

# NATIONAL COLLECTIVE BARGAINING AGREEMENT

*between*



U.S. Customs and  
Border Protection

and

**NTEU**  
The National Treasury Employees Union

**May 11, 2011**

Revised October 2013

*Vigilance* ★ *Service* ★ *Integrity*

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## **INTRODUCTORY NOTE**

Any reference to "employee" or "employees" throughout this Agreement shall mean bargaining unit employee(s) only. Furthermore, as the English language lacks a generic singular pronoun signifying both the masculine and feminine (e.g., "he" and "she", "him" and "her", etc.); we have followed the customary and grammatically sanctioned use of masculine pronouns to refer to persons of either sex.

However, in reaffirmation of our dedication to the equality of the sexes in the employment situation, wherever a masculine pronoun is used in this Agreement to denote an employee, supervisor or other party, it refers to persons of both sexes and shall be construed to include males and/or females as appropriate.

Throughout this Agreement, U.S. Customs and Border Protection may be referred to as "The Employer", "Agency", or "CBP", and the National Treasury Employees Union may be referred to as "the Union", or "NTEU."

All acronyms will be spelled out the first time they are used in a given Article.

## **PREAMBLE**

As the first national collective bargaining agreement between U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) for the Agency-wide bargaining unit established by the Federal Labor Relations Authority on May 18, 2007, CBP and NTEU set forth the following principles of general guidance to aid in the creation of a constructive labor-management relationship that ensures and supports the effective and efficient accomplishment of the Agency's critical national security mission:

- **We** recognize employees are the keystone of the Agency, and their commitment, knowledge, skill, wisdom, experience, enthusiasm and versatility is the lifeblood to the successful accomplishment of the Agency's important mission.
- **We** recognize participation of employees, through their elected representative, NTEU, in the formulation and implementation of policies and practices affecting the conditions of their employment can contribute to increased organizational performance. As a result, CBP and NTEU are committed to develop and maintain a constructive relationship supportive of the employees and the mission they fulfill.
- **We** renew, as this relationship moves forward, our commitment to:
  - Recognize each others' needs and interests;
  - Focus and encourage non-adversarial methods for resolving problems;
  - Encourage and assist employees in developing to their full potential; and
  - Invite employee input on matters that affect them whenever practicable.

## **ARTICLE 1: COVERAGE**

The terms of this Agreement apply to all professional and non-professional employees of U.S. Customs and Border Protection (CBP), excluding:

- Employees in the Office of Border Patrol who are assigned to Border Patrol Sectors;
- Employees of the Office of Chief Counsel; and
- Management officials, supervisors, and other employees excluded from bargaining unit in accordance with 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).

In the event the National Treasury Employees Union is certified as the exclusive representative of any additional bargaining unit(s) within CBP after the effective date of this Agreement, the parties may, by mutual agreement, automatically cover such unit(s) by the terms of this Agreement.

## **ARTICLE 2: FAIRNESS AND EQUITABILITY**

**Section 1.** Several provisions in this Agreement require that the Employer exercise its authority or discretion in a fair and impartial (or fair and equitable) manner. Unless otherwise defined, such terms will be interpreted to mean that the Employer will exercise the referenced authorities or discretion fairly and consistently so as to avoid adverse impact. To clarify, this provision does not require the authority or discretion itself to be fair and impartial (or fair and equitable) on its face; but rather that it be applied, or followed fairly and impartially (or fairly and equitably). In other words, the provision simply requires that the referenced authorities or discretion be applied (or not applied) in accordance with law, rule, regulation, and this Agreement to similarly situated bargaining unit employees, without bias, favoritism, arbitrariness or consideration of reasons not relating to merit or mission.

**Section 2.** In carrying out its representation functions, the union will treat employees with dignity and respect.

## **ARTICLE 3: EFFECT OF LAW & REGULATION**

**Section 1.** Except as provided by law, in the administration of all matters covered by this Agreement, the parties are governed by:

- Existing or future laws;
- Government-wide rules or regulations in effect on the date the Agreement becomes effective;
- Government-wide rules and regulations issued after the Agreement is effective which do not conflict with the contract and over which all bargaining responsibilities have been fulfilled; and
- Department of Homeland Security and U.S. Customs and Border Protection rules and regulations which do not conflict with this Agreement and over which all bargaining responsibilities have been fulfilled.

**Section 2.** The parties may implement through mutual agreement any conflicting rules or regulations issued after the effective date of this agreement or over which bargaining has not been completed, but this is not a mandatory subject of bargaining for either party.

**Section 3.** This Agreement supersedes all previous agreements and past practices in conflict with it. Otherwise, all practices and agreements will continue until otherwise modified by the parties.



## **ARTICLE 4: LABOR-MANAGEMENT RELATIONS COMMITTEES**

The parties will establish Labor-Management Relations Committees (LMRCs) in accordance with the provisions of this Article. They will give consideration to: areas of pre-decisional input; the prevention and resolution of misunderstandings and grievances; working conditions, personnel policies and practices; the promotion of good employee-supervisor relationships; the strengthening of morale, etc.

All LMRCs are solely for the purpose of exchanging views and information and shall be deemed a supplement to negotiations as defined by the Civil Service Reform Act, not a substitute. However, the parties recognize that issues unresolved in these meetings potentially can be addressed in grievances, mid-term bargaining and other traditional representational forums.

### **Section 1. National Labor-Management Relations Committee.**

- A.** A national LMRC will meet two times per calendar year for no more than two (2) working days at U.S. Customs and Border Protection (CBP) Headquarters facilities. Additional meetings may be held, by mutual consent, at such other times as deemed necessary. Thirty (30) calendar days prior to the scheduled date of the meeting, the parties will exchange anticipated agenda items. Matters not on the agenda can be discussed by mutual consent.
- B.** The Union will have five (5) attendees from the bargaining unit present. These five (5) unit members will receive official time for the meeting as well as the time necessary to travel to and from the meeting. National LMRC bargaining unit members will be reimbursed travel and per diem in accordance with the Federal Travel Regulations. The national LMRC bargaining unit members may be joined by National Treasury Employees Union (NTEU) elected leaders and staff who are not CBP employees.

### **Section 2. National Work Groups.**

- A.** The national LMRC may, by mutual agreement, establish work groups to analyze specific problems and propose solutions. Absent mutual agreement by the national LMRC, a work group shall be comprised of no more than eight (8) members, i.e., four (4) representatives from NTEU and four (4) representatives from CBP.

- B.** No later than seven (7) calendar days after the national LMRC agreeing to establish a work group, CBP will provide NTEU the qualifications necessary to participate in a specific work group. Within seven (7) calendar days of receipt of qualifications from CBP, NTEU will provide employee nominations.
- C.** The work groups proposed solutions will be presented to the national LMRC for consideration.
- D.** Where the Employer selects bargaining unit employees to serve on committees, work groups or projects to analyze work processes or problems, and such work is not normally assigned to all employees in a given position or location, the Employer will solicit from NTEU nominations of employees based on qualifications provided by the Employer. The Employer will select from the union nominations, absent just cause.

### **Section 3. Field Level Labor-Management Relations Committees.**

- A.** In addition to the national LMRC, committees will be established at the field level (e.g., DFO or equivalent level) to support the objectives of this Article. Field LMRCs will meet four (4) times every calendar year for no longer than one (1) regular work day, at space provided by CBP management. The committees may also meet at other times as the parties find mutually agreeable.
- B.** The parties will furnish each other, no later than seven (7) calendar days prior to the scheduled date of the meeting, a written agenda of items to be discussed. Matters not on the agenda can be discussed by mutual consent.
- C.** NTEU will be represented by a maximum of six (6) and a minimum of four (4) unit members on any field LMRC. Representatives from the NTEU National Office and CBP Headquarters may attend any field LMRC meeting. Their attendance will not count towards the field LMRC structure.
- D.** Field LMRC meetings will be held during normal duty hours, and all participating unit employees shall be on official time.
- E.** Field LMRC bargaining unit members will be reimbursed travel and per diem in accordance with the Federal Travel Regulations.

#### **Section 4. Lower Level Labor-Management Relations.**

- A.** In addition to the national and field LMRCs, the Parties are committed to the constant encouragement of Chapter leaders and equivalent levels of CBP management to establish a productive relationship for the same purposes as listed above. This could be done by the creation of a local committee structure, a weekly meeting among key principals, an open door policy, etc.
  
- B.** If either party at this level is not satisfied with their respective labor-management relationship, either party can move that dispute to the field LMRC for assistance, if needed.

## **ARTICLE 5: UNION RIGHTS**

**Section 1.** The Union is the exclusive representative of the employees in the bargaining unit and is entitled to act for, and represent the interests of, all employees in the unit.

**Section 2.A.** The Union shall be given the opportunity to be represented at any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees in the bargaining unit or their representatives concerning any dispute or any personnel policy or practices or other general condition of employment.

- B.** The appropriate Union representative will receive reasonable advance notice of such formal discussions and advance copies or access to documents the Agency proposes to discuss unless such documents are protected by applicable laws, rules and regulations. The appropriate Union representative to receive such notice and documents will be designated locally by each NTEU Chapter. When possible, such notices shall be given no less than seven (7) calendar days prior to the discussion.
- C.** At any formal discussion, the designated Union representative will be identified and has the right to ask questions, comment, speak and make statements related to the subject matter addressed by the Agency at that meeting and shall not seek to take charge of or disrupt the meeting.
- D.** After a formal meeting held by management with a group of employees to discuss general conditions of employment, workload and operational requirements permitting, the Union may meet with those employees for up to thirty (30) minutes. After meeting with the employees, the Union will share employee concerns, if any, with management.

**Section 3.** The Union shall be given the opportunity to be represented at 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.

**Section 4.** The Union may refuse to represent employees in statutory appeals, e.g., before outside agencies such as Merit Systems Protection Board (adverse actions), or the Equal Employment Opportunity Commission (discrimination appeals). The Union may

refuse to represent employees in other matters where employees have the statutory right to choose other representation (e.g., replies to proposed suspensions, adverse actions, reductions in grade or removals based on unacceptable performance).

**Section 5.A.** The Agency will give the Union as much advance notice as possible of a new employee's entrance on duty date, name, position, and work location. The Union will also be notified of any employee employment orientation session and allowed to participate in accordance with the formal meeting procedure to discuss representational matters. The Union representative will be provided a period of time not to exceed sixty (60) minutes, before a break if possible, to address the new employees at their permanent duty station as part of this employee employment orientation session. If a new employee will not be included in a group orientation, a Union representative will be afforded a period of time, not to exceed sixty (60) minutes, during the new employee's first day of employment to discuss representational matters. Release of the Union representative to attend these meetings will be on official time in accordance with Article 30: Union Representatives and Official Time.

**B.** Upon request, the Agency agrees to show a Union video, if provided with one, wherever basic training orientation sessions are conducted including the Federal Law Enforcement Training Center (FLETC) facilities in Glynco, Front Royal and Marana. The Agency will also make available to participants in these sessions a list of NTEU Chapter Presidents' names and phone numbers, NTEU brochures and an NTEU announcement card (as provided by NTEU). All bargaining unit employees attending basic training sessions at FLETC facilities will be provided a notice at their first class session informing them of who will provide them with Union representation while they are at the Center and how they can contact their Union representative.

**C.** NTEU shall distribute to each new employee, at the time of the orientation or other meeting as provided for in this Agreement material on its benefits and services, descriptive material about the Union, and information concerning their conditions of employment. These materials shall contain no adverse or derogatory information about the Employer. Any material distributed must conform to the requirements of law and regulations concerning information which may be distributed on Federal property.

**Section 6.A.** The parties agree to recognize Labor-Management Recognition Week on an annual basis at an agreed upon time. During that week, and in accordance with Article 29: Access to Facilities and Services, local chapters may use the Agency's cafeterias, break rooms and meeting rooms to set up exhibits that publicize the contributions of organized labor, including NTEU, to society.

**B.** This provision does not grant official time to employees for participating in this event.

## **ARTICLE 6: AGENCY RIGHTS**

**Section 1.** In accordance with the Civil Service Reform Act of 1978 the Agency retains the authority:

- A.** To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and,
- B.** In accordance with applicable laws:
  - (1) To hire, assign, direct, lay off, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay, or to subject such employees to other remedial action;
  - (2) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which the Agency's operations shall be conducted;
  - (3) With respect to filling positions, to make selections for appointments from:
    - (a) Among properly ranked and certified candidates for promotion; or
    - (b) Any other appropriate source; and

To take whatever actions may be necessary to carry out the missions of the Agency during emergencies.

## **ARTICLE 7: PROTECTION AGAINST PROHIBITED PERSONNEL PRACTICES**

**Section 1.A.** For the purpose of this Article and in accordance with 5 U.S.C. § 2302, "prohibited personnel practice" means any action described in Section 2.

**B.** For the purpose of this Article, "personnel action" means a(n):

- (1) Appointment;
- (2) Promotion;
- (3) Adverse action, disciplinary action or other corrective action;
- (4) Detail, transfer or reassignment;
- (5) Reinstatement;
- (6) Restoration;
- (7) Reemployment;
- (8) Performance evaluation under Chapter 43 of Title 5 of the United States Code;
- (9) Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this Subsection;
- (10) Decision to order psychiatric testing or examination; and
- (11) Any other significant change in duties or responsibilities or working conditions.

**Section 2.** In accordance with 5 U.S.C. § 2302, the Employer shall not:

**A.** Discriminate for or against any employee or applicant for employment:



- (1) On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
  - (2) On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
  - (3) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;
  - (4) On the basis of handicapping condition as prohibited under Section 501 of the Rehabilitation Act of 1973; or
  - (5) On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- B.** Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
- (1) An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or
  - (2) An evaluation of the character, loyalty, or suitability of such individual;
- C.** Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- D.** Deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- E.** Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- F.** Grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

- G.** Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official;
- H.** Take or fail to take or threaten to take or fail to take a personnel action with respect to any employee or applicant for employment as reprisal for:
- (1) A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:
    - (a) A violation of any law, rule, or regulation; or
    - (b) Gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (2) A disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
    - (a) A violation of any law, rule, or regulation; or
    - (b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- I.** Take or fail to take or threaten to take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right complaint or grievance right granted by any law, rule, or regulation; testifying for or otherwise lawfully assisting any individual in the exercise of any right of this subsection; cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or refusing to obey an order that would require the individual to violate a law;

- J.** Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this Subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- K.** Knowingly take, recommend or approve any personnel action if the failure to take such action would violate veterans' preference requirement; or
- L.** Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles contained in 5 U.S.C. § 2301.

**Section 3.** In accordance with 5 U.S.C. § 2302, nothing in Section 2 above shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

**Section 4.** In accordance with 5 U.S.C. § 2302, nothing in Section 2 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the Civil Service under:

- A.** Section 717 of the Civil Rights Act of 1964 prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- B.** Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
- C.** Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
- D.** Section 501 of the Rehabilitation Act of 1973, prohibiting discrimination on the basis of handicapping condition; or
- E.** The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

**Section 5.A.** In accordance with 5 U.S.C. § 7121, an employee aggrieved under Subsection 2.A., above, may raise the matter under a statutory procedure or the grievance and arbitration procedures provided in this Agreement, but not under both.

- B.** An employee shall be deemed to have exercised his option under this Section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever event occurs first.
- C.** Selection of the grievance and arbitration procedures contained in this Agreement in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of Title 5 of the United States Code in the case of any personnel actions that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

**Section 6.** Except as provided in Section 5 above, any employee aggrieved under the provisions of this Article shall file his complaint under the grievance and arbitration provisions contained in this Agreement.

## **ARTICLE 8: POSITION DESCRIPTIONS AND CLASSIFICATION** **APPEALS**

**Section 1.** The position description is a written record of the principal duties and responsibilities assigned to a position and which comprise the work assigned to an employee. Position descriptions will clearly state what work is expected to be performed.

**Section 2.A.** Position descriptions will state the principal duties, responsibilities and supervisory relationships in a manner necessary for proper classification.

**B.** Position descriptions are not expected to contain a comprehensive or exhaustive listing of each and every task or duty which is performed by an employee. These incidental and infrequent duties may be omitted from the position description or covered by a brief statement showing that other minor duties may be performed.

**C.** It is understood that this Section does not preclude management from assigning such duties as necessary to accomplish its mission in accordance with law.

**Section 3.** A group of like positions with similar principal duties, responsibilities and supervisory relationships may be covered by a standard position description.

**Section 4.** CBP will take the necessary steps to ensure position descriptions accurately reflect the assigned duties of the employee occupying that position.

**Section 5.** An employee will be provided with a copy of his/her position description when (s)he reports for duty in the position; when changes are made in the position description; and upon appropriate request.

**Section 6.A.** In accordance with the procedures contained in this Agreement, CBP will notify NTEU regarding changes to be made in the grade controlling and/or principal duties and responsibilities of positions held by bargaining unit employees; changes in position descriptions; and the creation of new bargaining unit position descriptions.

- B.** Positions that have the same grade controlling duties or responsibilities will be classified at the same grade level in accordance with applicable law, rule or regulation.

**Section 7.** CBP will provide NTEU with copies of proposed classification standards referred to the Employer by the Office of Personnel Management (OPM) for comment.

**Section 8.A.** Employees are encouraged to discuss with their supervisor significant aspects of duty assignments are believed not covered by official position descriptions.

- B.** If the supervisor agrees that material differences exist, he will either arrange for the preparation of a new position description or amendment to bring the position up-to-date, or take action to assign the employee the duties and responsibilities reflected in the position description of record.

**Section 9.A.** A General Schedule employee may file a classification appeal directly with OPM or through the Appeals Procedure established by CBP. An employee may not pursue both procedures at the same time.

- B.** A Federal Wage System (e.g., Wage Grade) employee must file a classification appeal with CBP before going to OPM.

**Section 10.** When an employee elects to file a classification appeal directly with OPM, (s)he will do so in accordance with the appropriate rules and regulations. When an employee elects to file a classification appeal through the CBP appeals procedure, the following procedures will apply:

- A.** Appeals must be made in writing and forwarded to the CBP Office of Human Resources Management, Office of Compensation and Organizational Effectiveness Division.
- B.** An employee may file an appeal directly or designate, in writing, a representative to process the appeal. Two (2) or more employees may appeal jointly if they occupy identical additional positions and agree on the basis of the appeal.
- C.** Appeals must contain the following information:

- (1) The organizational location of the position;
- (2) The title (or requested title), series, and grade level;
- (3) Reasons why the position is believed to be incorrectly classified;
- (4) A statement of any relevant circumstances, information, or classification standards which have a bearing on the appeal; and,
- (5) If applicable, a written designation of representative.

**D.** CBP will provide a decision to the employee following a reasonable investigation and evaluation period, normally within sixty (60) calendar days of receipt of the appeal.

**Section 11.A.** In the event CBP issues an unfavorable decision, an employee may submit a classification appeal to OPM in accordance with established rules and regulations.

**B.** CBP will make available to employees the OPM requirements for submitting a classification appeal.

**Section 12.** A successful classification appeal will be effected no later than the beginning of the second full pay period following the receipt of the decision.

**Section 13.A.** Employees and NTEU may grieve reductions in grade or pay actions that result from classification decisions but not the substantive classification decision itself.

**B.** Where the classification of a position results in the reduction in grade or pay of an employee, the employee or NTEU may appeal through the grievance procedure and arbitration provisions of this Agreement, or, at their option, to the Merit Systems Protection Board under such regulations as the Board may prescribe.

**Section 14.A.** An employee who has filed a classification appeal will be entitled to a Union representative at any desk audit or meeting with any CBP representative concerning the appeal, provided that such representation is not prohibited by any rule, regulation or operating procedure of CBP.

**B.** An employee who has filed a classification appeal will not be subject to any penalty, reprisal, discrimination, or harassment because he has filed such an appeal.



## **ARTICLE 9: PERSONNEL RECORDS**

**Section 1.** Only information authorized by law or regulation will be maintained in an employee's electronic Official Personnel Folder (e-OPF) or Employee Performance Folder (EPF). No derogatory material of any nature which might reflect adversely upon the employee's character or Agency career will be placed in his or her e-OPF or EPF without his or her knowledge. Nothing in the e-OPF or EPF will be made available to any unauthorized person for inspection or photocopy. Moreover, even authorized persons may only access the files in connection with official business. A log will be kept of the name and date of any use of the files.

**Section 2.** An employee, or his or her personal representative designated in writing will, upon request, be given a sanitized (in accordance with the Privacy Act) copy of the audit trail log identifying the user(s) who accessed his/her e-OPF or EPF records. Such requests should be submitted to the employee's servicing Human Resources Management Specialist (for e-OPFs) or Mission Support Specialist (for EPFs).

### **Section 3. Supervisory records, notes and diaries.**

- A.** In the event an individual supervisor maintains a formal working file concerning an employee's conduct or performance (e.g., through the use of the former Office of Personnel Management Form 7B or equivalent), each employee or his or her personal representative designated in writing will, upon request, and in accordance with the provisions of the Freedom of Information Act and/or the Privacy Act solely for purposes of redaction, be given a copy of any document contained in such file with the exception of records restricted by law or regulation.
- B.** Notes or diaries maintained by a supervisor with regard to his/her work unit or employees are merely extensions of the supervisor's memory, and may be retained or discarded at the supervisor's discretion. However, they may not be given or shown to any other person but the supervisor who created them and the employee.
- C.** Such records, notes or diaries shall not be used as the basis to support an unfavorable personnel action, or denial of such, unless the employee has been shown and provided a copy of such record, note or diary after it has been determined that the information will be used for such purpose, and before it is used. Of course, these extensions of the supervisor's memory must also meet the requirements of the Privacy Act before they can be used.

**D.** The parties recognize that the longer a supervisory record covered by Section 3(A) of this Article is kept without notifying the employee of it, the less likely it is that the employee will be able to fairly respond to the notation due to the passage of time, e.g., asking the employee to explain why he came in ten minutes late on a day months ago. Consequently, employees will be given a reasonable amount of official time to timely respond to any potentially negative recordation maintained by the agency or an individual supervisor.

**Section 4.** There will be no personnel files, retrievable by name or other personal identifier (e.g., SSN), other than the individual supervisors' and the EPF or E-OPF.

## **ARTICLE 10: NOTICE TO EMPLOYEES**

**Section 1.** All new employees will be informed by the Agency that the Union is the exclusive representative of employees in the unit.

