Relations Authority (FLRA). Provides leadership in establishing policies and guidance relating to matters under 5 U.S.C. 71, and, except as otherwise provided, shall be responsible for carrying out the purpose of the Federal Service Labor-Management Relations Statute (FSLMRS).

Federal Mediation and Conciliation Service (FMCS). An independent agency whose mission is to preserve and promote labor-management peace and cooperation. The agency provides free mediation and conflict resolution services to managers and unions who request assistance with labor or bargaining matters.

Federal Service Impasses Panel (FSIP or "The Panel"). The Panel resolves bargaining impasses between Federal agencies and unions. If bargaining between the parties, followed by mediation assistance, does not result in a voluntary agreement, either party or the parties jointly may request the Panel's assistance. Following a preliminary investigation by its staff, the Panel may determine to assert jurisdiction over the request. If jurisdiction is asserted, the Panel has the authority to recommend and/or direct the use of various dispute resolution procedures, including informal conferences, additional mediation, written submissions, and mediation-arbitration. If the parties still are unable to reach a voluntary settlement, the Panel may take whatever action it deems necessary to resolve the dispute, including the imposition of contract terms through a final action. The merits of the Panel's decision may not be appealed to any court.

Federal Service Labor-Management Relations Statute (FSLMRS). See 5 U.S.C. § 7101 - 7135.

Formal Discussion. Under 5 U.S.C. § 7114(a)(2)(A), the exclusive representative must be given an opportunity to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any *grievance* or any personnel policy or practices or other *general condition of employment[.]"*

Good Faith Bargaining. A statutory duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any condition of employment, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

Government-wide Regulations. Regulations issued by an agency bearing on conditions of employment that must be complied with by other agencies. Such regulations are a major limitation on agency discretion and therefore on the scope of bargaining, which presupposes agency discretion. Agencies chiefly involved in issuing such regulations are the Office of Personnel Management (on personnel management) and the General Services Administration (on property management).

Grievance. Under 5 U.S.C. § 7103(a)(9), a grievance "means any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(I) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment[.]"

Grievance Procedure. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under 5 U.S.C. § 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that covers all the matters mentioned in the statutory definition of "grievance." See "Negotiated Grievance Procedure."

Ground Rules. The "rules" that the parties adopt or bargain when negotiating. Either the agency or the union may lawfully insist on reaching a ground rules agreement before beginning substantive bargaining. This is true for both term bargaining and impact and implementation bargaining. Generally, ground rules are used for larger or more substantial matters but can be used for any bargaining.

Hire Employees. A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under 5 U.S.C. § 7106(a)(2)(A)."

I&I (Impact and Implementation) Bargaining. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on how management will implement changes Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of midterm bargaining.

Information. The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see "Particularized Need"), to available data "for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining. The agency must provide that information free of charge.

Internal Security Practices. A right reserved to management by 5 U.S.C. § 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the Agency's personnel.

Labor Organization. A union--i.e., an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

Labor-Management Forum. A non-adversarial forum, authorized and created by Executive Order 13522, in which managers, employees and union representatives will discuss workplace challenges and attempt to craft solutions jointly. Agencies must establish such forums by creating councils or committees at the level of recognition or other appropriate levels.

Management Official. An individual who formulates, determines, or influences the policies of the Agency. Such individuals are excluded from appropriate units.

Management Rights. Refers to types of discretion reserved to Management officials by statute.

Core rights. Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency."

Operational rights. Consists of the rights, in accordance with applicable laws, to hire, assign, direct, layoff, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees, to assign work, to make determinations with respect to contracting out, to determine the personnel by which Agency operations shall be conducted, to make selections for appointments from among properly ranked and certified candidates for promotion, or any other appropriate source, and to take whatever actions may be necessary to carry out the Agency mission during emergencies.

Three exceptions. The three 5 U.S.C. § 7106(b) exceptions to the above involve (1) 5 U.S.C. § 7106(b)(1) permissive subjects of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) procedures management will follow in exercising its reserved rights, and (3) appropriate arrangements for employees adversely affected by the exercise of management rights.

1. **"Permissive" subjects exception**. This exception to Management's rights deals with staffing patterns--i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency."