**Section 2.** An employee who receives a personally addressed notice, proposal or correspondence from the Agency concerning:

- A. Removal of firearm carriage authority;
- B. Leave restriction;
- C. Denial of a within-grade salary increase;
- D. A fitness for duty examination;
- E. A request for outside employment;
- F. Reassignment or transfer;
- G. An adverse action; or
- H. A disciplinary action;

shall receive an additional copy which states at the top of the first page: **THIS COPY MAY AT YOUR OPTION BE FURNISHED TO YOUR NTEU REPRESENTATIVE.**

An additional copy will not be provided in Section 2.G and 2.H notices if the employee has designated the Union as their representative but will instead be provided to the employee's Union representative pursuant to the procedures set forth at Article 45 Section 8 and Article 46 Section 7.

**Section 3.** Each employee will be furnished, on a bi-weekly basis, a payroll statement showing the employee's total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The notice shall also contain annual leave and sick leave balances. The Employer is not required to provide this information in a paper format as long as it provides employees access to the same information electronically.

**Section 4.A.** The Agency agrees to provide an employee who is injured while on duty status with a copy of the Department of Labor brochure, e.g. CA-550, and all the appropriate forms within a reasonable period of time after the reporting of the job accident or injury.

**B.** At a minimum, when the employee sustains a job-related injury which requires medical treatment, management shall promptly authorize treatment by giving the employee a properly executed CA-16 within 4 hours of the report. A CA-2 will be provided in lieu of the CA-1 if the employee is reporting an occupational illness.

**C.** Although the Agency will employ an electronic system in administering this Section, paper copies of the required documents will be available upon request.

**Section 5.A.** The Agency may periodically direct the attention of all employees to the Standards of Conduct, and their responsibilities thereunder, and the Table of Offenses and Penalties, through orientation sessions and formal and informal discussions.

**B.** Each supervisor will provide advice and guidance to the employees under his supervision concerning conduct questions, within the scope of his experience, knowledge and authority, and assist them in obtaining advice on conduct questions which are beyond that scope.

**C.** An employee who has a question concerning an interpretation or the application of the Standards of Conduct may forward the question, in writing, through normal supervisory channels. An answer will be provided in writing by an appropriate Agency representative.

## **ARTICLE 11: OUTSIDE EMPLOYMENT**

**Section 1.** In accordance with U.S. Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch, applicable regulations and directives, employees are required to obtain approval prior to engaging in outside employment, or participating in or being associated with a business enterprise.

**Section 2.** Outside employment means any form of non-Federal employment, activity, enterprise, or business relationship involving the provision of personal services by the employee. The definition of outside employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, service, or civic organization, unless the participation involves acting in a fiduciary capacity, providing professional services or the rendering of advice for compensation, or the activity relates to the employee's official duties, or creates the appearance of a conflict or otherwise interferes with the Agency's mission.

**Section 3.** The Employer will approve an employee request for outside employment, or participating in or being associated with a business enterprise, only upon a determination that the requested activity is not expected to involve conduct prohibited by statute or Federal regulation, does not give rise to the appearance of a conflict of interest or violation of law or Federal regulation, and does not interfere with the efficient performance of an employee's duty or availability for duty.

### **Section 4. Request Procedures.**

- A.** Employees desiring to accept or undertake outside employment, or to engage in or be associated with a business enterprise, shall obtain prior approval of the Employer by forwarding a request on CBP Form 3031, Request to Engage in Outside Employment or Business Activities. Provided the Form 3031 contains sufficient and complete information for the Employer to make a decision, the Employer will act on the request as soon as reasonably possible, but in no case later than fifteen (15) working days after receipt of the Form 3031.
- B.** In the event the employee has not received a response on his or her request to engage in outside employment or activity, the employee will contact the Employer to inquire as to the status of the request and the Employer will issue a final decision within ten (10) working days. If the Employer does not respond by that date, the Union may take the matter directly to expedited arbitration in accordance

with Article 28: Arbitration. If the Arbitrator finds the Agency failed to make any response to the employee, the arbitrator may assess all arbitration costs against the Agency.

C. If the Employer's response is to disapprove the request, it will provide the employee a written explanation of the basis for the disapproval.

**Section 5.** If the employee has not changed positions or duties, he or she need not reapply for approval simply because the approving official has changed.

**Section 6.** Employees are encouraged to ask for, and the Employer further agrees to provide guidance and specific interpretative assistance on questions concerning outside employment when requested in writing by the employee.

**Section 7.** When the Employer determines that upon further review or upon a change in circumstances, that any approved outside employment, activity, or association with a business enterprise is inconsistent with the criteria for approval, the employee shall be directed to terminate his outside employment or association within a reasonable period of time and the employee will terminate his outside employment by that date. This will be done by a written notice which includes an explanation for the basis of the disapproval.

**Section 8.** All challenges to the Employer's decision to deny or discontinue outside employment will be appealed directly through expedited arbitration in accordance with Article 28: Arbitration.

## **ARTICLE 12: PROBATIONARY PERIODS**

This Article is intended to clarify the policies, procedures and processes applicable to employees serving on probationary periods.

**Section 1.** For the purpose of this Article, *probationary period* refers to a probationary or trial period served by an employee that is established in accordance with the appointment under which an employee serves.

**Section 2.** Probationary periods will be served in accordance with applicable laws, regulations and the authority under which employees is appointed. The duration of such periods will be documented in the employee's Official Personnel Folder.

**Section 3.** During the probationary period, the employee's conduct and performance in the actual duties of the position will be observed, and the employee may be separated from the Agency in accordance with this Article and applicable regulations.

**Section 4.** The Employer will advise employees serving a probationary period of performance standards and standards of conduct at the beginning of the probationary or trial period.

**Section 5.** During the probationary period, the Employer will:

- A. Observe the employee's conduct, general character traits, and performance;
- B. Provide guidance in regard to work related problems; and
- C. Evaluate the employee's potentialities and attempt to determine whether the employee is suited for continued employment with the Employer.

**Section 6.** In the event the performance or conduct of an employee serving a probationary period may be lacking, the Employer will:

- A. Explain what is required of the employee in the position;

**B.** Identify areas where the employee needs improvement; and

**C.** Suggest ways or means for the employee to improve his or her performance and/or conduct.

**Section 7.** The Employer will meet with, discuss and counsel an employee serving a probationary period regarding his or her work, performance expectations, or conduct upon request by the employee. Such counseling will include those areas in which the employee indicates (s)he would like further guidance or knowledge.

**Section 8.** In evaluating a probationary employee's potentialities and determining whether the employee is suited for continued employment, the management official responsible for conducting the evaluation and making the determination may seek input from any supervisor or management official with or for whom the employee performed work during the probationary period.

**Section 9.** Nothing in this Article is to be interpreted as preventing or discouraging the Employer's initiation of a separation action at any time during the probationary period.

**Section 10.** In the event the Employer determines an employee will be separated during his/her probationary period, the Employer will inform the employee in writing of the separation, including the general reasons for and effective date of the separation. Such separations must be effective before the employee completes his/her probationary period.

**Section 11.** Nothing will prohibit an employee serving a probationary period from resigning in lieu of an Employer initiated separation.

**Section 12.** An employee serving on a competitive service appointment who is separated during the probationary period based on deficiencies in performance or conduct occurring after entering on duty, in accordance with law and regulation, may only appeal the separation to the Merit Systems Protection Board (MSPB) on the following grounds:

**A.** When the employee believes the separation was based on partisan political reasons or marital status; or



- B.** When the employee believes the separation was based on discrimination because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged discriminatory action the employee was at least forty (40) years of age, or disabling condition, only if such allegation is combined with an otherwise appealable matter based on subsection A.

**Section 13.** An employee serving on a competitive service appointment who is separated during the probationary period who is separated based in whole or in part on conduct occurring prior to employment, in accordance with law and regulation, may only appeal the separation to the MSPB on the following grounds:

- A.** When the employee believes the separation was based on partisan political reasons or marital status;
- B.** When the employee believes the Employer did not follow proper procedures for separating the employee as set forth in applicable laws and regulations; or
- C.** When the employee believes the separation was based on discrimination because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged discriminatory action the employee was at least forty (40) years of age, or disabling condition, only if such allegation is combined with an otherwise appealable matter based on subsections A. or B.

**Section 14.** Appeals to the MSPB must be filed no later than thirty (30) days after the separation has been effective, or as otherwise allowed by applicable MSPB regulations.

**Section 15.** Where an employee separated during the probationary period believes that the separation is based solely on discrimination because of race, color, religion, sex, or national origin, or because of age, provided that at the time of the alleged discriminatory action the employee was at least forty (40) years of age, reprisal for Equal Employment Opportunity activity, or disabling condition, the employee may pursue an appeal to the Equal Employment Opportunity Commission pursuant to procedures and time frames established by the Commission and its regulations.

**Section 16.** The separation of an employee during the probationary period is not subject to the grievance or arbitration procedures established elsewhere in this Agreement unless permitted by law, rule or regulation.

**Section 17.** Nothing in this Agreement diminishes the right of an employee serving a probationary or trial period from pursuing other appeal avenues with the assistance of NTEU such as appeals filed with the Office of the Special Counsel or to the Federal Labor Relations Authority.

## **ARTICLE 13: BID, ROTATION AND PLACEMENT**

### ***PART A: BID, ROTATION AND PLACEMENT FOR CBP OFFICERS AND CBP AGRICULTURE SPECIALISTS***

In the interest of providing opportunities for employees to receive work assignments in accordance with their preferences, this Part affords CBP Officers and CBP Agriculture Specialists within the Office of Field Operations an annual opportunity to bid on specific assignments or work units within the area of responsibility of their Port Director.

#### **Section 1. Definitions.**

- A. *Bid*** is the term used to refer to an individual's request to be assigned to a specific work unit. Similarly, ***bidding*** refers to the process of submitting a request for assignment to a work unit or higher level unit in accordance with this procedure. Such a bid constitutes an employee commitment to be assigned to those requested work units in the event (s)he is selected in accordance with these policies and procedures.
- B. *Covered employees*** include all CBP Officers and CBP Agriculture Specialists assigned to a port of entry who have successfully completed the formal academy and structured post-academy training programs, and are not the subject of any pending performance or disciplinary action, or the subject of an investigation of alleged misconduct, that may prevent the performance of the full scope of required duties. Employees on a temporary light duty assignment may participate in the bid process, provided the Agency possesses evidence that the employee will no longer be on light duty at the time of placement.
- C. *Duration*** refers to the length of time an employee serves within an assignment.
- D. *Mutual agreement*** refers to the ability of the local parties (e.g., a NTEU Chapter President and Port Director) to vary from the procedures set forth in this policy only if both parties agree to do so voluntarily. A "by mutual agreement" provision does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute procedures. Such agreements must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the annual bid cycle (i.e., August 1<sup>st</sup>) following receipt of the notice.

- E. *Placement*** refers to a change in an employee's assignment in accordance with these procedures, other than through rotation.
- F. *Qualifications*** refers to the knowledges, skills and abilities for particular assignments and for the composition of particular work units. Such qualifications will be uniformly applied throughout the unit, and limited to those established consistent with law and regulation.
- G. *Random selection*** means to arbitrarily and indiscriminately choose through an appropriate system. Unless specifically described or mutually agreed to at the local level, the default system for random selection from a defined group of employees shall be based on the matching of a randomly selected number ranging from zero (0) to nine (9) to the last digit of an appropriate numerical unique identifier assigned to each employee. This process shall be repeated using the second to last, third to last, etc. numbers to new randomly selected numbers until a single employee is identified.
- H. *Rotation*** refers to a change in an employee's assignment immediately following the annual bidding process.
- I. *Seniority*** will be determined by:
- (1) The total time an employee has served in his or her occupation (i.e., CBP Officer or CBP Agriculture Specialist), including time in an equivalent position (i.e., Customs Inspector, Immigration Inspector or PPQ Officer) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.
  - (2) In the event it is necessary to resolve ties after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
  - (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e., SCD) will be used.
  - (4) In the event it is necessary to resolve ties after step (3), the methodology provided by the local NTEU Chapter President for the port of entry will be used. Such methodology shall be provided prior to the bid cycle each year. Absent identification, the default methodology will be coin flip.

Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

- J. *Work unit*** means the smallest organizational component, operational or equivalent level to which groups of employees are normally assigned and for which qualifications for positions are defined and applied. Such units are specific to the configuration of each Port. Examples of work units are: airport, seaport, cargo, and passenger, and to the extent they exist, A-TCET, PAU, PERT, NII, ICAT and Outbound.

## **Section 2. Policies.**

- A.** To the extent consistent with operational requirements, on an annual basis each Port of Entry will solicit bids and rotate approximately twenty-five percent (25%) of covered employees within each work unit under these procedures.
- B.** Management may limit the number of rotations to less than twenty-five percent (25%) when it determines such limits are needed based on operational and mission requirements. In such circumstances, management will notify NTEU prior to the call for employee bids (at either the national or local level) as required by law.
- C.** Other limitations may be made only by mutual agreement between CBP and NTEU (at either the national or local level).
- D.** Management may, at its discretion, increase the percentage of opportunities available to more than twenty-five percent (25%), after informing and upon request, consulting with NTEU (at either the national or local level).
- E.** In processing employee bids under these procedures, management is responsible for ensuring employees are assigned to a particular work unit so as to ensure continuity of, and to prevent unnecessary disruption to, Agency operations. This responsibility includes determining the appropriate numbers, types (e.g., CBP Officers and Agriculture Specialists) and grades of employees with specific skill sets needing to be assigned or retained within a particular work unit or assignment. Nothing in this subsection is intended to permit the creation of a work unit based solely on grade.
- F.** Where management involuntarily extends the assignment of an employee to a particular work unit or assignment as a result of fulfilling its responsibility in Section 2.E., it will take reasonable steps to train others to replace the employee so

that the retained or extended employee may rotate within six months, but no later than the beginning of the next bid cycle. Management will also make reasonable efforts to alleviate any adverse impact on the extended or retained employee.

- G.** Employees selected for assignments pursuant to these procedures will normally perform the work assigned for a minimum of one full bid cycle period (e.g., October through September). As an exception, CBP may establish longer assignment durations in connection with assignments requiring specialized training involving significant investment of time and/or money by the Agency. Employees in such assignments may be required to remain on the assignment for one full bid cycle from the end of the cycle wherein the employee received the specialized training. Assignments to which this exception applies shall be identified prior to the call for employee bids, and will normally apply uniformly throughout the country.
- H.** Employees may not receive reimbursement for any travel or relocation costs associated with assignments made under these procedures.

### **Section 3. Procedures.**

- A.** During the month of September of each calendar year, each port of entry shall conduct a bid, rotation and placement process for covered employees in accordance with the below procedures.
  - (1) No later than August 1<sup>st</sup> of the first year this procedure is used, CBP will provide NTEU, at the national level, advance copies of standardized bid opportunity announcements for work units associated with national CBP programs (e.g., AASP/PAX Secondary, A-TCET, ATS/ATU, Cargo, CTR, PERT, PAU, Training Teams or other teams/assignments open to this process) for review. Such announcements will include a description of the work unit, the assignment's duration, as well as identify the knowledges, skills and abilities CBP intends to use to determine if an employee is qualified for such assignments. For subsequent years, CBP will similarly provide advance copies of announcements for work units for which the qualifications have changed from the previous year, or for newly established teams/assignments.
  - (2) NTEU shall provide its issues or concerns regarding the announcements to CBP no later than August 15<sup>th</sup> of each year.

- (3) No later than August 1<sup>st</sup> of the first year this procedure is used, CBP will provide NTEU, at the local level, advance copies of bid opportunity announcements for work units associated with localized functions (e.g., admin, scheduling, trusted traveler/enrollment center, or other teams/assignments open to this process) for review. NTEU shall provide its issues or concerns regarding the announcements to CBP no later than August 15<sup>th</sup> of each year. For subsequent years, CBP will similarly provide advance copies of the announcements for work units associated with localized functions for which the qualifications have changed from the previous year, or for newly established work units.
- (4) By local mutual agreement, qualifications for nationally defined work units may be supplemented by one (1) knowledge, skill or ability. Absent agreement, only the nationally established qualifications shall be used.
- (5) On or about September 1<sup>st</sup> of each year, CBP will identify and post (or distribute) the bid opportunity announcements at each Port.
- (6) Concurrent with the posting, CBP will make available (or distribute) a bid preference and qualifications statement form. To the extent practicable, CBP will standardize this form. Included on the form will be an area for the employee to identify and self-certify his/her seniority, as well as to provide up to four (4) prioritized bid preferences. In lieu of expressing a preference for a particular work unit, the employee may indicate (in any of the four (4) bid preferences) his/her desire to be placed anywhere within the next higher level from the posted bidding opportunity (e.g., A-TCET would be the next higher level for Outbound). By mutual agreement, the parties may increase or decrease the number of bid preferences.
- (7) Employees wishing to bid on one or more available assignments must submit a completed bid preference and qualifications form within ten (10) calendar days of the posting (or distribution) of the bid opportunity announcement postings. By mutual agreement, the parties may extend or adopt a longer bidding period.
- (8) For the purpose of providing transparency of process and procedural compliance awareness, local bid and rotation committees, consisting of at least two (2) representatives each from NTEU and CBP management shall review and process employee submissions. The committee may be a different size by mutual agreement. To ensure the committee is prepared to implement

these procedures each year, it will review these procedures as well as the employee submissions prior to doing so.

- (9) Upon request by the rotation committee, an employee may be required to provide proof of his/her seniority. Requests will be made only when necessary, as determined by at least one (1) member of the committee. In the event proof is not provided, the employee's bid request will be removed from consideration.
- (10) Management shall select qualified employees bidding for one or more assignments in seniority order, except when an obvious difference in qualifications exists among employees that would impact the performance of the work unit. To clarify, employee bids will be placed in seniority order, with the most senior processed first. The processing of bids will continue until the identified number (normally twenty-five percent (25%)) of new placements within each work unit is made.

When processing a bid, the employee will be placed in his/her highest priority bid for which (s)he is qualified and more senior than an employee currently assigned to that work unit. To accommodate this placement, the employee with the least seniority assigned to the work unit will be displaced. Absent the placement of the displaced employee through the processing of his/her bid preference and qualifications form, (s)he will be assigned to the Port's core function(s).

By mutual agreement, the parties may establish a different method for determining which employee is affected by the placement of a more senior qualified employee bidding to the work unit (e.g., first in – first out). Any such agreement must be made prior to, and publicized concurrently with, the bid opportunity announcements postings.

- B.** Bid preference and qualifications statements of employees who were not selected for any assignment during the annual bid and rotation cycle will be retained for use in accordance with Section 6 below.

#### **Section 4. Work Schedule Preference.**

- A.** Concurrent with the bid procedure, employees will be permitted to express a preference for available shifts or schedules within each work unit or assignment.



- B.** Selections for available shifts and/or work schedules will be made in a manner consistent with the policies and procedures delineated above. Such work schedule preferences, however, will not be limited to 25%.

**Section 5. Announcement and Implementation.** Absent unusual circumstances, CBP will announce and implement bid and rotation and work schedule bid results within thirty (30) calendar days of the close of the employee bid submission period.

**Section 6. Post-Rotation Vacancies.**

- A.** As they arise between bid cycles, CBP has elected to fill vacancies in work units subject to the annual bid and rotation process through one of the following methods:
  - (1) Placement of employees who submitted a bid preference and qualifications statement and were not selected for any assignment during the annual bid and rotation. Under this method, the most senior employee who bid to and was found qualified for the work unit will be placed. Employees placed through this method will be expected to perform the work assigned through the current bid cycle, or the identified assignment duration, whichever is greater.
  - (2) Placement of employees who were not selected for any assignment during the annual bid and rotation process, regardless of whether they submitted a bid preference and qualifications statement form. Under this method, employees will be identified and placed by random selection. Employees placed through this method will normally be assigned to the work unit for a period of six (6) months. Management has elected to limit the number of employees serving under such assignments to not more than twenty-five percent (25%) of a work unit. Upon conclusion of the assignment, the employee will be assigned to the Port's core function(s). The vacated position may be continue to be filled through this procedure, or that defined under Section 6.A.(1) above.
- B.** Absent unusual and unforeseen circumstances that would create a significant personal hardship for the employee, (s)he must accept placement under this procedure.
- C.** Once all employees who submitted a bid preference and were qualified for a particular work unit are placed, management may assign employees through any appropriate method.

## **Section 7. Assignment Dispute Procedure.**

**A.** The following procedure has been developed for the purpose of expediting a final resolution to claims of violations of this procedure. With this in mind, unless CBP and NTEU agree otherwise (at the national level), it shall serve as the exclusive procedure for addressing such claims.

- (1) In those cases which an employee or the union believes (s)he has not been assigned in accordance with these procedures, either shall be entitled, upon request, to a face-to-face meeting with the responsible management official to discuss the reasons for the his/her assignment. An employee shall be entitled to be accompanied by one (1) union representative at such meetings.
- (2) If the meeting in Section 7.A.(1) above does not resolve the matter, the union or employee will notify the Port Director (or designee) in writing of the claimed violation, including the nature of the error and requested remedy, within fourteen (14) calendar days of notice of the assignment decision.
- (3) If the notification includes a request for a meeting, the Port Director (or designee) will schedule one within seven (7) calendar days of receiving the submission, and the employee and the union representative will be entitled to reasonable travel and per diem, if appropriate, as well as time to travel and attend the meeting.
- (4) A written decision will be issued by the Port Director (or designee) no later than seven (7) calendar days following the meeting (or receipt of the employees submission if no meeting was requested). The decision shall include an explanation for the decision.
- (5) If the matter is not resolved to the union's (or employee's) satisfaction by the Port Director (or designee), it may be referred in writing to the appropriate Director of Field Operations (or designee) within seven (7) calendar days from the date of decision. The referral must identify the specific deficiency contained in the Port Director's decision.
- (6) The Director of Field Operations (or designee) shall provide a final decision on the matter within seven (7) calendar days following receipt of the referral.
- (7) In the event the Port Director or Director of Field Operations (or designees) determines that absent a management error, the employee should have been provided a different assignment, such assignment shall be made immediately to

the extent the assignment is available. If not available, or at the employee's (or union's) request, the employee will be placed at the top of the list(s) of work units or assignments for which (s)he bid for placement under Section 6(A)(1) above. In the event more than one employee is placed on these lists in accordance with this procedure, they will be listed in seniority order. Once placed from the bid list, the employee will remain in the position for at least one (1) full bid cycle (i.e., rotation to rotation).

(8) If the final decision is not acceptable to the union, it may be submitted to arbitration as if it was a final grievance decision. The parties are encouraged to combine related grievances submitted to arbitration within a port to be heard by a single arbitrator. At a minimum, where necessary to avoid arbitration decisions that could reasonably result in two or more employees being placed in the same position, such grievances will be combined and heard before a single arbitrator.

**B.** Upon request, the time frames contained in the above procedure may be extended by mutual agreement of the involved parties.

**C.** The placement of an employee under this dispute procedure (e.g., through the granting of a grievance or implementation of an arbitration award), or the impact of such a placement on other employees, is not subject to grievance or arbitration.

***PART B: BID & ROTATION AND WORK PREFERENCES FOR POSITIONS OTHER THAN CBP OFFICERS AND CBP AGRICULTURE SPECIALISTS.***

To increase the variety in work assignments, this Part describes bid and rotation and work preference procedures for positions other than CBP Officers and Agriculture Specialists.

**Section 1. Definitions.**

**A. *Covered employees*** include those employees, unless otherwise indicated, who have obtained the journeyman level in their respective occupation prior to the bid announcement date for the annual bid cycle, and are not the subject of any pending performance or disciplinary action, or the subject of an allegation of misconduct, that may prevent the performance of the full scope of required duties. Employees on a temporary light duty assignment may participate in the bid process, provided the Agency possesses evidence that the employee will no longer be on light duty at the time of placement.

- B. *Work unit*** is the term used to refer to a specific commodity team, trade team, entry branch, or similar organizational unit.
- C. *Bid*** is the term used to refer to an individual's request to be assigned to a specific work unit. Similarly, bidding refers to the process of submitting a request for assignment to a specific work unit. Such a bid constitutes an employee commitment to be assigned to that requested work unit in the event (s)he is selected in accordance with these policies and procedures.
- D. *Rotation*** refers to a change in an employee's assignment immediately following the bidding process.
- E. *Mutual agreement*** refers to the ability of the local parties (e.g., a NTEU Chapter President and Port Director, or designees) to vary from the procedures set forth in this policy only if both parties agree to do so voluntarily. A "by mutual agreement" provision does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute procedures. Such agreements must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the next bid cycle following receipt of the notice.
- F. *Qualifications*** refer to the knowledge, skills and abilities the Agency has determined necessary for particular assignments and for the composition of particular work units. Such qualifications will be uniformly applied, and limited to those established consistent with law and regulation.
- G. *Seniority*** will be determined by:
- (1) The total time an employee has served in his or her series (e.g., 1889 or 1894). Time served as an Import Specialist or Entry Specialist on a less than full time basis will be credited for seniority purposes on a pro rated basis.
  - (2) In the event it is necessary to resolve ties after step (1), the total time assigned to the position at the current duty location.
  - (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e., Service Computation Date) will be used.

## **Section 2. Import Specialist & Entry Specialist Policies.**

- A.** Unless the parties mutually agree to another procedure(s) at the local level, this procedure will serve as the default bid and rotation process for covered Import Specialists and Entry Specialists. An election not to conduct any bid and rotation for covered employees may be made by mutual agreement.
- B.** Management will solicit annual bids and rotate at least one associate per four (4) or five (5) person work unit, and at least two (2) associates per six (6), seven (7), or eight (8) person work unit. Locations that do not have more than one (1) work unit will not have a bid and rotation process.
- C.** Management may limit the number of rotations to less than that prescribed in Subsection B above when it determines such limits are needed based on operational and mission requirements. In such circumstances, management will inform the local NTEU chapter prior to the solicitation for employee bids and take the necessary steps to permit the rotation of employees in accordance with this Article by the next bid cycle.
- D.** Management may, at its discretion, increase the number of rotation opportunities to more than that prescribed in Subsection B above, after informing and upon request, consulting with the local NTEU chapter.
- E.** In processing bids under these procedures, management is responsible for ensuring employees are assigned to a particular work unit so as to ensure continuity of, and to prevent unnecessary disruption to, Agency operations. This responsibility includes determining the appropriate numbers, types and grades of employees with specific skill sets needing to be assigned or retained within a particular work unit or assignment. Nothing in this Article is intended to create a work unit based solely on grade.
- F.** Import Specialists and Entry Specialists rotating to a new team will be provided a reasonable amount of training determined necessary by the supervisor. Safety equipment and protective devices shall be provided to Import Specialists as required and prescribed by applicable regulations, directives and provisions of this Agreement.
- G.** Import Specialists and Entry Specialists selected for assignments pursuant to these procedures will, absent just cause, perform the work assigned for a minimum of three (3) years after which they will be eligible to participate in the next bid cycle.

- H. Import Specialists and Entry Specialists selected for assignment pursuant to these procedures will be expected to conform to the work schedule requirements and practices of the new work unit to which they are assigned. As tours of duty (including Alternative Work Schedules (AWS)) are established for and tied to specific work units, the placement of an employee may necessitate the change of the employee's schedule (including from an AWS to a regular schedule) if so required to be consistent with work unit's negotiated agreements, established scheduling procedures and practices.
- I. Import Specialists and Entry Specialists may not receive reimbursement for any travel or relocation costs associated with assignments made under these procedures.
- J. Import Specialists and Entry Specialists that are reassigned to another duty location during the bid cycle will be placed at management's discretion. Those employees will be eligible during the next bidding process if they meet the definition of covered employees.

### **Section 3. Import Specialist & Entry Specialist Procedures.**

- A. On or about September 1<sup>st</sup> of each year, duty locations will make available to Import Specialists and Entry Specialists the work units and number of positions available for bidding. Management's advertisement will also include a brief description of the work unit, necessary qualifications, as well as the tour(s) of duty available.
- B. Within ten (10) work days of advertising available bids, covered employees will submit a number of bids equal to the number of work units at their location in priority order to their supervisor. Included with the bids, the employee will self-certify his/her seniority. By mutual agreement, the parties may extend or adopt a longer bidding period.
- C. For the purpose of providing transparency of process, local bid and rotation committees, consisting of at least two (2) representatives each from NTEU and CBP management shall process employee submissions. By mutual agreement, the committee may be a different size. To ensure the committee is prepared to implement these procedures each year, it will review the procedures and the employee bids prior to processing submissions.

- D. Upon request by the committee, an employee may be required to provide proof of his/her seniority. Requests will be made only when necessary, as determined by at least one (1) member of the committee. In the event proof is not provided, the employee's bid request will be removed from consideration.
- E. Absent just cause, bids will be granted in qualified seniority order for the first bid cycle conducted after the effective date of this Agreement. When processing a bid, the employee will be placed in his/her highest priority bid where there is a vacancy.
- F. During the second bid cycle after the effective date of this Agreement, employees who participate in the first cycle will be ineligible. The remaining most senior employees will have their bids processed by the Committee.
- G. During the third cycle after the effective date of this Agreement, employees who participate in the first and second cycle will be ineligible. The remaining most senior employees will have their bids processed by the Committee. The next years bid cycle will restart with the employees whose bids were granted in Subsection E.
- H. During any bid cycle when the most senior employee bids to remain assigned to their current work unit, the next most senior covered employee will have their bid processed by the Committee until a vacancy (if any) exists.

#### **Section 4. Senior Import Specialist Policies.**

- A. Unless the parties mutually agree to another procedure(s) at the local level, this procedure will serve as the default bid and rotation process for covered Senior Import Specialists. An election not to conduct any bid and rotation for covered employees may be made by mutual agreement.
- B. Management will solicit annual bids from all Senior Import Specialists (GS-1889-12) who have worked on their respective work unit for at least four (4) years. Rotation and placement onto other available work units will be determined by seniority. Locations that do not have more than one (1) work unit will not have a bid and rotation process for Senior Import Specialists.
- C. Management may limit the number of rotations when it determines such limits are needed based on operational and mission requirements. In such circumstances, management will inform the local NTEU chapter prior to the solicitation for employee bids and take the necessary steps to permit the rotation of employees in

accordance with this Article by the next bid cycle.

- D.** Management may, at its discretion, increase the number of rotation opportunities after informing and upon request, consulting with the local NTEU chapter.
- E.** In processing bids under these procedures, management is responsible for ensuring employees are assigned to a particular work unit so as to ensure continuity of, and to prevent unnecessary disruption to, Agency operations. This responsibility includes determining the appropriate numbers, types and grades of employees with specific skill sets needing to be assigned or retained within a particular work unit or assignment.
- F.** Senior Import Specialists rotating to a new team will be provided a reasonable amount of training determined necessary by the supervisor. Safety equipment and protective devices shall be provided to Import Specialists as required and prescribed by applicable regulations, directives and provisions of this Agreement.
- G.** Senior Import Specialists selected for assignments pursuant to these procedures will, absent just cause, perform the work assigned for a minimum of four (4) years after which they will be eligible to participate in the next bid cycle.
- H.** Senior Import Specialists selected for assignment pursuant to these procedures will be expected to conform to the work schedule requirements and practices of the new work unit to which they are assigned. As tours of duty (including Alternative Work Schedules (AWS)) are established for and tied to specific work units, the placement of an employee may necessitate the change of the employee's schedule (including from an AWS to a regular schedule) if so required to be consistent with work unit's negotiated agreements, established scheduling procedures and practices.
- I.** Senior Import Specialists may not receive reimbursement for any travel or relocation costs associated with assignments made under these procedures.
- J.** Senior Import Specialists that are reassigned to another duty location during the bid cycle will be placed at management's discretion. Those employees will be eligible during the next bidding process if they meet the definition of covered employees.



## **Section 5. Senior Import Specialist Procedures.**

- A.** On or about October 1<sup>st</sup> of each year, duty locations will make available to Senior Import Specialists the work units (i.e., teams) and number of positions available for bidding. Management's advertisement will also include a brief description of the work unit, necessary qualifications, as well as the tour(s) of duty available.
- B.** Within ten (10) work days of advertising available bids, covered employees will submit a number of bids equal to the number of work units at their location in priority order to their supervisor. Included with the bids, the employee will self-certify his/her seniority. By mutual agreement, the parties may extend or adopt a longer bidding period.
- C.** For the purpose of providing transparency of process, local bid and rotation committees, consisting of at least two (2) representatives each from NTEU and CBP management shall process employee submissions. By mutual agreement, the committee may be a different size. To ensure the committee is prepared to implement these procedures each year, it will review the procedures and the employee bids prior to processing submissions.
- D.** Upon request by the committee, an employee may be required to provide proof of his/her seniority. Requests will be made only when necessary, as determined by at least one (1) member of the committee. In the event proof is not provided, the employee's bid request will be removed from consideration.
- E.** Absent just cause, bids will be granted in qualified seniority order for the first bid cycle conducted after the effective date of this Agreement. When processing a bid, the employee will be placed in his/her highest priority bid where there is a vacancy.
- F.** During the second bid cycle after the effective date of this Agreement, employees who participate in the first cycle will be ineligible. The remaining most senior employees will have their bids processed by the Committee.
- G.** During the third cycle after the effective date of this Agreement, employees who participate in the first and second cycle will be ineligible. The remaining most senior employees will have their bids processed by the Committee.
- H.** During the fourth cycle after the effective date of this Agreement, employees who participate in the first, second, and third cycles will be ineligible. The remaining most senior employees will have their bids processed by the Committee.

- I. The next year's bid cycle will restart with the employees whose bids were granted in subsection E.
- J. During any bid cycle when the most senior employee bids to remain assigned to their current work unit, the next most senior covered employee will have their bid processed by the Committee until a vacancy (if any) exists.

**Section 6.** Absent unusual circumstances, CBP will announce and implement bid and rotation results within thirty (30) calendar days of the close of the employee bid submission period.

**Section 7.** By mutual agreement, the parties may establish a different method for determining which covered employee is affected by the placement of a more senior qualified covered employee bidding to the work unit (e.g., first in – first out). Any such agreement must be made prior to, and publicized concurrently with the bid announcement postings.

**Section 8. All Other Positions.**

- A. On at least an annual basis (normally an employee's annual proficiency review meeting) all other non-uniformed employees will be permitted to express a preference for routine work assignments, e.g., audits, accounts, or branches, for management's consideration. In the event a preference cannot be accommodated, management will meet with a requesting employee and explain the decision(s) not to accommodate the preference and discuss potential alternatives. Upon request from an employee, management will provide a written explanation as to why a work preference couldn't be accommodated.
- B. Upon mutual agreement of the local parties, other bid and rotation procedures may be created for bargaining unit positions other than CBP Officer, CBP Agriculture Specialist, Import Specialist and Entry Specialist.
- C. However, those locations operating under existing practices will continue on those practices to the extent that they comply with the provisions of this Article and changes are implemented in accordance with law and this Agreement.

## **ARTICLE 14: ALTERNATIVE WORK SCHEDULES**

**Section 1.** Alternative work schedules are potential scheduling options. Establishment and termination of such scheduling options is subject to applicable law, regulations and the terms of this Agreement. Furthermore, employees covered by this Agreement may participate in a flexible or compressed work schedule only to the extent expressly provided under a locally negotiated agreement.

**Section 2.** CBP and NTEU recognize and acknowledge that broad use of alternative work schedules enable employees to better balance their work and personal responsibilities, increase employee effectiveness and job satisfaction, and aid CBP's recruitment and retention efforts. The parties therefore agree to take necessary and reasonable steps, consistent with the effective and efficient accomplishment of the Agency's mission, to support and encourage employee use of alternative work schedules. Such steps may include:

- A.** Identifying Agency positions that are suitable for alternative work schedules;
- B.** Adopting appropriate policies to increase the opportunities for employees in positions suitable for participation in alternative work schedules;
- C.** Providing appropriate training and support necessary to implement alternative work schedules; and
- D.** Identifying barriers to implementing alternative work schedules, and developing strategies for addressing such barriers.

**Section 3.** Flexi-tour and compressed work schedules are the two (2) types of alternative work schedules available for local implementation.

**Section 4.** Flexi-tour is a flexible schedule in which an employee, having once selected start and end times within established flexible time bands, continues to adhere to those times until the periodic opportunity to change arises. CBP and NTEU agree this Section shall not apply to employees compensated under the Customs Officer Pay Reform Act (COPRA).

- A.** The following definitions apply to Flexi-tour work schedules:

- (1) *Basic Work Requirement*: Ten (10) eight-hour days (plus an unpaid lunch period each day of 30 to 60 minutes, as required) during each bi-weekly pay period.
- (2) *Core Hours (Time)*: The designated hours and days during the bi-weekly pay period when an employee on a flexible schedule must be at work.
- (3) *Flexible (Flex) Time*: That part of the schedule of working hours during which employees, subject to supervisory approval, may choose their time of arrival and departure from work.
- (4) *Credit Hours*: Any hours worked under a flexi-tour schedule which are in excess of an employee's basic work requirement which, upon management approval (e.g., that sufficient work to be performed exists), are worked at the request of the employee. Credit hours may be earned and used in quarter-hour increments. Credit hour use must be requested by the employee and approved by management in advance. A request to use credit hours will be granted, workload permitting.

**B.** At the local level, either party may initiate bargaining over the establishment and implementation of a Flexi-tour schedule, or the modification or termination of an existing practice. In addition to whether the establishment of such a schedule is feasible, the scope of such negotiations may include:

- (1) Commencement date and frequency of the periodic opportunity period;
- (2) Where the number of employees permitted to work specific start times and to take a lunch break at a specific time is limited, the procedures by which qualified employees will be notified of, express interest in and selected for specific schedules;
- (3) Procedures by which opportunities to work credit hours are offered and assigned among qualified and available employees; and
- (4) Where work requirements prevent the approval of all requests for credit hour use received for a particular time, the procedures by which conflicting requests among qualified employees will be resolved.

## **Section 5. Compressed Work Schedules**

- A.** A compressed work schedule is defined as an eighty (80) hour basic work requirement in a pay period which is scheduled for less than ten (10) workdays. The following are examples of widely recognized (a.k.a. traditional) compressed work schedules:
- (1) 5/4-9: a schedule comprising of eight (8) workdays of nine (9) hours each and one (1) workday of eight (8) hours in each pay period.
  - (2) 4-10: a schedule comprising of four (4) workdays of ten (10) hours each in each administrative workweek of the pay period.
- B.** At the local level, either party may initiate bargaining over the establishment and implementation of a compressed work schedule, or the modification or termination of an existing practice.

**Section 6.** Flexible and compressed work schedules established through local negotiations must reasonably align to staffing and workload requirements, and not adversely impact operations or result in increased operating costs (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule). With this in mind, in order to promote the availability and employee participation in such scheduling options, where traditional compressed work schedules are not feasible, local parties are encouraged to explore the feasibility of more creative compressed work schedule options such as (but not limited to) alternating between compressed and regular schedules based on known fluctuations in workload (e.g., seasonal fluctuations).

**Section 7.** Management may require an employee who is on temporary assignment, travel or training to adopt a regular work schedule for the pay period(s) in which such temporary assignment, travel or training occurs, the work associated with the temporary assignment, travel or training does not align with the employee's regular work schedule and management reasonably determines that there is no legitimate work that may be assigned that would allow the employee to work his/her established tour of duty.

**Section 8.** Management may temporarily suspend the use of flexible and compressed work schedules for a particular work group or team in order to meet unexpected work requirements or changes in staffing levels that require such a suspension, provided a

minimum of two (2) weeks advance notice is provided to the affected employees and designated union representative. Such notices will include the date such schedules are expected to resume. Nothing shall prohibit the local union from voluntarily agreeing to adjust schedules prior to the conclusion of the two week notice period, if acceptable to management. Absent local agreement, such temporary suspensions shall not be longer than three (3) pay periods in duration.

**Section 9.** Should the Employer at any time determine that a locally negotiated flexible or compressed work schedule has had an adverse impact, e.g., a reduction in productivity, a diminished level of services furnished to the public, or has resulted in an increase in operating costs (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule), the Employer will notify the Union of its intent to modify or terminate such schedules in accordance with applicable law and regulation. Such notice will include an explanation of the basis for the Employer's decision.

**Section 10.** If the Employer and the Union reach an impasse with respect to establishing or terminating a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel for resolution in accordance with applicable law and regulation.

**Section 11.** The policies, practices, and procedures established under previous local agreements governing flexible and compressed schedules shall remain in effect only to the extent that they comply with the provisions of this Article and neither party exercises their ability to reopen and invoke negotiations. If the union invokes negotiations either at its own initiative or in response to an employer proposal to terminate an existing local agreement or practice, changes will not be implemented until the bargaining obligations of law are met.

**Section 12.** Local agreements established in accordance with this Agreement may be reopened by either party at any time.

## **ARTICLE 15: TELEWORK**

**Section 1.** Telework (also commonly referred to as flexiplace or telecommuting) has the potential to enhance the quality of work life for employees, while also maintaining productivity and mission accomplishment. The policy and procedures contained in this Article memorializes the Agency's commitment to implement Telework for the bargaining unit.

**Section 2.** The Agency will make available the procedures, policies, and related forms and information concerning Telework to all supervisors and bargaining unit employees via the CBP intranet. Such information will include the impact of the alternative worksite becoming the employee's official duty station, e.g., potential changes in locality pay. Through this intranet posting, employees may submit questions regarding Telework. Based on the questions received, the Agency will post and periodically update Frequently Asked Questions as an additional resource.

### **Section 3. Definitions.**

- A. *Alternate Worksite*** is a place where official duties are performed away from the traditional worksite. An alternate worksite can be a designated area in a home-based office or other approved location.
- B. *Approving Official*** is a management official with delegated authority to review, modify, approve, and/or terminate the Telework arrangement.
- C. *Core Telework*** is a Telework arrangement that occurs on a routine, regular, and recurring basis one or more days per work week.
- D. *Situational/Episodic Telework*** is a Telework arrangement that occurs on an occasional, non-routine basis, such as during emergencies (i.e., inclement weather, natural or a man-made disaster, etc.) or temporary medical situation/condition.
- E. *Telework*** is an arrangement in which an employee performs official duties away from the traditional worksite on either a regular and recurring or on a temporary basis. Telework is also known as flexiplace, flexible workplace, or telecommuting.
- F. *Traditional Worksite*** is a worksite that is located where the employee regularly performs his or her duties absent a Telework agreement and as long as the

employee is scheduled to report physically at least once a week on a regular and recurring basis to that traditional worksite.

#### **Section 4. General Policies.**

- A.** An employee's participation in a Telework arrangement is voluntary. Telework is neither an employee entitlement, nor an alternative for child, elder or dependent care or a means to conduct personal business (e.g. home repairs, running a self-owned business, etc.).
- B.** Telework is appropriate for those positions whose assigned duties, tasks, or other work activities can be performed at an alternate worksite.
- C.** In order to participate in Telework, employees in eligible positions (see Section 5 below) must have a performance rating of Successful (or equivalent) and may not be on leave restriction, the subject of any pending performance or disciplinary action, or the subject of an allegation of misconduct, that may prevent the performance of the full scope of required duties.
- D.** Employees who have been subjected to any disciplinary or performance action within the last twelve (12) months are ineligible to participate in a Telework arrangement. Exceptions to this criterion may be requested by employees in an eligible position and approved or denied by the approving official on a case-by-case basis.
- E.** Eligible employees who wish to participate in Telework must provide a signed copy of the Telework package (CBP Telework agreement and safety checklist) to their approving official.
- F.** Participating employees and their supervisors must complete the appropriate on-line Office of Personnel Management's Telework training course. Participating employees must certify their completion of the training by attaching the completion certificate to their Telework agreement.
- G.** Unless otherwise instructed by an approving official, employee(s) will perform official duties only at the traditional worksite or Agency approved alternate worksite. Upon request, an employee's alternate worksite will be his or her approved home-based office.



- H.** A permanent change in the terms of the Telework arrangement requires a new Telework agreement setting forth such changes.
- I.** Nothing in this Article prohibits management from approving participating employees to Telework up to five (5) days per week and work any of the Compressed Work Schedules established in accordance with Article 14: Alternative Work Schedules.
- J.** In the event a Telework request is denied by the approving official, the employee will be provided with a written justification supporting the denial.
- K.** When considering employee requests to Telework, the Agency acknowledges its commitment to approve Telework requests consistent with its responsibility for ensuring the successful performance of Agency work at the traditional and alternate work sites.

#### **Section 5. Position Eligibility.**

- A.** Eligibility in a Telework arrangement is directly connected to the work duties assigned to a position. Absent the performance of duties identified in subsection B. below, most positions that do not require the wearing of a CBP uniform are presumed to be appropriate for Telework.
- B.** Examples of duties that would justify some or all employees in a position being ineligible for Telework arrangements may include one or more of the following:
  - (1) On-site activity that cannot be handled remotely or at an alternative worksite;
  - (2) Office support and phone coverage;
  - (3) Hands-on contact with machinery, equipment, vehicles, etc.;
  - (4) Positions that require the physical presence at all times; or
  - (5) When Customer service or Agency mission would be adversely affected (e.g., workload increase for other employees, team performance is reduced, unable to respond to customers/clients, etc.).