2. **"Procedural" exception.** 5 U.S.C. § 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed procedure that "directly interferes" with a management right is not a procedure within the meaning of 5 U.S.C. § 7106(b)(2).

3. **Appropriate arrangement exception.** 5 U.S.C. § 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines

whether or not the specific proposal "excessively" interferes with the management right. If the interference is "excessive," the proposal isn't an appropriate arrangement and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

To qualify as an “arrangement” to which it would be proper to apply the excessive interference balancing test, the proposal has to be “tailored” so that it applies only to those employees who would be adversely affected by the proposed management decision.

Mandatory Topic of Bargaining. Those topics which the parties are legally obliged to bargain upon request. Generally speaking, these include the personnel policies, practices and working conditions of bargaining unit employees.

Mediation. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement.

Med-Arb (mediation followed by interest arbitration). A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb’s suggestions for settlement if they know that the med-arb has authority to impose a settlement.

Midterm Bargaining. Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining--i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes I&I bargaining, and union-initiated midterm bargaining on new matters. It excludes matters that are already covered by the term agreement.

Mitigate. To lessen or reduce. This term is often used to describe a reduction in penalty; e.g., when an arbitrator "mitigates" the length of a suspension, or reduces it to a letter of warning.

Negotiability Disputes. Disputes over whether a proposal is nonnegotiable because (a) it is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's “no fault” negotiability procedures

Negotiated Grievance Procedure (NGP). A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute --e.g., retirement, life and health insurance, classification of positions--the NGP covers those matters specified in the definition of grievance in 5 U.S.C. § 7103(a)(9) minus any of those matters that the parties agree to exclude from the NGP. That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include*--just the opposite from pre-FSLMRS and private sector practices.

Official Time. At one time treated as a term of art created by 5 U.S.C. § 7131, involving paid time for employees serving as union representatives. However, the Authority has said that Section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for

other matters; that is, matters other than those relating to labor-management relations activities. Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. 5 U.S.C. § 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

Particularized Need. The Authority's analytical approach in dealing with union requests for information under 5 U.S.C. § 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the Agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an unfair labor practice.

Past Practice (Established Practice). Existing practices sanctioned by use and acceptance that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the negotiated grievance procedure because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known by both parties.

Performance opportunity period (POP). An informal period of time at NIEHS during which an employee is given a chance to perform up to an acceptable level after performing at less than a minimally acceptable level in one or more critical elements.

Performance improvement plan (PIP). Often in the form of a lengthy counseling memorandum from the supervisor in conjunction with an HR specialist, it provides a deadline for performance improvement and specifies in writing that an action for unacceptable performance -- reduction in grade, or removal -- will be taken if improvement does not take place by that time. The plan must communicate the standards governing the employee's performance and give the employee adequate instructions regarding the manner in which he is expected to perform the duties of his position.

Procedures. Under 5 U.S.C. § 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

Representation Election. Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their exclusive representative.

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

Representation Issues. Issues related to how a union gains or loses exclusive recognition for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

Status quo ante. A Latin word meaning "the conditions that existed before" or "the state of affairs that existed previously."

Term Negotiations. The negotiation (or re-negotiation) of a complete labor agreement.

Supervisor. Under 5 U.S.C. § 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]" The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

Unacceptable performance. A level of job performance that fails to meet the requirements of an established performance standard in at least one critical element.

Unfair Labor Practice (ULP). A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP *charges* are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP *complaint* if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a fact-finding hearing and before the Authority, which decides the matter. The most common agency ULPs are duty to bargain ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), formal discussion ULPs, *Weingarten* ULPs, and failure-to-provide-information ULPs. The most common ULP committed by a union is a failure to fairly represent (see "Fair Representation") all unit members without regard to union membership.

Union. A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment[.]"

Union Member. In the federal sector, there are no "closed shops" and Bargaining Unit employees may elect to become members of a labor union through dues deductions. An employee working with a union representative would need to complete SF 1187 to become a member of a union.

Union-Initiated Midterm Bargaining on New Matters. Absent a bargaining waiver, the union has the right to initiate bargaining on matters not "covered by" the CBA.

Weingarten Rights. Under 5 U.S.C. § 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if the examination is conducted by a representative of the Agency, the employee reasonably believes that the examination may result in disciplinary action, and the employees asks for representation. Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right.