- C. Entire position series may be ineligible for core Telework arrangements if there not a sufficient amount of appropriate work to justify at least one (1) day of Telework per pay period.
- D. All participating employees, including employees in positions generally excluded from core Telework arrangements, are eligible for situational/episodic Telework arrangements.
  - (1) Determinations as to situational/episodic Telework arrangements will be made on an ad hoc basis based on the employee's ability to perform assigned duties, task or other work activities at the alternate worksite.
  - (2) In the event a request for situational/episodic Telework is denied by the approving official, the employee will be provided with a written justification supporting the denial.

## **Section 6. Compensation & Benefits.**

- A. Unless participating in a full-time arrangement which results in a change in the employee's official duty station, Telework is not a basis for changing salary or benefits.
- B. Upon approval of a core Telework arrangement (i.e., one or more Telework days per week), a participating employee who also participates in the Public Transportation Incentive Program (PTIP) will submit an amended PTIP benefit application to reflect any reduction in actual transportation costs, as appropriate.
- C. The participating employee's timekeeper will have a copy of the employee's work schedule. The employee's time and attendance for hours worked at the traditional worksite and the alternate worksites, which are consistent with the Agency's policy, will be certified by the approving official bi-weekly.
- D. Participating employees may be assigned and approved overtime as determined necessary by the Agency. All applicable employment and labor laws, including but not limited to statutes, regulations, rules, policies, negotiated agreements, etc. governing overtime and/or work scheduling, will continue to be adhered to. Participating employees must ensure that all overtime is authorized/approved, in advance, by his/her supervisor.

## **Section 7. Leave.**

- A.** Employees will continue to follow established office procedures and practices for requesting and obtaining approval of leave.
- B.** In emergency situations, which require the traditional worksite to close, the employee will continue to perform at his or her alternate worksite unless the work cannot be performed due to the closing of the traditional worksite. When an emergency affects only the alternate worksite for a major portion of the workday, the employee must consult with the supervisor for instructions as whether to report to the traditional worksite or request annual leave or leave without pay.

## **Section 8. Conduct.**

Participating employee(s) are bound by Agency standards of conduct while working at the alternate worksite. Nothing in this Article precludes the Agency from taking any appropriate disciplinary or adverse action against an employee who fails to comply with the provisions of their Telework agreement or Agency policies and procedures.

## **Section 9. Technology and Security.**

- A.** Participating employee(s) must certify that the Agency's Security Awareness Training has been completed.
- B.** Participating employee(s) must have an internet connection (high-speed connection [e.g., DSL or cable] is recommended) before requesting a Telework arrangement. Employees must be accessible at all times, via telephone, during his/her working hours.
- C.** Employees who Telework will ensure government property and information are kept safe, secure, and separated from his/her personal property and information.
- D.** Employees who Telework will be the sole operators of the government-owned equipment they use and will abide by established Agency policy regarding the use of government-owned equipment for personal business.
- E.** Technical support will be provided to participating employees when needed. A participating employee's Telework arrangement may be temporarily or permanently terminated, in the event technical problems significantly reduce

independence from the traditional worksite that prevents the employee from performing assigned duties at the alternate worksite.

### **Section 10. Liability.**

The Agency will not be liable for damages to an employee's personal or real property while the employee is working at the approved alternate worksite, except to the extent the Agency is found liable under by the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act.

### **Section 11. Alternate Worksite Costs.**

- A.** The Agency will provide the supplies and equipment that are necessary for participating employees to perform their assigned duties. Such equipment may include a laptop computer, Mobi Key, required software, docking station and a pre-paid phone or long-distance calling card for those employees required to make authorized long-distance calls. Customary office supplies (such as paper, pens, etc.) provided at the traditional worksite will be made available by the Agency to employee(s) participating in a Telework arrangement.
- B.** When such pre-paid phone or long-distance calling cards are temporarily not available, the following procedures will apply. In accordance with government-wide regulations, participating employee(s) may receive reimbursement for business-related long distance phone calls made on the employee's personal phone. To the extent business-related long distance calls result in additional personal costs, the employee should submit a Standard Form 1164 through appropriate channels to request reimbursement.
- C.** Technical administrative services such as photo-copying, facsimile transmissions, mailing, etc. will normally be conducted during time at the traditional work site. In the event a participating employee desires Agency reimbursement for technical administrative services performed at an alternate work site, advance written approval must be obtained from the Agency.

### **Section 12. Workers' Compensation.**

Participating employee(s) are covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at either the traditional or the

alternate worksite. The employee will notify the supervisor immediately of any accident or injury that occurs at the alternate worksite and to complete any forms required in connection with claims based upon the accident/injury.

### **Section 13. Work Assignments/Performance.**

Participating employees will be evaluated pursuant to the procedures set forth in Article 19: Employee Proficiency Review and will be expected to perform work assignments as if they were working at the traditional worksite. A significant decline in performance or productivity may be grounds for terminating the alternate worksite arrangement consistent with the procedures established in accordance with this Article. If an employee is removed from Telework participation, the employee may reapply after six (6) months.

### **Section 14. Records Management.**

Participating employee(s) will protect U.S. Government and Agency records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974 (5 U.S.C. § 552(a)).

### **Section 15. Home Inspections.**

- A.** The Agency reserves the option to inspect alternate worksites for adequacy and compliance with safety requirements.
- B.** Absent unusual circumstance, home inspections will be conducted during normal working hours with prior notice of at least two (2) business days.
- C.** Upon request by a participating employee, a NTEU representative may be present at a home inspection while in an official time status consistent with Article 30: Union Representatives and Official Time. Home inspections will not be unreasonably delayed to accommodate a request for NTEU presence at the home inspection.

**Section 16. Agency Directed Return to Work & Changes to Telework Arrangements.**

- A.** Participating employee(s) must be available to work at the traditional worksite, normally with a one-day advance notice, when management makes a determination that the employee's presence is required. The employee may request to Telework on an alternate day, in cases where he/she is required to report to the traditional worksite on a regularly scheduled Telework day.
- B.** When a participating employee is required to return to the traditional worksite on a temporary basis, the employee must report within a reasonable amount of time. Time required to report to the official worksite, including traveling distance and mode of transportation factors, will be taken into consideration in evaluating what is reasonable.
- C.** Requests by the participating employee to change a scheduled Telework day(s) in a particular week or biweekly pay period must be submitted in advance, prior to the effective date of the change, in writing, and approved by the Agency.
- D.** In the event an employee is removed from Telework for cause, i.e., the employee is ineligible pursuant to the policies set forth in Section 4.C. above, the employee will be expected to return to the traditional worksite on a permanent basis within a reasonable period of time.

**Section 17. Employee Initiated Return to Work.**

If a participating employee believes there is a need to return to the traditional worksite, the employee will normally provide their approving official with two (2) weeks advance notice. The notice will indicate if the return to the traditional worksite is temporary or permanent and also include a brief description of the reason(s) prompting the return to the traditional worksite.

**Section 18.A.** Employee(s) returning to the traditional worksite for any reason may not have the same working conditions they had prior to participating in a Telework arrangement.

- B.** The Agency will attempt to provide the returning employee with the same working conditions (work area space, equipment, etc.) that the employee possessed prior to participating in Telework.

- C. In the event the returning employee's prior working conditions cannot be accommodated, the Agency, within a reasonable amount of time, will provide similar working conditions as other bargaining unit employees at the traditional worksite.

**Section 19. Selection Order.**

- A. In following through with its commitment to support Telework, the Agency will make a good-faith effort to provide sufficient funding for Telework arrangements. In the event limited funding or resources result in limitations on selections for Telework arrangement to fewer than the number of employees volunteering, the following hierarchy will be followed:

- (1) Employee with a disability;

- (2) Employee with temporary or chronic health problems who may otherwise choose to leave the Agency; then

- (3) All other selections will be made by seniority. Seniority is defined as time as a CBP employee in the position subject to Telework. Ties will be broken by Service Computation Date, then coin flip. In the event that selections are between employees in different positions, seniority will be determined by Service Computation Date.

- B. Conflicts in days worked at the alternate work site, will be resolved through seniority as defined in subsection A.(3) above.

**Section 20.** To foster the growth of and monitor the efficiency of the Telework program, NTEU will be provided the same Telework data provided by the Agency in compliance with statutory or regulatory reporting requirements.

**Section 21. Local Level Variation.**

- A. By mutual agreement of the parties at the local level, post-implementation bargaining concerning the impact of changes in office space, selection orders, and any other Telework matter not in conflict with this Article or Agreement is permitted. "By mutual agreement" is an understanding that neither party is allowed to take post-implementation bargaining disputes to any method of

Impasse resolution.

- B.** In order to expedite the implementation of Telework benefits, the procedures of this Article will serve as the default during post-implementation bargaining, as well as in the event both local parties have no desire to engage in post-implementation bargaining.



## **ARTICLE 16: TRAVEL**

**Section 1.A.** Employees shall be reimbursed for travel on official business in accordance with law, regulation, and this Agreement in the maximum amounts permissible.

**B.** Employees authorized to use the Agency's automated travel system will be provided with sufficient training as needed.

**C.** Any changes in rates or reimbursement to Federal employees by law or regulation during the life of this Agreement are hereby made part of this Agreement.

### **Section 2. Definitions.**

**A. *Official duty station*** is defined as a location where the employee normally reports for the workday.

**B. *Temporary duty station*** is defined as any job-site where the employee does not normally report for the workday or a location other than where the employee originally reported for the workday. The parties agree that the definition of temporary duty station is applicable for determinations of mileage and other related travel expenses subject to reimbursement in accordance with existing federal travel regulations.

**C.** For applicable travel compensation purposes (e.g. comp time, per diem), official duty station is defined as a mileage radius of not greater than 50 miles. The 50 mile rule for determining travel compensation should not be applied to local travel procedures and mileage reimbursements contained in Section 5.

**Section 3.A.** To the maximum extent practicable, the Agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee. When travel is required outside the regularly scheduled workweek, the official involved shall furnish the employee, upon request, written reasons for his decision.

**B.** Time spent in a travel status away from the official duty station of an employee is not hours of employment for pay purposes for employees *exempt* from the FLSA unless:

(1) The travel is within the employee's regularly scheduled administrative workweek, including regularly scheduled overtime; or

(2) The travel is outside the employee's regularly scheduled administrative

workweek, the travel is ordered or approved, and the travel meets one of the following four conditions:

- (a) The travel involves the performance of actual work while traveling;
- (b) The travel is incident to travel that involved the performance of work while traveling;
- (c) The travel is carried out under arduous and unusual conditions; or
- (d) Travel results from an event that cannot be controlled administratively.

**C.** Time spent in a travel status away from the official duty station of an employee is not hours of employment for pay purposes for employees *non-exempt* from the FLSA unless the circumstances in Section 3.B. apply; or:

- (1) The travel is required during regular work hours;
- (2) The travel requires driving a vehicle or performing work while traveling;
- (3) The travel requires serving as a passenger on a one-day assignment away from the official duty station; or
- (4) The travel requires serving as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that corresponds to the employee's regular working hours.

**D.** Employees are permitted to earn and use compensatory time off for time spent in a travel status away from the official duty station when such time is not otherwise compensable in accordance with the negotiated CBP Directive 51630-005 "Compensatory Time Off for Travel."

**Section 4.** It is the responsibility of CBP employees to place themselves at their official duty station and return from there at their own expense.

### **Section 5. Local Travel**

**A.** After an employee places himself where he normally reports, the cost to the employee of any local travel required for official purposes during regular hours of work or on overtime shall be reimbursed by the Agency. In this regard, once an

employee arrives where he normally reports, he will receive full mileage reimbursement for any subsequent travel to any temporary duty station.

- B.** When an employee travels from his home to a temporary duty station and/or from a temporary duty station to his home, the employee will be reimbursed for any mileage in excess of his normal round trip from his home to where he normally reports.
- C.** No employee is entitled to reimbursements that are not permitted pursuant to the Federal Travel Regulations.
- D.** Examples of the rules set forth in Subsections A and B above include:
  - (1) When an employee travels from his residence to a temporary duty station and then returns home, the employee shall be reimbursed for actual mileage and expenses in excess of the normal round trip distance between his residence and where s/he normally reports.
  - (2) When an employee travels from his residence to where he normally reports, then travels from where he normally reports to a temporary duty station, then travels from the temporary duty station back to his home, the employee shall be reimbursed for the distance between the two (2) duty stations. If the distance between the employee's final temporary duty station and his home exceeds the distance between where he normally reports and his home, the employee shall be reimbursed for the excess expense.
- E.** Subsections A and B above do not apply to or cover established rotational assignments through different duty stations. This includes reporting to a work unit assigned through the Bid, Rotation and Placement process. The site of each rotational duty assignment shall be considered where he employee normally reports for the duration of the employee's rotational assignment at that specific job-site.
- F.** The local travel reimbursement policies set forth in Subsections A and B above apply to travel to overtime assignments as well as assignments during regular hours of work.

## **Section 6. Per Diem.**

- A. Employees shall be eligible for per diem or actual subsistence allowance only when they travel to an assignment outside the local commuting area. Commuting areas will be defined in accordance with law, rule, and regulation.
- B. Employees traveling outside the local commuting area for a period of twenty-four (24) hours or less without incurring lodging costs are entitled to partial per diem when the travel period involved is more than twelve (12) hours.
- C. Reimbursement will be in accordance with existing travel regulations.

**Section 7.A.** When use of one privately owned vehicle is made by two (2) or more employees on official business, mileage reimbursement will be made to only one (1) employee.

- B. When travel on official business could be performed by two (2) or more employees riding in one privately owned vehicle, and the employees elect to travel in separate automobiles, mileage reimbursement will be made only to one (1) employee.
- C. When joint use of one (1) privately owned vehicle would be impracticable or cause unreasonable personal hardship, each traveler shall submit a written justification for the use of more than one (1) automobile. The Agency shall approve mileage reimbursement for separate vehicles when such justifications and requests are in accord with applicable law and regulation and this Agreement.
- D. When an employee is authorized to use a privately owned vehicle for official business and that vehicle sustains damage, the employee may file a claim in accordance with 31 C.F.R. § 4.1.
- E. Absent a determination from a management official to use a government owned vehicle for local travel, employees will be provided the option to use a privately owned vehicle for travel to perform official business. The use of government owned vehicles and personally owned vehicles will be in accordance with applicable Federal travel regulations. In the event a government owned vehicle is not available and the employee does not have or chooses not to use a personally owned vehicle, the mode of transportation used for local travel will be reimbursed in accordance with applicable travel regulations.

**Section 8.A.** At the discretion of the Agency, an employee on official travel may be required to return to his official duty station during duty hours for non-workdays.

- B.** In the case of a voluntary return of a traveler to his official duty station (or his place of residence from which he regularly commutes to his official duty station), the employee will be reimbursed for the cost of the round trip home and back to his temporary duty station or the cost of per diem if he had remained at this temporary duty station, whichever is the lesser.
- C.** If an employee elects to remain at the site of his temporary duty assignment rather than return to his official duty station for non-workdays, the employee will be reimbursed for the cost of the round trip home and back to his temporary duty station or the cost of per diem he incurs by remaining at his temporary duty station, whichever is the lesser.

**Section 9.A.** When the Agency makes lodging available for an employee on official travel, the employee will have the option of remaining in the Agency-provided lodging or of securing other lodging.

- B.** If the employee elects to secure his own lodging, the Agency will reimburse the employee for the cost of the lodging provided by the Agency or the cost of the lodging secured by the employee, whichever is the lesser.
- C.** Where lodging is provided by the Agency, and remaining at the place of lodging is integrally related to, and necessary for, the accomplishment of the purposes for the official travel, the employee may not exercise the option provided in Subsection B above.

**Section 10.A.** An employee who regularly utilizes public ground transportation in the performance of official duties shall be reimbursed for the cost thereof upon submission of the appropriate expense voucher and in accordance with appropriate regulations. In the alternative, and where practicable, the Agency may issue bus tokens, fare cards, taxi fare books or other bulk vouchers.

- B.** The type of public ground transportation which may be used on a particular occasion shall be determined by the Agency.
- C.** If the employee elects to use a different but equally efficient type of public ground transportation, the employee will be reimbursed for the costs of the least expensive type of ground transportation.

**Section 11.A.** Upon timely application, the Agency will take all reasonable steps, consistent with current policies and procedures, to provide travel advances to employees prior to the date of departure on official travel.

- B.** In cases of emergency job related travel, the Agency will take all reasonable steps to provide travel advances to employees in accordance with current policies and procedures.

**Section 12.** While assigned to Pre-Clearance or other foreign locations, employees will receive allowances in accordance with applicable State Department regulations.

**Section 13. Travel Handbook.**

- A.** Matters not specifically addressed in the Article will be governed by the CBP Travel Handbook CIS HB 5300-13.
- B.** The information contained in the Employer's Travel Handbook will be consistent with applicable law, rule, regulation and this Agreement.
- C.** The Employer will take reasonable steps to ensure the information contained in its handbook is updated to reflect current travel laws, rules and regulations. Such steps will include providing NTEU (at the national level) notice and the opportunity to bargain over changes to the handbook resulting from changes in law, rule or regulation in accordance with the procedures contained in Article 26: Bargaining.
- D.** The Travel Handbook will be made readily available to employees through the Employer's intranet.

## **ARTICLE 17: PART-TIME EMPLOYMENT**

**Section 1.A.** Part-time employment provides the Agency with flexibility to meet work requirements and provides a benefit to employees who require or prefer shorter hours, for example, older or handicapped individuals, students, and parents with family responsibilities.

- B.** To be considered part-time for the purposes of this Article an employee must work between sixteen (16) and thirty-two (32) hours per week, or thirty-two (32) and sixty-four (64) hours per pay period.
- C.** The Agency will consider requests for part-time career employment and, when appropriate, will make such opportunities available, consistent with resource and operational requirements.
- D.** Employee requests for part-time employment must be made in writing to the employee's immediate supervisor. The Agency will give fair and objective consideration to the employee's request for part-time employment and grant such requests based on the Agency's need for the employee's services, the suitability of the position for part-time employment, availability of resources, and the impact on the efficiency of the Agency. Requests will be approved or disapproved within thirty (30) calendar days of receipt by the immediate supervisor. In the case of disapproval, the supervisor will inform the employee in writing and provide the reason for the denial.
- E.** Before an employee is assigned to a part-time position, the Agency will provide the employee information concerning the impact of the conversion from full-time to part-time employment in the areas of retirement, reduction-in-force, health and life insurance, promotion and step increases. This information will be provided to the employee in the form of a written fact sheet. The employee will be required to sign a statement indicating that they received this information.
- F.** Any person who is employed on a full-time basis shall not be required to accept part-time employment as a condition of employment.

**Section 2.A.** Job-sharing is a form of part-time employment in which the tours of duty of two or more employees are arranged in such a way as to cover a single full-time position.

- B.** The Agency will consider requests to job-share and may grant these requests based on the Agency's need for the employees' services, the suitability of the position for

job-sharing, availability of resources, and the impact on the efficiency of the Agency.

- C.** Employee requests to job-share must be made to the immediate supervisor(s) in writing, in accordance with the procedures of Section 1.D., above.
- D.** If one partner leaves the program for any reason, the other partner(s) will have forty-five (45) days from receiving written notice from the Agency to find another partner or resume full-time employment, unless workload demands require otherwise.



## **ARTICLE 18: CHILD CARE SUBSIDY PROGRAM**

**Section 1.** The Employer will establish a Child Care Subsidy Program (Program) in accordance with Public Law 106-554 and the terms of this Agreement, subject to budgetary considerations. The intent of the Program will be to make child care more affordable for lower income employees whose children are, or will be, enrolled in licensed child care facilities.

**Section 2.** The Employer will take the necessary steps to ensure the Program is established and operational not later than one (1) year following the effective date of this Agreement.

**Section 3.** The Employer will publicize the availability and characteristics of the Program on its intranet site.

### **Section 4. Program Characteristics.**

**A. Eligibility:** All full and part time employees who meet all of the following requirements are eligible to participate in the Program:

- (1) Total household income (based on Adjusted Gross Income on the prior year's tax return(s)) is \$ 50,000 or less;
- (2) Has (or is the legal guardian of) a child or children age thirteen (13) or younger (age eighteen (18) or younger if the child is disabled); and
- (3) Uses a home-based or center-based child care provider that is licensed or regulated by state and/or local authorities in the state or locality in which the provider operates;

**B. Subsidy Limit:** The amount of the subsidy provided under this Program will not exceed \$ 5,000 per calendar year, and will be reduced by any other child care subsidy the employee receives from any other source.

**C. Participation in other Federal Programs.** In the event both parents (or legal guardians) work for Federal government agencies offering a child care subsidy program, the Employee must select only one of the programs in which his/her family will participate (not both).

**D. Annual Subsidy Calculation:** Monthly subsidies paid will be calculated based on the below formulas:

<u>Total Household Income</u>	<u>% of Child Care Costs Paid by Employer</u>
\$20,000 and below	50%
\$20,001 - \$30,000	40%
\$30,001 - \$40,000	30%
\$40,001 - \$50,000	20%

**Section 5. Program Application Procedures.**

**A.** The Employer will establish Program application procedures in a manner that permits eligible employees to apply to participate in the program at any time.

**B. Documentation Required:** At a minimum, the Employee's application will include:

- (1) Child Care Subsidy Application (OPM Form 1643), completed by the employee;
- (2) Child Care Provider Information For the Child Care Subsidy Program for Federal Employees (OPM Form 1644), completed by the child care provider;
- (3) A copy of the most recent signed and dated Federal Income Tax Return. For married employees who filed separately, this includes a signed and dated copy of the spouse's Return.
- (4) A copy of the most recent Wage and Tax Statement (Form W-2) for both parents (or legal guardians);
- (5) A copy of the two most recent Leave and Earnings Statements (or equivalent) for both parents (or legal guardians);
- (6) A copy of the employee's most recent Notification of Personnel Action (Form SF-50);
- (7) A copy of the child(ren)'s birth certificate;
- (8) A copy of the child care provider's license;

(9) A copy of child care provider's schedule of fees; and

(10) Proof of enrollment of the child(ren) in the child care facility.

**Section 7.** The Employer will approve applications submitted by eligible employees that are complete and meet the criteria contained in applicable law and regulation, and the terms of this Agreement. On an annual basis, participating employees must submit an updated application for approval/recertification.

**Section 8.** The Employer will notify the employee in writing as to whether his/her submitted application is approved, and if disapproved, the reasons for the disapproval.

**Section 9.** Once approved by the Employer, monthly subsidy payments under this Program will be made directly to the child care provider based on services actually rendered. The Employer will make such payments when it receives the monthly invoice from the employee no later than the last day of the month following the month for which payment is requested (e.g., to obtain subsidy for services rendered in October, the employee must provide the invoice no later than November 30<sup>th</sup>).

**Section 10.** In the event an employee no longer meets the eligibility criteria, the Employer will notify the Employer immediately of the circumstances in writing. The employee will be responsible for reimbursing the Employer for any overpayment resulting from the employee's delay in notifying the Employer.

**Section 11.** If an employee changes his/her child care provider, he/she must notify the Employer of such by completing the appropriate paperwork.

**Section 12.** Employees are responsible for determining and addressing all income tax consequences relating to the receipt of a subsidy under this Program.

## **ARTICLE 19: EMPLOYEE PROFICIENCY REVIEW**

This Article shall govern the administration of the Employee Proficiency Review (EPR) process for all employees within the bargaining unit.

### **Section 1. EPR Objectives:**

- A. To improve both individual and organizational performance;
- B. To encourage constructive, honest and open communication between supervisors and bargaining unit employees about performance issues;
- C. To encourage bargaining unit employees to participate in assessing their own strengths and areas requiring further development; and
- D. To meet statutory and regulatory requirements concerning the EPR process.

### **Section 2. Definitions.**

- A. *Annual Proficiency Review* is the written annual record of the proficiency review and the assignment of either a Successful or Unacceptable proficiency rating.
- B. *Competencies* are the broad-based (i.e., generic) components considered essential to achieving successful performance in all positions within CBP. These competencies collectively constitute the core critical element and will be the basis for the annual proficiency rating.
- C. *Performance Plan* is the document provided to each employee by the supervisor which outlines the critical element and related competency areas.
- D. *Review* means the process of assessing an employee's performance against established competencies.
- E. *Review Period* is a period of time, normally not less than twelve (12) months, during which an employee's performance will be reviewed.
- F. *Successful Rating Level* means the employee has successfully performed his assigned duties and responsibilities in furtherance of the mission and goals of CBP.

**G. *Unacceptable Rating Level*** means the employee's performance of his assigned duties and responsibilities is unacceptable. An unacceptable rating may not be issued to an employee until and unless the conditions of Section 9 (Improving Performance) have been satisfied.

**H. *Minimal Review Period*** is the minimum period of time allowed for the review of an employee. The minimum review period is ninety (90) consecutive calendar days.

**I. *Employee Proficiency Plan*** is a document prepared by the supervisor which describes an employee's deficiency in meeting a Successful level of performance, the steps which the employee must take to improve performance and the possible consequences of unimproved performance.

**J. *Employee Performance File*** is the file containing current official copies of an employee's performance plan, proficiency reviews, employee proficiency plan, and any supporting or related documentation concerning proficiency review.

**Section 3.A.** The Agency has determined that the proficiency ratings and competency areas discussed in this section shall be used in rating employees' annual performance.

**B.** The proficiency rating will constitute the annual performance rating as required by 5 C.F.R. § 430. Under the EPR process, each employee will receive, on an annual basis, one of the following two (2) proficiency ratings: Successful or Unacceptable.

**C.** The annual proficiency review will be based on an employee's performance as measured against the competencies which constitute the core critical element required for successful performance. Locally developed competency areas are not to be added to the core competencies for purposes of employee proficiency reviews.

**D.** In conducting this proficiency review, the supervisor will consider the level of the employee's job knowledge, technical skills, professional application and ability to work with others, as those terms are defined below. Individual proficiency ratings (i.e., Successful, Unacceptable) are not required for each of the individual competency areas. The overall proficiency rating shall be based on simultaneous consideration of all competency areas as parts of the core critical element to determine if the employee has performed at the Successful level. Thus,

unacceptable performance in one or more of the competency areas may or may not result in a proficiency rating of Unacceptable.

#### **Section 4. Competency Areas.**

The Employer has determined the following Competency Areas will be used in rating the annual performance of employees:

##### Competency Area # 1 - Job Knowledge:

Properly interprets law, regulation, and Agency policy and directives in the performance of their respective duties.

##### Competency Area # 2 - Technical Skills

Proficient in the technical skills necessary to accomplish their assigned work in an effective and efficient manner. Examples would include use of job-specific equipment, automated systems/data bases, research materials, enforcement techniques, manuals, etc.

##### Competency Area # 3 - Professional Application

Effective application of job knowledge and technical skills. Examples include written and oral communication, leadership, planning and organization, analytical skills and problem solving.

##### Competency Area # 4 - Working with Others

Works constructively and in collaboration with co-workers and personnel from other agencies/organizations toward common goals. Shares information, knowledge and experience with others to accomplish team goals. Assumes personal responsibility for assigned areas. In all work situations, maintains open, honest and constructive interactions with co-workers, other agencies and the public.

#### **Section 5. Individual and Organizational Performance Planning.**

- A. At the beginning of the review cycle, the supervisor and employee will meet for a discussion of the job-specific expectations for performance. The purpose of this

meeting is to jointly clarify how the competencies apply within the work environment so that there is a common understanding about the Agency's expectations for performance. At this time, the employee will receive a copy of the critical element, which consists of the four core competency areas, and will sign the Annual Proficiency Rating Form to acknowledge receipt.

- B.** The Agency's expectations for performance must be reasonable, realistic, and attainable, providing the employee with a firm benchmark toward which (s)he can aim his/her performance. Thus, the competencies should be applied in such a manner that an employee may achieve a Successful rating without attaining an "absolute or perfect" level of performance in one or more competency areas.
- C.** If applicable, this meeting should include the communication and discussion of goals established by the Agency for the individual and the work unit's plan for contribution to applicable national goals/initiatives for the performance year.

#### **Section 6. Optional Self Assessment and Development Plan.**

- A.** The self assessment and development plan is an optional tool which an employee may use for self improvement. Under this plan the employee assumes responsibility for his own development. This plan is focused on the development of an individual's job-related skills and is not a vehicle for achieving promotion. The Agency recognizes its responsibility to help employees raise their level of competence and is committed to support employee self development plans within available Agency resources such as time, money, etc. An employee self development plan is not meant to supersede the provisions for employee development spelled out in Article 32: Employee Development. Rather, it is meant to encourage current-job performance-related communication between the employee and his supervisor.
- B.** The self assessment portion of this plan is expected to help the employee gain some insight into his/her strengths, identify areas for self-improvement and obtain current-job performance-related feedback from the supervisor.
- C.** The optional self assessment and development plan may be prepared in advance for use at any stage of the EPR cycle (beginning of the year, on-going reviews or final annual review).

## **Section 7. On-Going Reviews.**

Throughout the performance cycle, the supervisor and the employee should meet frequently to discuss the employee's performance to date and, if pertinent, progress made toward achieving any previously identified goals, objectives or development. The employee or supervisor may initiate an on-going review meeting at any time. At least one on-going review meeting will be conducted during the sixth or seventh month of the performance cycle. An employee's individual contributions to team or unit goals may also be discussed. Employees are encouraged to utilize the optional worksheet for the purpose of preparing for on-going review meetings. An employee's signature is not required for any on-going review meeting except the one that is held during the sixth or seventh month of the performance cycle.

## **Section 8. Final Review Procedures.**

- A.** The review period will normally coincide with the fiscal year. However, the parties may, at the DFO, headquarters or appropriate headquarters or field office level, agree to a June 1-May 31 review period for one or more ports within the DFO area. Absent unusual circumstances, all reviews must be completed within one (1) month after completion of the performance cycle.
- B.** Every employee is assigned one immediate supervisor for the purpose of completing the annual proficiency review, on-going reviews, any development plan and any associated meetings. However, in the case where employees and/or supervisors rotate, the assigned supervisor may, in making these determinations, rely on input provided by other immediate supervisors who have directly supervised the employee's work during the performance cycle.
- C.** The annual proficiency review will be deferred if:
  - (1) The supervisor/employee relationship has not existed for ninety (90) days (i.e., the supervisor lacks ninety (90) days as the employee's immediate supervisor).
  - (2) The employee has not served under an approved performance plan in accordance with this Article for a minimum ninety (90) day period.
  - (3) An employee has been issued an Employee Proficiency Plan as described in Section 9.



- D.** If a proficiency review has been deferred under Subsection C.(1) or (2) above, the employee's performance cycle will be extended to provide a full ninety (90) day basis for evaluation at which time a proficiency rating will be issued. In cases where an employee's extended absence does not permit the minimum period of time for a review, the employee will not receive a proficiency rating that appraisal period (e.g., long-term training, LWOP, etc.).
- E.** Authorized time spent performing Union representational functions will not be considered when assessing employee performance.
- F.** Full-time Union representatives may request a proficiency rating, provided they have performed sufficient overtime work - the equivalent of ninety (90) days - to have their performance assessed. Such requests should be made in writing and submitted to the appropriate rating official along with a listing of the overtime assignments worked during the rating period.
- G.** Full-time Union representatives who do not work overtime or have not performed sufficient overtime work to have their performance assessed are considered un-ratable in accordance with 5 C.F.R. § 430. However, in the event of a RIF, these employees will receive ratings in accordance with 5 C.F.R. § 351.203.
- H.** Both the supervisor and the employee will sign the EPR and the employee will be provided with a copy. A secondary review signature will be required only when performance is at an Unacceptable level.

## **Section 9. Improving Performance.**

- A.** Improving the deficient performance of employees is in the best interests of the individual employee and promotes the efficiency and effectiveness of the Agency. The objective of the improvement process is to eliminate deficiencies in an employee's performance. This process is intended to be corrective in nature, not punitive.
- B.** This process is not intended to address misconduct or remediation matters (e.g., habitual tardiness). Such matters should be dealt with under Article 45: Disciplinary Actions and/or Article 46: Adverse Actions.
- C.** Deficiencies in performance should be recognized and their causes determined as soon as they become evident. Most deficiencies should be corrected through normal interactions between the employee and supervisor. Such interactions

should take place prior to the issuance of an EPP. An EPP is intended for those situations where deficiencies continue and should be issued at the earliest opportunity. An Unacceptable proficiency rating may not be given to an employee prior to the employee having completed the EPP. A review during the sixth or seventh month of the performance cycle, and the final review period, are not and should not be the only opportunities for the Agency to issue EPPs.

**D.** At the time the EPP is provided to the employee, it shall be discussed with the employee. Prior to the onset of the meeting for discussion of the EPP, the employee will be advised that a request for Union representation at the meeting will be honored. As part of the EPP discussion process, the employee will be afforded the opportunity to make verbal or written comments. The employee and supervisor will sign and date the EPP, indicating only that the employee has received a copy.

**E.** The EPP provided for above will contain:

- (1) Identification of the Competency Area(s) in which the employee is deficient;
- (2) An explanation and/or examples of the specific duties which are not being performed adequately;
- (3) Advice as to what the employee must do to bring performance to a Successful level;
- (4) A statement that the employee will be given a minimum of sixty (60) days to demonstrate improvement in performance;
- (5) A description of the type(s) of assistance the Agency will make available (e.g., formal and/or on-the-job training, increased supervision, etc);
- (6) A warning of the possible consequences of unimproved performance, and if applicable, advice that the employee's within-grade increase will be withheld;
- (7) A statement that employee requests will be honored for union representation at meetings where EPPs are issued; and
- (8) Information about the availability and means of contacting the Employee Assistance Program (EAP). **Note:** Such notice is not intended to imply that the Agency has determined that the employee is in need of EAP services, nor that the employee's participation is mandatory.

- F.** An EPP may be issued at any time throughout the proficiency review cycle. If an EPP is issued less than sixty (60) days prior to the end of the proficiency review period, the assignment of the annual proficiency rating will be deferred until the employee has had a minimum of sixty (60) days in which to demonstrate improved performance.
- G.** An employee will be given, at a minimum, sixty (60) days to demonstrate improvement in performance under the EPP. The supervisor will keep the employee informed of his/her progress by means of counseling as appropriate. At the end of the EPP period, the employee's performance will be reviewed by the supervisor. If the Agency determines that the employee's performance has improved to a Successful level, then the EPP will be removed from the Employee Performance Folder (EPF) when a progress review is given, or at the end of the review period, whichever occurs first. If the employee does not improve to the Successful level, the Agency will exercise its options to extend the EPP, reassign the employee, or initiate reduction in grade or removal action, as deemed appropriate.
- H.** One supervisor will issue and monitor the EPP. This supervisor should have direct knowledge of the employee's deficiencies. However, in the case of rotating employees and/or supervisors, the supervisor issuing the EPP may, subsequent to issuing the EPP, consult with, and be provided with input from, other supervisors who will directly supervise the employee's work during the EPP period.
- I.** In no instance will an employee's performance be rated Unacceptable without the employee having been issued an EPP.
- J.** The requirements of this Section do not apply to employees serving probationary or trial periods.

#### **Section 10. Temporary Assignments/Details.**

- A.** If an employee's proficiency review is due while that employee is on TDY/Detail of ninety (90) days or less, the Proficiency Review will be completed by the supervisor at the employee's home duty station.
- B.** If an employee's proficiency review is due while that employee is on TDY of over ninety (90) days, the proficiency review will be completed by the TDY/Detail supervisor. The proficiency review and optional self assessment and development

plan, if one exists, will be mailed back to the employee's home duty station. (Absent any EPP, the employee's performance will be presumed to be Successful).

- C. Copies of proficiency review ratings issued under subsections A and B above will be provided to the permanent supervisor at the employee's home duty station.

**Section 11. Record Keeping.**

- A. The current official copies of the performance plan, proficiency reviews, EPPs, and any supporting or related documentation concerning proficiency review shall be maintained in accordance with local procedures in an EPF. Proficiency reviews will be maintained for at least four (4) years.
- B. The EPF, and the materials contained therein, shall be maintained by the Agency and shall be made available only to Agency officials with the need for such information. The information in the EPF shall be safeguarded and released only for the purposes listed in the Office of Personnel Management's Privacy Act Notice covering EPFs.
- C. Employees may review their EPFs upon request.

**Section 12.** In the event the Agency finds it necessary to change the current employee performance rating levels, NTEU will be provided advance notice and the opportunity to bargain in accordance with the procedures contained in Article 26: Bargaining

## **ARTICLE 20: ACCEPTABLE LEVEL OF COMPETENCE**

**Section 1.A.** This Article is applicable only to General Schedule employees who occupy permanent positions within the Agency. An Acceptable Level of Competence (ALC) determination is made solely for the purpose of determining whether an otherwise eligible employee is entitled to a Within-Grade Increase (WGI).

- B.** Such determinations shall be based on the most recent proficiency rating, either annual or special proficiency rating, issued under Article 19: Employee Proficiency Review of this Agreement.
- C.** A WGI will be granted to an employee whose most recent proficiency rating is Successful. A WGI will not be granted to an employee whose most recent proficiency rating is Unacceptable.
- D.** The standard of proof to be borne by the Agency in denial of a WGI will be that standard established by law.

**Section 2.A.** The ALC determination will be made by the appropriate management official in a fair and objective manner, and free of personal favoritism.

- B.** The supervisor will use the proficiency rating which was issued no earlier than the most recently completed performance cycle in making the acceptable level of competence decision, unless a special proficiency rating is issued under Subsection 2.E below, or unless a special proficiency rating is required due to a postponed ALC determination as described in Subsection 3.A.
- C.** If the supervisor decides to withhold a WGI, the employee will be given sixty (60) days within which to demonstrate performance at a Successful level. This notice will be provided through the issuance of an Employee Proficiency Plan (EPP), in accordance with Article 19: Employee Proficiency Review. If sixty (60) days in advance of the WGI due date, the employee is on an EPP which includes a warning that a WGI may be withheld, then no additional notice will be required. If the employee's performance improves to the Successful level, then the notice will be canceled. In these cases, the WGI will be made effective on the date that the employee's performance reaches the Successful level.
- D.** If the employee's performance does not improve to the Successful level, the WGI may be denied. When a WGI is to be denied, the employee will be informed that his/her WGI is being withheld as soon as possible after the end of the waiting

period. The written notification will include the reasons for the negative determination and the areas in which the employee must improve in order to be granted a WGI in the future. The written notification will also contain the right to request reconsideration from an appropriate management official who will be identified in the notice.

- E.** In any case in which the supervisor's ALC determination is not consistent with the most recent annual proficiency rating, a special proficiency rating shall be prepared covering the period between the annual rating and the employee's ALC anniversary date.

**Section 3.A.** An ALC determination will be postponed when both of the following apply:

- (1) the employee has not worked under a performance plan in his current position for the minimum ninety (90) day review period, and
- (2) the employee has not been given an annual proficiency rating in any position within ninety (90) days before the end of the waiting period.

- B.** In the circumstances cited in subsection 3.A. above, the employee's ALC determination will be postponed until the employee has worked under an approved performance plan for ninety (90) days. Upon completion of the minimum ninety (90) days, the employee will receive a special performance review and proficiency rating in accordance with Article 19: Employee Proficiency Review. The rating issued will serve as the basis for the delayed ALC determination. If the employee's performance is determined to meet the acceptable level (i.e., proficiency rating of Successful), the WGI will be retroactive to the beginning of the pay period following completion of the waiting period.

**Section 4.A.** When an employee's work is determined to be of an ALC in accordance with the requirements of Section 2 of this Article, the effective date of the WGI will be the first day of the first pay period following completion of the waiting period.

- B.** If a negative ALC determination is changed upon reconsideration or appeal, the effective date for the WGI is the date on which it would have been due.
- C.** When an ALC determination is not made on a timely basis through administrative error, oversight or delay, the determination shall be made based upon the

employee's performance during the period that would have been covered had the determination been made in a timely manner. The effective date for the WGI is the date on which it would have been due.

**Section 5.A.** Requests for reconsideration of a negative determination must be filed in writing within fifteen (15) days of the receipt of the notice of final negative determination.

- B.** An employee reconsideration file will be established and maintained by the appropriate reconsideration official. This file will contain all pertinent documents related to the negative determination and the request for reconsideration. The file will not contain any document that has not been made available to the employee.
- C.** The deciding official in reconsideration cases shall be an appropriate higher level official designated by the Agency, who has greater authority than the official who issued the initial determination.
- D.** If a meeting is requested, the Agency will determine the location of the meeting. Attendance at such meeting will be limited to the employee, the employee's local Union representative and/or NTEU's national field representative and such representatives as the Agency may designate. Where the Agency chooses a site other than the employee's work location, the Agency will pay travel and per diem costs for the local representative.

**Section 6.A.** After being withheld, the Agency will grant the WGI at any time after it is determined that the employee has demonstrated sustained performance at an ALC.

- B.** After withholding a WGI, the Agency will determine, at a minimum, whether the employee's performance is at an ALC after twenty-six (26) calendar weeks following the original due date for the WGI. If the new determination is again negative, the employee must again be so notified.

**Section 7.** Appeals under this Article are only subject to the final step of the grievance procedure and expedited arbitration procedures set forth in Article 27: Grievance Procedure and Article 28: Arbitration.

**Section 8.** Determinations that an employee is not performing at an ALC will not be used to dispose of questions of misconduct not directly related to job performance.

**Section 9.** If a negative ALC determination is changed as a result of reconsideration, dispute or appeal, the WGI will be granted retroactively, unless prohibited by applicable law or higher Agency regulations, and the effective date for the WGI is the date on which it would have been due.



## **ARTICLE 21: UNACCEPTABLE PERFORMANCE**

**Section 1.A.** The actions covered by the provisions of this Article are: reduction in grade and removal for unacceptable performance, for employees serving in bargaining unit positions at the time the action was initiated.

- B.** The Agency will determine when the need arises for such action, i.e., the employee's performance is at an unacceptable level in the core critical element, and the action will be carried out in a prompt and timely manner in accordance with law and regulation.
- C.** Prior to initiating any such action, the Agency will prepare an Employee Proficiency Plan (EPP) in accordance with Article 19: Employee Proficiency Review. The employee will be provided a reasonable period of time, at least sixty (60) days, to improve his performance to the Successful level.
- D.** Where sufficient improvement to meet the Successful level has not been demonstrated during the sixty (60) day period, the EPP may be extended for a reasonable period of time or the Agency will initiate reduction in grade, or removal action, as appropriate.

**Section 2.** Once a determination has been made to proceed with actions indicated in Subsection 1.A. of this Article, the Union will be provided with advance notice and will be given the opportunity to attend any formal discussions conducted with the affected bargaining unit employee concerning that action.

**Section 3.** An employee whose reduction in grade or removal is proposed under this Article will be provided with at least thirty (30) days, but not more than sixty (60) days, advance written notice which identifies:

- A.** Specific instances of unacceptable performance by the employee on which the proposed action is based;
- B.** The performance expectations of the employee's position involved in each instance of unacceptable performance;

- C. That the employee shall receive a reasonable amount of official time to review the material relied upon to support the proposed action and to prepare an answer orally and/or in writing;
- D. That the employee has the right to be represented by the Union or an attorney or other representative of his own choosing; and
- E. That the Agency will provide a written response and specific reasons at the earliest practicable date.

**Section 4.** Where an action is proposed under this Article, an employee will be provided with a copy of those portions of all written documents which contain information or evidence relied upon by the Agency in proposing the action. The Agency will also supply the employee with a copy of those portions of written documents that are favorable to the employee and are related to the identified instances of unacceptable performance. Such information shall be supplied in a manner consistent with the requirements and provisions of the Privacy Act.

**Section 5.A.** An employee against whom an action is proposed under this Article shall be provided with reasonable time (normally fourteen (14) days) from receipt of notice of the proposed action and all information as set forth in Section 4 above, to review material relied upon by the Employer and answer the proposed action orally and/or in writing. The employee may submit affidavits and/or other documentary evidence in support of the answer. If the employee wishes to make an oral reply, the request for an oral reply must be made within seven (7) days of the date the employee receives the letter of proposal and all information. In no case will the employee be required to present his reply sooner than three (3) working days after receiving the material relied upon in the notice.

- B. The employee shall have the right to be represented by the Union or an attorney or other representative of his own choosing in connection with the oral and/or written reply.
- C. An employee will have the right to raise any defense to the proposed action allowed by applicable laws and regulations.
- D. The Employer shall prepare a summary of any oral reply. The employee may review the summary and make corrections or shall submit his version of the summary within a reasonable amount of time if corrections are not mutually agreeable.

- E. The management official presiding at the oral reply will have reviewed the entire case file, including the employee's written reply if one was previously submitted.
- F. The deciding official will carefully consider the employee's oral and/or written replies in rendering his decision.

**Section 6. A.** The decision to retain, reduce in grade, or remove an employee:

- (1) Shall be made within thirty (30) days after the date of expiration of the notice period, and
- (2) In the case of a reduction-in-grade or removal, may be based only on those instances of unacceptable performance by the employee:
  - (a) Which occurred during the one (1) year period ending on the date the notice was issued under Section 3 above, and
  - (b) For which the notice and other requirements of this Article are complied with.

**B.** The decision shall:

- (1) Specify, or cite by reference to the proposal letter, the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;
- (2) Be concurred with by an Agency manager who is a higher position than the person who proposed the action unless proposed by the Commissioner of CBP; and
- (3) Contain the reasons supporting the decision, will address employee allegations of pertinent factual discrepancies concerning the incident, and will be served upon the employee and the Union.

**Section 7.** The employee shall be provided with a copy of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and supporting reasons, and any order effecting an action covered by this Article, together with any supporting material.

**Section 8.A.** Adverse decisions under this Article may be appealed to the Merit Systems Protection Board or, with the consent of the Union, directly to arbitration, but not both.

- B.** An employee shall be deemed to have exercised his option under this Section at such time as the employee timely initiates an appeal to the Merit Systems Protection Board, or arbitration is invoked, whichever event occurs first.
- C.** An employee who elects to appeal an action to the Merit Systems Protection Board may be represented by the Union or an attorney or other representative of his own choosing. An employee who elects to appeal an action under the dispute resolution procedures provided in the Agreement may be represented only by the Union.

**Section 9.** Where the Union moves a matter to arbitration under this Article:

- A.** The arbitrator shall be governed by Section 7701(c)(1)(A) of Title 5, United States Code (i.e., the Agency shall bear the burden of proof and the decision of the Agency shall be sustained only if the Agency's decision is supported by substantial evidence).
- B.** The Agency's decision affecting any action under this Article may not be sustained if the Union:
  - (1) Shows harmful error to the employee in the application of the procedures of this Article in arriving at such decision;
  - (2) Shows that the decision was based on any prohibited personnel practice described in Article 7: Protection Against Prohibited Personnel Practices; or
  - (3) Shows that the decision was not in accordance with other law.

**Section 10.A.** Any of the time limits set forth in this Article may be extended or waived by mutual agreement of the parties.

- B.** Reasonable extensions of time will be granted by the Agency on a case-by-case basis, upon good cause shown.

**Section 11.** If because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed and the employee's performance continues to be acceptable for one (1) year from the date of the advance written notice provided under Section 3 of this Article, any entry or other notation of the unacceptable performance for which the action was proposed under this Article shall be removed from any Agency record relating to the employee.

**Section 12.** The provisions of this Article do not apply to those employees specifically excluded by governing law or regulation.

## **ARTICLE 22: INVESTIGATIONS**

**Section 1.** This Article contains the policy and procedures to be followed when bargaining unit employees are the subjects of, or involved with investigative and administrative interviews. These policies and procedures will be followed by Agency and Union representatives and employees participating in these interviews/examinations.

**Section 2.** An employee being interviewed by a representative of the Agency (e.g., Department of Homeland Security Office of Inspector General) in connection with either a criminal or non-criminal matter has certain entitlements/rights regardless of who is conducting the interview.

### **Section 3. Union Notice.**

- A.** When the Agency knows in advance that it is going to conduct an interview of an employee(s), the applicable NTEU Chapter will receive reasonable advance notice when interviews are being conducted by the Agency and whether the interview will be audio/video tape-recorded. The Union will also be informed where and when the interview will take place and the general subject matter of the interview.
- B.** Absent extenuating circumstances, interviews will be conducted at the employee's worksite.

**Section 4.A.** Employees and Union representatives acknowledge their responsibilities under Sections 11 and 12 when participating in investigative and administrative interviews under this Article.

- B.** Agency representatives will also act in a professional manner when conducting investigative and administrative interviews under this Article.

**Section 5. General Notice.** When an employee is interviewed by the Agency, and the employee is the subject of an investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated and be informed whether or not the interview is related to possible criminal misconduct by him/her. This notice shall be on a form (see Appendix A-1) which the employee will sign and date at the outset of the interview.

**Section 6. Employee Weingarten Rights.** When the Agency conducts an interview 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. This notice shall be on a form (see Appendix A-2) that the employee signs at the beginning of the interview and is witnessed by the investigating agent.

- A. If the employee exercises his or her option to have union representation present, the employee will have a reasonable period of time to secure Union representation.
- B. The arrangements made to accommodate Union representation in subsection A may not cause an unnecessary delay prompting an obstruction of the Agency's investigation.
- C. Where a representative of the Agency denies an employee the opportunity to be represented by the Union during an interview, the employee will, upon request, be provided with the reason for the denial in writing.
- D. Interviews that continue beyond the employee's regular duty hours shall constitute hours of work and be compensated for by the Agency.
- E. The Agency will annually inform employees of their rights under 5 U.S.C. § 7114 (a)(2)(B).

**Section 7. Third Party Witness Interviews.** Prior to beginning interviews with employees who are being interviewed as third party witnesses, the Agency will provide employees with a form (see Appendix A-3), which shall be signed and dated by the employee at the outset of the interview.

**Section 8. Miranda Rights.** When an employee who is the subject of a criminal investigation is interviewed in custody by the Agency, the employee shall be given a statement of his/her Constitutional rights in writing on a form (see Appendix A-4) prior to commencement of questioning. The employee shall sign the statement of rights and indicate if (s)he is waiving these rights.

**Section 9. Beckwith Rights.** In a non-custodial interview involving possible criminal matters, an employee will be advised in writing of his/her rights and the consequences of refusing to answer the questions posed to him/her on the grounds that the answers may

tend to incriminate him/her. This notice shall be on a form (see Appendix A-5) that the employee signs and dates prior to the commencement of questioning.

**Section 10. Kalkines Rights.** In an interview involving possible criminal matters, where prosecution has been declined by appropriate authority, an employee will be required to answer questions only after the Agency representative has provided the employee with the appropriate assurances. Prior to requiring an employee to answer under such circumstances, the Agency representative shall inform the employee that his/her statements concerning the allegations during the interview cannot and will not be used against the employee in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview. This notice shall be on a form (see Appendix A-6) which shall be signed and dated by the employee at the outset of the interview.

**Section 11.A.** In any interview where the employee is not the subject of a criminal investigation, or when an employee has been advised of his/her rights under Section 10., above, the Agency representative has the authority to inform the employee that:

- (1) The employee must disclose any information known to him concerning the matter being investigated;
- (2) The employee must answer any questions posed regarding any matter which has a reasonable relationship to matters of official interest and may properly refuse to answer questions regarding matters in which the Agency has no official interest;
- (3) The employee's failure or refusal to answer such questions may result in disciplinary or adverse action; and
- (4) A false answer to any such question may result in criminal prosecution.
- (5) The employee may discuss the matters raised in the interview with the Union but not with other employees until the investigation is completed.

**B.** When an employee refuses to answer a question in accordance with this section, the Agency representative shall inform the employee of his/her obligation to answer.



**Section 12.A.** When the person being interviewed is accompanied by a representative furnished by the Union, in both criminal and non-criminal cases, the role of the representative includes, but is not limited to the following rights:

- (1) To clarify the questions;
- (2) To clarify the answers;
- (3) To assist the employee in providing favorable or extenuating facts;
- (4) To suggest other employees who have knowledge of relevant facts; and
- (5) To advise the employee.

**B.** However, a union representative may not disrupt an investigation by transforming the interview into an adversarial contest.

**Section 13.** Prior to interviewing anyone other than the subject of the investigation, the Agency will be mindful of its obligations to obtain all reasonable and necessary information from the employee, rather than others, in accordance with the Privacy Act.

**Section 14.** At the conclusion of an investigation governed by this Article which does not result in the proposal of any criminal or administrative action, the Agency will notify the affected employee of that fact.

**Section 15. Periodic Reinvestigations.** The following procedures are applicable to any NTEU bargaining unit employees undergoing a Periodic Re-Investigation (PRI):

- A.** Employees will be permitted to utilize up to sixteen (16) hours of administrative time to complete the forms required in their respective periodic reinvestigation. It is understood that some employees may need more time than others to complete the forms.
- B.** Administrative time may not necessarily be taken consecutively. It may need to be scheduled an hour or two at a time, based on workload and staffing requirements.

- C.** Employees will be permitted to leave the work site during the administrative time if reasonably necessary to complete the forms. Due to potential privacy conflicts, employees need not provide specific reason(s) for requesting time away. A general explanation or a reference to one of the following examples will be sufficient. Examples of situations for which employees shall be permitted to leave the work site are: to visit a financial institution, to visit a storage facility to inventory property, or to find a private location to complete the forms. However, if a private work location is afforded the employee, (s)he is encouraged to complete the forms at the work location.
- D.** Photocopies of previously submitted forms will no longer be accepted as the information will not be transferable to the government's electronic filing system.
- E.** Within ten (10) days of receiving the notice to complete the periodic reinvestigation forms, employees may request copies of their last set of previously completed forms similar to those that are now required. The employee's PRI package will identify where to forward this request. Employees shall have fourteen (14) days from the date they receive the requested information to complete the documents.
- F.** Employees will receive sufficient training to enable them to access and use the government's electronic filing system.
- G.** Investigators will advise all third parties they interview of the purpose of the PRI interview prior to asking any questions.
- H.** Absent extenuating circumstances, PRI interviews will be conducted at the employee's worksite during duty hours.
- I.** Copies of the certification of investigation will be inserted into the employee's Official Personnel Folder (OPF) and the Agency will take necessary steps to notify the employee of the completion of the PRI simultaneous to the entry in the OPF.

## **ARTICLE 23: REDUCTION IN FORCE AND TRANSFER OF FUNCTION**

### **Section 1. Reduction in Force (RIF).**

- A.** A RIF is the release of a competing employee from his competitive level by furlough for more than thirty (30) days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment or restoration rights or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within one hundred and eighty (180) days. The need to apply RIF procedures does not suspend the Employer's authority and responsibility to take other legitimate employee actions, such as reassignment, change of duty station, or demotion for unacceptable performance. Such actions may be taken before, during, or after a RIF, but appropriate procedures must be followed.
- B.** In the event the Agency finds it necessary to exercise its authority to conduct a RIF, NTEU will be provided advance notice and the opportunity to bargain in accordance with the procedures contained in Article 26: Bargaining.

### **Section 2. Transfer of Function.**

- A.** A transfer of function is 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) effected; or, the movement of the competitive area in which the function is performed to another commuting area. In a transfer of function, 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 the transfer.
- B.** In the event the Agency finds it necessary to exercise its authority to conduct a transfer of function, NTEU will be provided advance notice and the opportunity to bargain in accordance with the procedures contained in Article 26: Bargaining.

## **ARTICLE 24: RETIREMENT**

**Section 1.** The Agency will provide retirement counseling to be made available on an as-needed basis, but not less than annually in which all employees in the unit nearing eligibility for retirement may voluntarily participate. Such counseling may include individual assistance, informational material, and/or group sessions.

**Section 2.** Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Agency as to:

- A.** His rights to file for disability retirement if he has at least five (5) years of creditable civilian service under the Civil Service Retirement System (CSRS) or 18 months of creditable civilian service under the Federal Employees Retirement System (FERS);
- B.** The possibility of applying for a discontinued service annuity;
- C.** Eligibility for deferred annuity at sixty-two (62), provided he has had at least five (5) years of civilian service and leaves his money on deposit with the Office of Personnel Management (OPM); and
- D.** All the options regarding the contributions he has made to the retirement funds and the Thrift Saving Plan, if appropriate.

**Section 3.** An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided the withdrawal is communicated to the Agency in writing and received by the Agency prior to its having made a commitment to fill the position of the retiring or resigning employee.

**Section 4.** The parties recognize that final decisions concerning retirement applications and issuance of retirement checks are the responsibility of the OPM. The Agency agrees to process and transmit all necessary paperwork in connection with retirement applications in a timely fashion.

**Section 5.** Upon receipt of a written request from an employee who is eligible to retire, or who is within one hundred twenty (120) days of such eligibility, the Agency agrees to provide a statement setting forth an estimate of the employee's monthly compensation

upon retirement, types of retirement options available, and the procedures for continuing any health or life insurance policies. This information will be updated at the employee's request, but not more frequently than once a year.

**Section 6.** See Article 35: Overtime, Section 1.J. for annuity integrity procedures covering COPRA covered employees who are within three (3) years of retirement.

## **ARTICLE 25: DUES ALLOTMENTS**

**Section 1.** Employees of the bargaining unit who are members in good standing of the Union will be permitted to pay dues through the authorization of voluntary allotments from their compensation provided the employee has: 1) completed and submitted a Standard Form 1187, Request and Authorization for a Voluntary Allotment of Compensation of Employee Organization Dues, to the Employer's Payroll Office; and (2) receives net compensation sufficient to cover the total amount of the allotment after higher priority deductions.

**Section 2.** The Union's responsibilities include:

- A.** Informing and educating bargaining unit members on the voluntary nature of the system for allotment of Union dues, including the conditions under which the allotment may be revoked;
- B.** Purchasing and distributing Standard Form 1187, and forwarding properly executed and certified Standard Forms 1187 to the Payroll Office on a timely basis;
- C.** Informing the Payroll Office in writing of any member who has been expelled, suspended or is no longer a member in good standing of the Union, within ten (10) business days of such final determination;
- D.** Informing the Payroll Office of any changes in membership dues;

**Section 3.** In cases where an employee changes Union membership from one (1) NTEU Chapter to another, NTEU National will deliver notification to the Payroll Office, and the Employer will effect the change in Chapters on the next pay period after receipt of notice.

**Section 4.** The Employer's responsibilities include:

- A.** Processing appropriately filed Standard Form 1187s within one (1) pay period of receipt from the Union;

- B.** Suspending dues withholding for employees who leave the unit temporarily, and automatically resume dues withholding upon their return to the bargaining unit;
- C.** Upon written notice from the Union, processing changes in dues amounts that will be effective the first pay period after receipt;
- D.** Notifying an employee who is not eligible for dues withholding of that fact. The local chapter will also be notified when an employee is not eligible for dues withholding;
- E.** Terminating dues allotments for employees due to loss of membership in good standing or due to separation from the bargaining unit;
- F.** Taking necessary steps to correct administrative errors for which it is able to correct.
- G.** Providing the Union’s Operations Department with the following dues withholding data each pay period via an electronic file using ASCII delimited (preferable comma or tab delimited) file format and codes set forth in Appendix B. If the ASCII file format is not available the Microsoft Excel file format will be used. The detailed filed layout will describe the field names, field lengths, field data-types, and any other relevant information explaining the data.

<i>Name of field/column</i>	<i>Description of data in each column</i>	<i>Type of Data *</i>	<i>Maximum Length</i>
<i>Agency-ID</i>	<i>The ID number of your agency</i>	<i>N-C</i>	<i>10</i>
<i>PP-Date</i>	<i>Pay Period Date</i>	<i>Date</i>	<i>-</i>
<i>SSN</i>	<i>Member Social Security Number</i>	<i>N-C</i>	<i>9</i>
<i>Chapter-ID</i>	<i>ID of member chapter</i>	<i>N-C</i>	<i>10</i>
<i>Fname</i>	<i>First Name</i>	<i>N-C</i>	<i>15</i>
<i>Lname</i>	<i>Last Name</i>	<i>N-C</i>	<i>15</i>
<i>Middle</i>	<i>Middle Initial</i>	<i>N-C</i>	<i>1</i>
<i>Amount</i>	<i>Total Amount of Dues Withheld</i>	<i>N</i>	<i>6</i>
<i>WAEID</i>	<i>Seasonal Member ID</i>	<i>N-C</i>	<i>3</i>
<i>DW-Code</i>	<i>Dues Withholding code</i>	<i>N-C</i>	<i>1</i>

<i>Duty-State</i>	<i>State in which Member works</i>	<i>N-C</i>	<i>2</i>
<i>Duty-City</i>	<i>City in which Member works</i>	<i>N-C</i>	<i>4</i>
<i>Duty-County</i>	<i>County in which Member works</i>	<i>N-C</i>	<i>3</i>
<i>Grade</i>	<i>Level Member is paid at</i>	<i>N-C</i>	<i>2</i>
<i>Step</i>	<i>Level within grade Member is paid at</i>	<i>N-C</i>	<i>2</i>
<i>Pay-Plan</i>	<i>Pay Plan chart Member is paid on</i>	<i>N-C</i>	<i>2</i>
<i>Nat-Amt</i>	<i>Member dues due to NTEU</i>	<i>N</i>	<i>6</i>
<i>Local-Amt</i>	<i>Member dues due to local chapters</i>	<i>N</i>	<i>6</i>
<i>Adj-Base-Pay</i>	<i>Adjustable Base Pay</i>	<i>N</i>	<i>8</i>

\* **Key:** N-C = Numbers and/or Characters (Alphanumeric)      N = Number only

**Section 5.** In the event the Employer erroneously removes an employee from the bargaining unit as a result of administrative error(s) for which the Employer is responsible, and thereby inappropriately terminates a proper dues allotment, or fails to begin dues withholding in a timely manner, the Employer will:

- A.** Correct the error and begin or reinstate the dues allotment no later than the following pay period after becoming aware of the error; and
- B.** Pay the full amount owed to the Union and recoup the funds from the employee's salary through a salary adjustment. These adjustments are subject to the employee's right to seek waiver of overpayment in accordance with the Debt Collection Act of 1982 and applicable implementing regulations; and
- C.** In the event the Employer fails to correct errors and begin or reinstate the dues allotment in accordance within the timeframe identified in Subsection A., the Employer will pay the full amount owed to the Union and waive employee overpayment under the Debt Collection Act of 1982 and applicable implementing regulations.
- D.** In the event the Union notifies the Employer of the failure to begin dues withholding or an inappropriate termination of dues withholding within six (6) pay periods of receiving dues withholding data from the Employer such overpayments will also be waived.



**Section 6.A.** The Employer will notify the Union, in writing, of any reimbursement to which the Employer is entitled because of dues received by the Union in violation of this Agreement.

**B.** The Union will not knowingly accept dues withheld through the Employer's payroll system from employees who are not in the bargaining unit.

**C.** Within thirty (30) days of the Employer's notice in Subsection A, above, the Union will reimburse the Employer, or file for a waiver of the Employer's collection action in accordance with law, e.g., the Debt Collection Act of 1982 and applicable implementing regulations.

**Section 7.** The amount of dues to be deducted as an allotment from compensation may be changed no more than once every twelve (12) months.

**Section 8.** If an employee is improperly separated and is ordered reinstated by the proper authority, the employee is required to initiate a new SF-1187, if required by law, to restart his dues withholding.

**Section 9.A.** Revocation notices for employees who have not had dues withholdings in effect for one year must be submitted on or before the one year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed Standard Form 1188 that has been initialed or signed by the Chapter president of his designee so that the Chapter can discuss with the employee the reason for the revocation. If the SF-1188 is not initialed, the Employer will return it to the employee for resubmission. The revocation will become effective the first full pay period after the employee's anniversary date.

**B.** Revocation notices for employees who have had dues withholding in effect for more than one (1) year must be submitted to the Payroll Office during USDA pay period 15 each year. Revocations will become effective during USDA pay period 18. Revocations may only be effected by submission of a completed Standard Form 1188 that has been initialed or signed by the Chapter president of his designee so that the Chapter can discuss with the employee the reason for the revocation. If the SF-1188 is not initialed, the Employer will return it to the employee for resubmission.

**Section 10.** Information Codes used on the NTEU biweekly dues withholding data provided by the Employer will be included in this Agreement as Appendix B.

## **ARTICLE 26: BARGAINING**

**Section 1.** The provisions of this Article cover the policies and procedures to be used by the parties when engaging in collective bargaining. Resolving bargaining issues in an effective and efficient manner is beneficial to the interests of both CBP and NTEU.

**Section 2.** CBP and NTEU will enter all bargaining situations striving to achieve a mutually acceptable outcome through a constructive and non-adversarial approach. While traditional bargaining will serve as the default, the parties are free to utilize any, or a combination of any bargaining models they wish. These models may include: traditional, interest-based, or protest bargaining.

**Section 3.A.** Except in cases of emergency, as provided for in the Civil Service Reform Act, such as unforeseen occurrences precluding such notice, the Employer shall provide the Union with reasonable advance notice of intended changes in operational or administrative procedures or of any new initiative. Such notice will inform the Union of the Employer's point of contact for purposes of all matters related to bargaining.

**B.** In response to the notice provided to the Union by the Employer in Section 3.A. above, the Union may negotiate:

- (1) Procedures which management officials of the Agency will observe in exercising its management rights; and
- (2) Appropriate arrangements for employees adversely affected by the Agency's exercise of its management rights;
- (3) At the election of the Agency, the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; and
- (4) The substance of the change if negotiable under existing law.

**Section 4.** The Union, in accordance with law and the terms of this Agreement has the right to initiate bargaining on its own and engage in mid-term bargaining over proposed changes in conditions of employment with the exception of the following areas:

- A.** Matters specifically addressed in this Agreement or another negotiated agreement between the parties. This section does not apply to bargaining in accordance with Section 15 below.
- B.** Matters where there is a clear and unequivocal waiver of the right to bargain by the Union, including those issues clearly and unmistakably bargained away as part of the legal implementation of other conditions of employment including the negotiation of this Agreement.

**Section 5.** All notices of intended changes and demands to bargain referenced throughout this Article will be delivered in writing through either personal delivery, electronic mail or by facsimile.

**Section 6.A.** The Union's designated representative to receive initial bargaining notices is the National President of NTEU and designee who will be identified to the Employer in writing.

- B.** The Employer's designated representative to receive initial bargaining notices is the Director, Labor-Management Relations or designee.

**Section 7.A.** Unless the level of bargaining is identified in another Article, should either party request to exercise its rights under Section 1, the moving party will deliver clear and specific notice to the other party at the level of exclusive recognition, i.e., at the national level. The party delivering the notice must include its designated representative for the bargaining.

- B.** Within twenty one (21) days of receipt of such notice the receiving party will request to bargain, indicate its designated representative and may request a briefing.
- C.** Within fifteen (15) days of the submission of the request to bargain, or the date of the briefing, whichever is later, the receiving party or designated representative will submit its proposals.
- D.** Bargaining will normally begin within fourteen (14) to thirty (30) calendar days after the receipt of proposals.
- E.** If the fifteenth or twenty-first day referred to herein falls on a Saturday, Sunday or

holiday, the period shall run until the end of the next regular business day (Monday through Friday).

- F.** If agreement is not reached, either party reserves the right to seek the services of the Federal Mediation and Conciliation Service (FMCS), and, if necessary, the Federal Service Impasses Panel (FSIP). By mutual agreement, the parties may use a different impasse resolution procedure, e.g., the use of a mediator-arbitrator.

**Section 8.A.** Reasonable extensions of time under this Article will be made for good cause shown, such as delays in receipt of necessary and relevant information consistent with the Federal Service Labor-Management Relations Statute provided that the total time involved does not cause an unreasonable delay or impede the Employer in the exercise of its management rights.

- B.** The submission of proposed changes and proposals shall not preclude either party from submitting other proposals or counter proposals that are related to the proposed change(s) and do not deal with extraneous matters.

**Section 9.** Where negotiation meetings are required, the meetings will be conducted as follows:

- A.** Negotiations will take place at a mutually agreeable site. Absent agreement, negotiations will be rotated between sites selected by the parties. National negotiations will normally occur at the headquarters offices of the Union or the Employer.
- B.** Unless agreed to otherwise, negotiations will be conducted during the regular workday of the office where the negotiations are taking place. Where feasible, the Employer shall make shift adjustments for Union representatives to accommodate the bargaining process.
- C.** An employee representing the Union in bargaining under this Article shall be authorized official time for such purposes during the time the employee otherwise would be in duty status. Designated bargaining representatives for the Union will also be afforded a reasonable amount of official time to prepare for bargaining. In the event face-to-face negotiations are conducted, bargaining teams will be limited to a maximum of three (3) Agency employees for each party, unless the parties mutually agree otherwise. NTEU and CBP staff members and the parties' subject matter experts may also participate in bargaining.

**D.** CBP is responsible for the travel and per diem costs of no more than three (3) bargaining unit employees serving as NTEU bargaining representatives unless the parties mutually agree otherwise.

**E.** Whenever the Employer wishes to change the current practice related to reimbursing employees to travel for bargaining and related matters, it will serve notice on the Union and negotiate prior to implementation.

**Section 10.** Local and national agreements and past practices will stay in place unless they conflict with this Agreement or are re-negotiated in accordance with law and this Agreement.

**Section 11.** The Union and the Employer agree that it is in the interest of the parties to resolve impact bargaining issues expeditiously.

**Section 12.** The duties of the parties to negotiate in good faith under this Article shall include the statutory obligation:

- A.** To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
- B.** To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- C.** To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
- D.** In the case of the Employer, to furnish to the Union, upon request, and, to the extent not prohibited by law, data:
  - (1) Which is normally maintained by the Employer in the regular course of business;
  - (2) Which is reasonably available and necessary for full and proper discussion, understanding, and negotiations of the subjects within the scope of collective bargaining; and
  - (3) Which does not constitute guidance, advice, counsel or training for

management officials or supervisors relating to collective bargaining; and

- E. If agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

**Section 13.** Consistent with Section 3 above, the parties recognize that emergencies or other situations permitted by law may mandate that a change be implemented before negotiations concerning the matters are concluded. The Employer agrees to make reasonable efforts to obtain sufficient time delays from higher authorities to enable bargaining to conclude before implementing the change. Accordingly, where basic management rights are involved, and an emergency or other situations permitted by law require the Employer to act without undue delay, the Employer may implement the proposed change and negotiations may continue on a post-implementation basis.

**Section 14.** Should a provision of any agreement negotiated pursuant to this Article be rendered invalid by appropriate authority after the effective date of this Agreement, either party may reopen the specifically affected sections as well as issues clearly and unmistakably bargained away as part of any agreement on the now invalid terms, where one or both parties have not formally pursued enforcement of the provision.

**Section 15.** All local and national mid-term agreements may be reopened by either party after one (1) year of its effective date by the submission of a request to bargain. Mid-term reopener request(s) must be submitted to the other party no later than thirty (30) days from each one (1) year anniversary date of the effective date of the agreement(s).

**Section 16.** The Employer agrees that when employees are surveyed by CBP management, and not at the behest of an outside agency, about matters relating to the conditions of employment, the Union will be provided an advance copy of the survey, invited to comment on its appropriateness and completeness, and given the opportunity to bargain impact and implementation in accordance with law and the terms of this Agreement.

## **ARTICLE 27: GRIEVANCE PROCEDURE**

**Section 1.A.** The purpose of this Article is to provide a fair and efficient process to expeditiously resolve Agency, Union, and unit employee grievances.

**B.** The parties recognize that many grievances arise from misunderstandings that can be settled promptly and satisfactorily on an informal basis. The Agency and the Union will make every effort to resolve grievances informally or the lowest level possible.

**Section 2.** For the purpose of this Article, grievance means any complaint:

**A.** By any bargaining unit employee concerning any matter relating to the employment of the employee;

**B.** By the Union concerning any matter relating to the employment of any employee;  
or

**C.** By any bargaining unit employee, the Union, or the Agency concerning:

(1) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(2) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment; or

**D.** By any bargaining unit employee or the Union concerning a claimed violation, misinterpretation, or misapplication of the Agency's policies affecting conditions of employment.

**Section 3.** In addition to those matters for which a separate grievance procedure is specifically provided for in other Articles (e.g., Bid, Rotation & Placement), the following matters are excluded from the grievance procedure:

**A.** Any claimed violation of Subchapter III of Title 5 of the United States Code (relating to prohibited political activities);

**B.** Retirement, life insurance, or health insurance;



- C. A suspension or removal under Section 7532 of Title 5 of the United States Code (relating to national security matters);
- D. Any examination, certification, or appointment;
- E. Any matter regarding the classification of any position which does not result in the reduction-in-grade or pay of any employee;
- F. The separation of an employee during a probationary or trial period, except as permitted by law or government-wide regulation;
- G. Non-selection for promotion from a group of properly ranked and certified candidates unless the basis of the grievance involves a statutory violation, (e.g., EEO, Prohibited Personnel Practice, CSRA, etc.);
- H. Non-adoption of a suggestion, disapproval of an honorary or discretionary award not directly related to job performance (except as specifically provided for in Article 42: Awards and Recognition);
- I. A proposal of an action or issuance of an Employee Performance Plan (EPP), which if effected, would be covered under this procedure or under a statutory appeals procedure;
- J. An action terminating a temporary promotion within a maximum period of two (2) years and returning the employee to the position from which (s)he was temporarily promoted, unless termination would constitute a prohibited personnel practice (see Article 7: Protection Against Prohibited Personnel Practices) or other violation of law or government-wide regulation.
- K. Any mandatory removal made in accordance with 5 U.S.C. § 7371; and
- L. Any matter in which the affected employee has elected to appeal through a statutory or regulatory processes, e.g., the EEOC (by filing a formal complaint), MSPB (by filing an appeal to the MSPB), FLRA (by filing an FLRA charge) or OSC (by filing a complaint with OSC).

**Section 4.** Except as set forth in Section 3 of this Article, the procedures contained in this Article shall be the exclusive administrative procedures available to employees for resolving grievances that fall within its coverage.

**Section 5.** Grievances under this Article may be initiated by employees either singly or jointly. When two (2) or more employees initiate separate grievances involving the same facts or events arising out of the same incident, the grievances shall be consolidated and processed through the grievance procedure as a single grievance. When processing such a consolidated grievance, no more than three (3) employees covered by the grievance will be permitted to attend any meeting concerning the grievance.

**Section 6.A.** The Union maintains the right, on its own behalf or on behalf of any bargaining unit employee to present and process grievances under this Article. Employees also maintain the right to present a grievance on their own behalf without Union representation.

**B.** Any resolution of a grievance filed by an employee who proceeds without Union representation will be consistent with law and the terms of the parties' Agreement. The Union will be provided copies of all grievance replies in such cases.

**Section 7.** The Union will be notified and provided the opportunity to attend any grievance or settlement discussion to the extent required by Section 2 of Article 5: Union Rights.

**Section 8.A.** All issues raised under Step 2 of this Article shall be identified in writing and signed by the employee or employees, Union representative, or management official raising the issue on form CBP 280 (see Appendix C) or a facsimile of the form. This form may be filed by the employee, the employee's Union representative or the management official in the Employer's electronic mail system.

**B.** Issues not raised and actions not requested in the initial filing of the Step 2 grievance form (i.e., the form CBP 280) may not be introduced at arbitration absent mutual agreement. Filings containing the language "any other remedies that may be appropriate in accordance with law and regulation " are sufficient to identify the action requested. Evidence and witnesses that are relevant to the resolution of the grievance may be introduced at any stage of the grievance procedure prior to arbitration.

**C.** Filings by management under this Article shall be made in writing directly with the Chapter President or the Union's National Office as appropriate.

**Section 9.** All written submissions made under this Article shall be delivered through personal delivery, facsimile, or electronic mail. Responses to filings shall be shared simultaneously and in a timely manner by the Employer with the appropriate Union representative and employee raising the issue.

**Section 10.** As used in this Article, “days” refers to calendar days unless otherwise expressly provided herein. If the day an action must be completed under this Article falls on a Saturday, Sunday or Federal holiday, the due date shall be the next regular business day (Monday through Friday).

**Section 11.** Absent mutual agreement, all grievance meetings will be held at the employee’s work location during regularly scheduled work hours. Participating in such meetings will be the employee who is raising the issue, the Union representative, the individual alleged to have taken the grieved action, and the individual who has the authority to resolve the grievance. Either party may choose to have an additional advisor/representative participate. Participants are encouraged to hold such meetings face-to-face; individuals unable to be physically present at such meetings will participate in them through telephone conferencing or some other audio-visual technology.

**Section 12. Local Level Grievances.**

**A. Step 1: Initial Problem Solving Meeting**

- (1) To increase the ability to resolve problems expeditiously, grievance should initially be raised as soon as practical, but no later than forty-five (45) days of the incident giving rise to the complaint or the date upon which the employee became or should have become aware of the incident by submitting to an immediate supervisor within his/her chain of command a written request for a meeting with the lowest level management official available with the authority to resolve the complaint. The request must include a brief description of the complaint. If (s)he is not the lowest level management official with the authority to resolve the complaint, the first line supervisor will immediately forward the request to the appropriate official and notify the employee and the Union representative of the name and location of the appropriate official where the grievance was forwarded.
- (2) The lowest level management official available with the authority to resolve the complaint will schedule and hold the requested meeting within seven (7)

days of the date of receipt the request. If the complaint is not resolved at the meeting, the management official shall provide a substantive written response (e.g., addresses each allegation in the grievance) to the grievant and Union representative within seven (7) days of the conclusion of the meeting.

- (3) The failure of the responding party to respond within seven (7) days will entitle the moving party to advance the grievance to Step 2: Formal Submission or to Step 3: Review & Final Decision, to include a mandatory meeting with the Director, Field Operations or equivalent management official (or designee) to discuss the grieved action(s). If the responding party fails to comply at Step 3: Review & Final Decision, the moving party may proceed to Arbitration within thirty (30) days of when the Step 3 decision should have been issued.

**B. Step 2: Formal Submission**

- (1) If the grievance problem solving meeting in Step 1 does not resolve the grievance, the party raising the issue shall make a written filing on form CBP 280, or a facsimile as described in Section 8.A. above to the Port Director or an equivalent management official (or designee) within fourteen (14) days of receipt of the denial of the grievance.
- (2) Within seven (7) days of receipt, the Port Director or equivalent management official (or designee) will meet with the affected employee to discuss and attempt to resolve the grievance.
- (3) The Employer's substantive written answer (e.g., addresses each allegation in the grievance) shall be provided to the grievant and Union representative within fourteen (14) days of the close of the meeting.
- (4) The failure of the responding party to hold the meeting within the seven (7) day time frame or provide a response within fourteen (14) days will entitle the moving party to advance the grievance to Step 3: Review & Final Decision, to include a mandatory meeting with the Director, Field Operations or equivalent management official (or designee) to discuss the grieved action(s). If the responding party fails to comply with Step 3: Review & Final Decision, the moving party may proceed to Arbitration within thirty (30) days of when the Step 3 decision should have been issued.

### C. Step 3: Review & Final Decision

- (1) If the employee is not satisfied with the resolution of the complaint after Step 2, an appeal may be filed by submitting the denial and the form CBP 280 to the Director, Field Operations or equivalent management official (or designee) within fourteen (14) days following receipt of the Step 2 decision. The grieving party may request a meeting to discuss the grievance at the time the appeal is forwarded. In the event the grieving party chooses not to request a meeting, the Director, Field Operations or equivalent management official or designee has the ability to request a meeting to discuss the grievance within seven (7) days of receiving the appeal. Absent mutual agreement, all requested meetings at this step will be held within seven (7) days.
- (2) If a meeting is held, the Director, Field Operations or equivalent management official or designee will issue a substantive final decision to the grievant and Union representative within seven (7) days of the meeting. If no meeting is held, the final decision will be issued within fourteen (14) days of receipt of the appeal.
- (3) If the employee is not satisfied with the final decision, the Union may invoke arbitration within thirty (30) days of receipt of the decision by following the process in the Article 28: Arbitration. If no Step 3 decision is provided in accordance with Subsection (2) above, the Union may invoke arbitration within thirty (30) days of when a decision should have been issued.

### **Section 13. National Level Grievances.**

- A.** To increase the ability to resolve problems expeditiously, national grievances should also be raised as soon as practical, but no later than ninety (90) days of the date the Union (or Employer if it is the moving party) became or should have become aware of the incident giving rise to the complaint by filing a form CBP 280 or a written equivalent containing the same required information to the CBP Director of Labor-Management Relations (or NTEU National President if the Employer is the moving party) or designee.
- B.** In an effort to resolve national level complaints in an expeditious manner, the CBP Director of Labor-Management Relations (or National President if the Employer is the moving party) or designee will schedule a meeting within fifteen (15) days of receiving the grievance. Within thirty (30) days of this meeting, a substantive

written decision (e.g., addresses each allegation in the grievance) will be provided to the Union (or Employer).

- C. If not satisfied with the resolution, the Union (or Employer if it is the moving party) may invoke arbitration within thirty (30) days by following the process in the Article 28: Arbitration.

**Section 14.A.** An exception to the rule that local grievances must be filed within forty-five (45) days and national grievances within ninety (90) days is when the grievance involves an alleged continuing violation. A continuing violation is an alleged pattern of conduct, even when the conduct occurred before the applicable time frames for filing a grievance. To be considered a continuing violation there must be a related violation within the applicable local and national time frames for filing.

- B. Remedies for grievances alleging a continuing violation must be in accordance with applicable law, rule, and regulation.

**Section 15.** Any denial of requested information in contemplation or connection with a grievance will be automatically joined to the grievance as an issue for the arbitrator to resolve.

**Section 16.** It is understood that each party in this process has a responsibility to timely follow the procedures set forth above in order to ensure the expedient resolution of disputes. In the absence of an extension in accordance with Section 18 below, the failure of a grieving party to comply with the technical time frames for moving a grievance from one step to the next will result in the grievance being barred from arbitration. The failure to move the grievance within the specified time frames does not absolve the responding party from their obligation to make a good faith effort to consider the grievance on its merits, meet with the grieved party and provide a substantive response.

**Section 17.A.** Suspensions of one (1) to fourteen (14) days may be appealed by NTEU through the expedited arbitration procedures of Article 28: Arbitration, Section 11 within thirty (30) days after receipt of the decision to effect the suspension (thereby waiving Step 2 of the grievance procedure), or beginning at Step 2 of the grievance provisions of this Article within fourteen (14) days after receipt of the decision to effect the suspension. In addition, the Employer, within fourteen (14) days of the final decision to suspend, may serve written notice to the other party that it is waiving the Step 2 meeting. If the

Employer waives the Step 2 meeting, expedited arbitration must be invoked by the Union within thirty (30) days of receipt of the waiver decision.

- B.** Grieved suspensions of one (1) to fourteen (14) days will be stayed throughout the grievance procedure. In addition, grievances moved to expedited arbitration by the Union will stay the suspension until an award is issued. In exchange for staying the suspension until an award is issued, NTEU agrees attorney fees may not be awarded if expedited arbitration results in the suspension being modified or overturned.

**Section 18.** Reasonable extensions of time under this Article can be made by mutual agreement between the parties.

**Section 19.A.** A final decision or resolution of any grievance prior to an arbitration decision will apply only to that grievance and will not constitute a precedent that is binding on either party for other grievances.

- B.** The remedy granted as a result of a grievance resolution will be applied only to those employees who are parties to the grievance, unless otherwise required by law or regulation.

**Section 20.** A description of any matter in dispute and the basis upon which it is resolved in any confidential settlement agreement may be available for CBP and NTEU's internal use or business.

## **ARTICLE 28: ARBITRATION**

**Section 1.** Only the Union or the Agency may invoke the procedures set forth in this Article.

**Section 2.A.** Matters specifically excluded from the grievance procedure are also excluded from this Article.

- B.** As used in this Article, “days” refers to calendar days unless otherwise expressly provided herein. If the day an action must be completed under this Article falls on a Saturday, Sunday or Federal holiday, the due date shall be the next regular business day (Monday through Friday).
- C.** “By mutual agreement” as used in this Article does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to the national arbitration procedures to grievance, arbitration or any other impasse dispute procedures. Such mutual agreements must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw.

**Section 3.A.** Requests for arbitration must be submitted in writing, e.g. by letter, facsimile or electronic mail, to the Agency’s Director of Labor-Management Relations, while requests from the Agency for arbitration must be submitted in writing to the Union’s National President, within thirty (30) days from receipt of the final grievance decision or at any time after a final grievance decision should have been issued under either Sections 12 or 13 of Article 27: Grievance Procedure. Adverse Actions must be invoked to arbitration within thirty (30) days of the employee’s receipt of the Employer’s final adverse action decision.

- B.** In accordance with Article 27: Grievance Procedure, Section 17, suspensions of one (1) to fourteen (14) days may be invoked to expedited arbitration within thirty (30) days after receipt of the decision to effect the suspension if the suspension has not been appealed by the Union to Step 2 of the grievance procedure. If the decision to effect the suspension has been appealed to Step 2 of the grievance procedure in accordance with Article 27: Grievance Procedure, Section 12, expedited arbitration must be invoked within thirty (30) days after the employee’s receipt of the Step 3 decision or any time after a final grievance decision should have been issued. If pursuant to Article 27: Grievance Procedure, Section 17 the Employer has notified NTEU, in writing, that it is waiving Step 2 of the grievance



procedure, arbitration must be invoked within thirty (30) days of receipt of the written waiver decision.

- C.** Once arbitration is invoked, the grievance will be assigned, based on the date of the invocation to an arbitrator on the appropriate Arbitrator Panel on a rotating basis beginning with the arbitrator whose last name appears first in alphabetical order. On a monthly basis, CBP will provide to the corresponding NTEU Field Office/NTEU National a list of the grievances that have been invoked to arbitration with the assigned arbitrator and date of invocation.
- D.** The arbitrator or other party must be contacted by the party invoking arbitration within forty-five (45) days of invoking arbitration to pursue a hearing date. If the parties cannot agree on a hearing date acceptable to the arbitrator that is six (6) months of the invocation date, the arbitrator is required to set a date during that time absent mutual agreement by the parties that (s)he can choose a date outside that time.
- E.** Failure of the invoking party to fulfill its obligations under Section 3.D. will result in the invoking party assuming all costs due and payable resulting from the arbitration.

#### **Section 4. Arbitrator Panels.**

- A.** The parties agree to have twenty-one (21) arbitration panels: one panel for Headquarters Pre-Clearance and the NTEU National Office, and one panel for each Field Office. The Chicago Field Office Panel will include the Financial Management Services Center (Indianapolis). Each Panel will be comprised of at least five (5) arbitrators, to hear and decide issues submitted to arbitration, with reasonable consideration given to each Field Office's geographic service area in the selection of panel members.
- B.** Arbitrator panels being used by CBP and NTEU at the time of this Agreement will be maintained until the replacements or additions are in place. Absent mutual agreement, current members will remain in place unless either party strikes them under this Agreement's striking procedures. The parties will attempt to appoint new members who live within the boundaries of the geographic Field Office they serve.
- C.** All arbitrators should be members of the National Academy of Arbitrators, but must at least be members of the FMCS or AAA panels.

- D.** In any particular arbitration, the parties by mutual agreement may agree to request a list of five (5) arbitrators from the Federal Mediation and Conciliation Service and alternately strike arbitrators until an arbitrator is selected, or they may simply agree on an arbitrator to hear the case, e.g., someone who works in the city in which the hearing will be held. The parties will toss a coin to determine which party will strike first.
- E.** In order to reach the requisite number of arbitrators on each panel and to fill any subsequent vacancies, the parties agree to select such arbitrators as follows:
- (1) The parties may mutually agree to place any arbitrator on the panel who meets the qualification requirements of Section 4.C. of this Article.
  - (2) The parties will then request a sub-regional list of five (5) arbitrators from the Federal Mediation and Conciliation Service. Each party will add two (2) additional names to the list for each vacancy on a panel by privately sending those names to FMCS and asking that they be added to the list of five (5) so that the parties receive a list of nine (9). The parties will toss a coin to determine which party will strike first. The parties will strike alternately until the requisite number of arbitrators remains.
- F.** Each arbitrator will be selected on a rotating basis to hear and decide arbitration cases within the service area covered by his or her panel. If the arbitrator who would otherwise be selected via the rotating procedure does not reside in or near the city where the case will be heard, as an exception to the rotating procedure, the parties may agree to select an arbitrator from another panel if s/he resides in or near the city where the case will be heard. If the parties do not mutually agree to select an arbitrator by this alternate method, the rotating selection procedure will be used.
- G.** Absent mutual agreement to do otherwise, each party may strike up to one (1) arbitrator from each panel during each twelve (12) month period of this Agreement by giving written notice to the arbitrator and the other party. In addition, if an arbitrator is unable to schedule a case in accordance with Section 3.D. of this Article in two successive cases the parties try to schedule with him or her, either party may strike the arbitrator at that time. Upon receipt of written notice, no further cases will be assigned to that arbitrator, but the arbitrator will hear and decide any cases already assigned to him. Within ten (10) days after receipt of such notice, the parties shall meet and select another arbitrator to replace the arbitrator removed using the procedure in Section 4.E. of this Article. The newly selected arbitrator will be placed on the list in the numbered position of the

arbitrator he replaces and will take the cases on a rotational basis in the same manner as the arbitrator he replaces would have received them. An arbitrator may remove himself from the list at any time.

- H.** Only arbitrators with experience in Equal Employment Opportunity (EEO) or civil rights law will hear and decide grievances involving allegations of EEO discrimination.
- I.** Within two (2) weeks of the effective date of this Agreement the President of NTEU and the CBP Director, Labor-Management Relations will exchange representatives designated to establish the panels for each Field Office and Headquarters. Once nominated, the parties' designated representatives will have forty-five (45) days to collaborate and utilize the procedures contained in this Section to establish a panel of at least five (5) arbitrators who will hear and decide grievances occurring in the respective Field Offices.

**Section 5.A.** Arbitrations involving local grievances will be held at an Agency facility in reasonable proximity to the geographic locale in which the grievance occurred, or any site mutually agreed to by the parties. National grievances shall be arbitrated in Washington, D.C. and will be rotated between the Employer's and the Union's premises.

- B.** Absent mutual agreement, a party that requests postponement of an arbitration proceeding after an arbitrator has been selected and a hearing date scheduled shall pay all fees and costs due and payable as a result of the postponement. However, if the parties settle the grievance prior to a final and binding arbitration award going into effect, any and all fees and costs will be equally shared.
- C.** If an employee is aggrieved due to the receipt of a disciplinary action, the Agency will pay for the travel and per diem of the aggrieved employee and approved witnesses if they are not located within commuting area of the arbitration hearing location. In arbitrations not based upon issued disciplinary actions, the Agency will pay for the travel and per diem of the aggrieved employee, and, in the event there are multiple aggrieved employees in a non-disciplinary arbitration, the Agency will pay for travel and per diem for up to a maximum of four (4) representative employees.
- D.** In the event a witness is not assigned to a duty station located within the commuting area of the arbitration hearing location, the party calling that witness shall have the right to obtain his/her testimony via telephone or other telecommunication device.

**Section 6.** This Section addresses the procedures to be applied by the parties regarding an arbitration hearing.

**A.** No later than twenty (20) days before the hearing date the parties will:

(1) Meet in person, by telephone or by video-conference and will use their best efforts to reach settlement.

(2) Absent settlement, the parties shall prepare a joint letter submitting the matter in dispute to the arbitrator. The letter shall present, in question form, the issue on which arbitration is sought, including questions of grievability and arbitrability. If the parties cannot agree on the issue(s) on which arbitration is sought, each party shall prepare its version of the issue(s) and submit it to the arbitrator; however, the arbitrator should look to the unresolved issues in the grievance to determine the issue.

(3) Attempt to reach an agreement on joint exhibits and any stipulation of facts concerning the matter being arbitrated. Either party may forward to the arbitrator as soon as practicable after his or her selection the following materials: the written invocation of arbitration, submission letter(s), a copy of this Agreement, and copies of applicable agency regulations, together with a copy of the form CBP 280 grievance . The parties shall be mindful that the scope of the arbitration is set forth in the form CBP 280 and in the Agency's grievance responses.

**B.** Copies of any and all documents filed with the arbitrator at any stage of the arbitration proceeding shall be simultaneously served on the other party.

**C.** The Parties will exchange a list of witnesses at least fourteen (14) days prior to the first day of the hearing, briefly identifying the relevance of the testimony expected from each witness. Either Party may object to the other party's witnesses on the grounds that the witness's proffered testimony is not relevant, probative or competent. The arbitrator will resolve disputes over the other party's witnesses by a conference call with the parties at least two (2) days prior to the hearing.

**D.** The Parties may agree to exchange lists of any exhibits they intend to offer into the record or use for demonstrative purposes either prior to or during the hearing.

**E.** Bargaining history may not be used in an arbitration hearing unless the party proposing to use it has notified the other at least thirty (30) days prior to the

hearing of its intent to use it. If a party gives notice of intent to use bargaining history, the other party may use it without providing notice.

- F.** The arbitration hearing shall be conducted between the hours of 9:00 am and 5:00 pm, Monday through Friday. The Parties may mutually agree to begin the hearing at a time other than 9:00 a.m. or to continue the arbitration hearing beyond 5:00 p.m., but may not be compelled to do so. The arbitrator should attempt to use the last thirty (30) minutes of the day to provide feedback to the parties and promote settlement of the case prior to briefing.
- G.** Arbitration hearings are administrative in nature and not court proceedings. The rules of evidence have only general applicability, but the arbitrator shall exclude irrelevant or unduly repetitious testimony. Except as expressed in this Agreement, the arbitrator shall determine the procedures to be followed at the hearing, and shall explain such procedures to both parties at the outset of the hearing.
- H.** The parties may offer such relevant and non-repetitious evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary.
- I.** Arbitration hearings shall normally be open hearings. Either party may request that the hearing be closed to persons having no interest in the dispute. Upon good cause shown the arbitrator may close the hearing.
- J.** The invoking Party shall present its case first, except in disciplinary or adverse action cases where the Agency shall present its case first. The invoking Party shall bear the burden of proving its case by a preponderance of the evidence, except: in disciplinary or adverse action cases, in which case the burdens applied shall be those of the Merit Systems Protection Board (MSPB) in adverse action cases; in matters covered by 5 U.S.C. § 4303, in which case the arbitrator is governed by the burden established in 5 U.S.C. § 7701(c)(1)(A) (Employer's decision is supported by substantial evidence); and in matters covered by 5 U.S.C. § 7512, in which case the arbitrator will be governed by 5 U.S.C. § 7701(c)(1)(B) (Employer's decision is supported by preponderance of evidence).
- K.** The arbitrator may, at his 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.

- L.** The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems proper after consideration of any objection made to its admission.
- M.** A verbatim transcript of the hearing shall be made by a qualified reporter unless the Parties mutually agree that one is not needed or unless the expedited arbitration procedures are utilized. Copies of any transcript made shall be provided to the arbitrator, the Union, and the Employer.
- N.** The filer, his representative, and all employees who are called as witnesses will be excused from duty without charge to leave to the extent necessary to participate in the arbitration.

**Section 7.** Unless otherwise provided for in this Article, the parties shall bear equally the arbitrator's fees and expenses of arbitration, including but not limited to the compensation and expenses of the arbitrator, the charge for the transcript and the costs of any non-governmental hearing rooms or facilities that may be used.

**Section 8.** This Section describes the Authority of any selected arbitrator deciding a grievance as defined by this Agreement.

- A.** The arbitrator shall have authority to make all grievability and/or arbitrability determinations. The arbitrator shall attempt to resolve these issues prior to the scheduled hearing. The arbitrator should not address the merits of the dispute if the case is found to be non-grievable and/or non-arbitrable.
- B.** The arbitrator shall have no authority to add to, subtract from, or modify the terms of the Agreement.
- C.** The arbitrator's award will be limited to the issues presented and remedies requested during the grievance procedure at step two.

**Section 9.** When the Union has requested such a remedy, attorneys' fees, back pay, and interest will be provided in accordance with standards established by the FLRA, MSPB, or other applicable jurisdiction.

**Section 10.** The Parties will request that the arbitrator serve his/her decision in writing on both Parties within forty-five (45) days after the close of the hearing or filing of the post-hearing briefs.

**Section 11.A.** The parties may agree that the procedures set forth in this Article are too time consuming, formal, and costly for the nature of a particular grievance. In such instances and subject to the other limitations set forth in this Article, the parties may agree to expedited arbitration as follows:

- (1) The hearing will be conducted within ninety (90) days of the arbitrator or the other party being contacted pursuant to Section 3.D. above. The arbitrator will be selected in accordance with the procedures in Section 4 of this Article.
- (2) No transcript will be made, and no briefs may be filed.
- (3) The arbitrator will announce his award at the close of the hearing or within five (5) days thereafter.
- (4) If during the selection process the arbitrator indicates he is unable to meet these time limits, the parties may select a different arbitrator from the panel who can meet these time limits.

**B.** These expedited arbitration procedures shall be used in the following actions unless the parties agree otherwise:

- (1) All non-adverse disciplinary actions, e.g., suspensions of one (1) to fourteen (14) days;
- (2) Written reprimands;
- (3) Within grade appeals;
- (4) Performance evaluation disputes;
- (5) Outside employment denials;
- (6) Denials of annual or sick leave or leave without pay;
- (7) Denials of official time requests by Union representatives under this Agreement;

- (8) Improper maintenance of personnel records;
- (9) Decisions by the Employer concerning:
  - (a) Bulletin board postings;
  - (b) Literature distribution;
- (10) Placement of employees pursuant to Article 13: Bid, Rotation & Placement;  
and
- (11) Denial of an employee's requested AWS or telework schedule.

**Section 12.** Either Party may file exceptions to an arbitrator's award to the FLRA under regulations prescribed by the FLRA for this purpose. If neither Party timely files exceptions, the arbitrator's award will be binding. In adverse action arbitrations, the impacted employee may file an appeal to the Federal Circuit. In addition, the parties recognize that the Agency may request that the Director of OPM file a petition for judicial review in the Federal Circuit. If an exception or appeal is filed, the arbitrator's award will not be implemented until all appeals are exhausted and a final decision is rendered by the FLRA or the court of highest authority to which the case has been appealed.

**Section 13.** Any of the time limits set forth in this Article may be waived or extended by agreement of the parties which has been confirmed in writing.



## **ARTICLE 29: ACCESS TO FACILITIES AND SERVICES**

**Section 1.** Access to CBP facilities and services for communication among the Union, the bargaining unit and the Agency will facilitate labor-management relations, save time and energy, and produce more efficient and effective working relationships.

**Section 2.A.** Upon a Union request received by the Employer, normally no later than twenty-four (24) hours in advance, the Employer will provide meeting space, if available, in areas occupied by the Employer for meetings during non-duty hours. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.

**B.** Any request for meeting space must contain the date, time, duration and purpose of the meeting and the estimated number of employees expected to attend.

**C.** An NTEU National Representative, upon an approved request received by the Employer, normally no later than twenty-four (24) hours in advance, may visit non-work areas located on the Employer's premises to discuss appropriate Union business with bargaining unit employees during non-duty hours. Absent just cause, the Union's request will be approved.

**D.** Employees attending meetings under this Section will only do so during non-duty hours or while in a leave status.

**Section 3.** Mutually agreed upon space will be provided for the placement of ballot boxes provided by the Union to be used in conjunction with Chapter Officer elections governed by local by-laws. The Union will comply with security and housekeeping rules in effect at that time and place. No responsibility for the safety or security of the ballot boxes is assumed by the Employer.

**Section 4.A.** Upon reasonable advance request by the Union, the Employer will provide confidential meeting space during official hours of business, in areas occupied by the Employer.

**B.** In the event meeting space is not available, the Employer will make necessary arrangements to reserve meeting space as soon as it becomes available.

**C.** Nothing in this Section will be construed as permitting meetings for the purpose of discussing internal Union business.

**Section 5.A.** For purposes of this Section, the term "official bulletin board" is defined as any physical bulletin board upon which the Employer posts notices to and for employees.

- B.** The Employer will provide the Union with a reasonable amount of dedicated space on each official bulletin board for its exclusive use. In addition, and subject to applicable restrictions, the Employer will provide space for the Union to install one bulletin board, of reasonable size, per floor occupied by employees. The Union will pay for the boards and the cost of installation. The boards will be for the exclusive use of the Union.

**Section 6.A.** The Union may distribute material on the Employer's premises during non-duty hours (e.g., lunch hours) in non-work areas during scheduled work hours provided that the employees distributing and receiving the material are on their own time and provided that there is compliance with the Employer's security policies and practices.

Non-work areas are: cafeteria or any other commercial enterprises located on the Employer's premises (with approval of lessor or operating agency), space set aside as snack bar or break areas, and rest rooms, entrance ways, lobbies and parking lots.

- B.** Material distributed by the Union in accordance with Section 6.A that does not libel or slander any individual, other labor organizations, government agencies, or activities of the Federal Government may be distributed, so long as it relates to working conditions or practices, or labor-management relations communications.
- C.** All costs incidental to the preparation and/or distribution of Union materials under this Section will be borne by the Union.

**Section 7.A.** To promote the greatest, and most efficient, distribution of this Agreement, CBP will post the Agreement on its intranet and internet site. The posted Agreement will have hyperlink ability to assist in navigating through the articles. Once the Agreement is posted, the Employer will immediately inform all employees of its availability and how to view its contents.

- B.** CBP will also post on its intranet and internet, mid-term agreements entered into at the national level in addition to all Agency Directives, handbooks etc. that impact conditions of employment.

**Section 8.A.** The Union's use of Agency equipment, supplies, and/or media for communications concerning Employer-Union business is permitted when available. Examples of such communication media include U.S. Mail, fax machines, electronic mail, telephones, satellite facilities, video or teleconferencing, two-way radio, photocopiers, inter-office mail, physical and electronic bulletin boards.

- B.** Communication by U.S. mail does not include the use of government paid postage.
- C.** The Union may establish National and Chapter electronic bulletin boards for one-way communication designed to reach large numbers of employees. CBP will provide access for designated CBP employees to mainframe bulletin boards where available, for viewing NTEU information.
- D.** The Union's use of Agency equipment or supplies for internal Union matters or business is strictly prohibited.
- E.** Upon reasonable advance request, the Union will be allowed to use the Employer's audio visual equipment, if locally available, for use during new employee orientation presentations.
- F.** The Employer will provide all employees, as practicable, with access to a CBP electronic mail system. Employees may exchange messages related to official Agency business and Employer-Union matters.
- G.** All costs incidental to the use of such equipment will be borne by the Union. The Union will return any equipment used to the Employer in good condition promptly after being used.

**Section 9.** Upon receiving the geographic locations covered by each chapter from NTEU, the Employer will furnish to the Union, for its internal use only, a list which will contain the name, grade, position, title, branch, division, organizational office and NTEU chapter of all employees in the bargaining unit. Additionally, the list will include information describing whether each employee is under FERS or CSRS and information about each employee's employment status (e.g., seasonal, intermittent, permanent part-time, permanent full-time, temporary, term, etc.). This list will be supplied within one month after this Agreement becomes effective and on February 1, May 1, August 1, and November 1 of each year thereafter.

**Section 10.** The Employer will provide upon request, two (2) four-drawer file cabinets, if available, to each NTEU Chapter which has not previously been provided with file cabinets by the Employer.

**Section 11.A.** Space availability and budget considerations permitting, as determined by the Employer, the Employer will make good faith efforts to provide lockable lockers for uniformed employees to be located near their work areas. In addition, the Employer will request that the General Services Administration furnish adequate locker space in new or replaced CBP facilities being constructed under their supervision, and also a like request will be made to authorities providing space to the Employer without charge.

**B.** Space availability and budget considerations permitting, as determined by the Employer, the Employer will, within its authority, make reasonable attempts to insure that adequate eating space, drinking fountains, sanitary facilities and vending machines are available at all permanent locations, which will be properly heated and ventilated.

**C.** Space availability and budget considerations permitting, as determined by the Employer, the Employer will, within its authority make reasonable attempts to insure that adequate lounges/break rooms are provided at all permanent locations.

**Section 12.** The Employer will list the name, office telephone number, home or Union office telephone number of each Chapter President and NTEU National Vice-Presidents (2) in the CBP telephone directory.

**Section 13.A.** At a minimum, the Employer will provide the Union with adequate office space and equipment at a CBP worksite or other approved facility, in accordance with government-wide regulations on space management. Upon the effective date of this Agreement local chapters may request to negotiate over office space in accordance with Article 26: Bargaining. Alternatively, the Union may choose to rent/lease its own commercial space. In the latter case, the leased space will be centrally located and readily accessible.

**B.** Any space considered for availability must be in accordance with government-wide regulations on space management. However, at a minimum, any office provided will be equipped with a desk, four chairs, and a telephone.

- C. Based upon need, equipment and system availability and budget considerations, the Employer will make reasonable efforts to provide a Union office in Employer-controlled space, with a fax machine, computer and systems access. Alternatively, the Union may provide such equipment and access at their expense.
- D. Any disputes regarding CBP provided space and/or equipment availability may be referred to the appropriate Field Level Labor-Management Relations Committee.
- E. Nothing in this Subsection is intended to reduce the number of Chapter union offices in place as of the effective date of this Agreement.

**Section 14.** The Employer will make reasonable efforts to ensure that temperatures within CBP-occupied office space are adjusted, where possible, to the allowable limits prescribed by applicable law, regulation or directive. Where temperatures in CBP occupied office space consistently fail to meet the allowable limits referred to above, the Employer will make reasonable efforts to have the situation corrected.

**Section 15.** The Employer will provide the Union appropriate notice when a determination is made to acquire new or modify existing space and this decision may affect unit employee working conditions. The Employer will consider Union recommendations in making determinations related to space management.

**Section 16.** The Employer will promptly forward to the lessor substantiated complaints by employees alleging problems relating to space management outside the Employer's control.

**Section 17.** Employees will, in accordance with the provisions of the Public Transportation Incentive Program, be provided with the maximum allowable transportation subsidy they qualify for based on their commute.

**Section 18.A.** When the Employer possesses the authority to establish parking fees at duty locations, the Union will be provided notice and the parties will negotiate locally in accordance with Article 26: Bargaining.

- B. The Employer will establish a pre-tax dollar parking benefit program to be implemented within three (3) months of the effective date of this Agreement.

**Section 19.A.** To communicate with managers and employees on employee conditions of employment, the Employer will provide one “blackberry” (with necessary access codes) to those NTEU Chapters that have more than two-hundred and fifty (250) unit members, upon request.

**B.** Chapter officials using agency provided blackberries are responsible for operating the device in accordance with applicable CBP policy.

**C.** Communication with a blackberry in accordance with this section may not be used for any purpose other than labor-management relations. Chapter officials using a blackberry in accordance with the section are not entitled to increased forms of compensation, e.g., claims under FLSA.

**Section 20.** In the administration of this Article, no local NTEU Chapter will forfeit any rights, privileges, benefits or access to CBP facilities or services contained in any collective bargaining agreement between CBP and NTEU unless specifically in conflict with this Article.

**Section 21.** In the event that employees are prohibited from carrying a privately owned pager, cell phone or other wireless communication device to receive incoming calls or messages, the Employer will ensure that at least one manned telephone line is available at all Ports covered by such policy which is specifically and solely dedicated to receiving incoming emergency telephone calls to bargaining unit employees (in a manner consistent with 64 FLRA No. 70). For Ports with operational command centers that are staffed and answer calls during operational hours, the Employer may use existing multipurpose phone lines at such centers for this purpose. For Ports without such command centers, the Employer will add a dedicated phone line for this purpose. CBP will implement internal procedures to ensure that impacted bargaining unit employees are immediately informed of the emergency telephone call. Port employees will be informed of the emergency telephone numbers and emergency notification procedures.

## **ARTICLE 30: UNION REPRESENTATIVES AND OFFICIAL TIME**

**Section 1.** The term “official time” as used in this Article, means an approved absence from duty by a bargaining unit employee during regular hours of duty without loss of pay and without charge to leave.

**Section 2.A.** Representatives shall be granted a reasonable amount of official time for all matters relating to the administration of this Agreement, and joint labor-management relations matters arising under Chapter 71, Labor-Management Relations, Title 5 and any other activity for which the Civil Service Reform Act (CSRA) allows employees to use official time such as:

- (1) to prepare for and participate in Labor-Management Relations Committees (LMRCs) activities as provided for in this Agreement;
- (2) meetings with the Employer concerning personnel policies, practices or other general conditions of employment or any other matter covered by 5 USC 7114(a)(2)(A);
- (3) to prepare for and present unfair labor practice charges or unit clarification petitions including preparation for and participation in any Federal Labor Relations Authority investigation or hearing as a representative of the Union;
- (4) to prepare and deliver written and/or oral replies to notices of proposed disciplinary, adverse or unacceptable performance actions;
- (5) to prepare for and present appeals in connection with statutory or regulatory appeal procedures in which the Union is designated as the representative;
- (6) to prepare for and present reconsideration replies in connection with the denial of within grade increases;
- (7) examinations of bargaining unit employees by a representative of the Employer in connection with an investigation;
- (8) to prepare for and participate in grievance meetings and arbitration hearings;
- (9) meetings of committees on which Union representatives are authorized membership pursuant to this Agreement;

- (10) to prepare for and/or participate in local or national negotiations;
- (11) to meet with national staff representatives of the Union in connection with a grievance, arbitration, or unfair labor practice charge;
- (12) to travel to and from any activity for which official time is authorized under this Article;
- (13) to attend or conduct Union sponsored training and other joint labor-management relations training matters. In no case will a Chapter receive less than forty (40) hours for each national Vice President, Chapter President, or Chief Steward and no less than twenty-four (24) hours for each Steward position authorized by this Agreement. All of this time may be pooled for use by any or all Chapter Union Representatives;
- (14) to engage in lobbying activities (e.g., visiting, phoning and writing to elected representatives) on matters concerning Union employees' conditions of employment. This official time will be available to union representatives in addition to Chapter Presidents, Chief Stewards and Stewards (e.g., Legislative Coordinators or Chapter Vice Presidents).
- (15) to prepare and maintain records and reports required of the Union by 5 U.S.C. § 7120 (c).

**B.** When serving as a designated employee representative in an established appeals procedure, a steward, chief steward, or Chapter President shall receive such official time as may be provided or allowed in the law or regulations governing the appeal procedure.

**C.** Reasonable time shall also be granted as necessary to stewards, chief stewards, Chapter Presidents, and affected employees to prepare for meetings referenced in Subsection A. above.

**Section 3.** As necessary or required, employees shall be excused from duty without charge to leave to participate in the activities covered in Section 2 of this Article.

**Section 4.** With regard to representational duties, the Union may officially designate Union stewards and chief stewards as follows:



- A.** The Union may designate at least one (1) official steward at each post of duty. A post of duty, for the purpose of this Article, is a common physical location, such as a station, port-of-entry, airport etc. The post of duty shall be the representational area of the steward(s) for the purposes of this Article.
- B.** The Union agrees to appoint no more than the following number of stewards at any post of duty where more than twenty-five (25) employees are stationed:

Post of Duty Size	Number of Stewards
26 – 50 unit employees	2
51 – 100 unit employees	4
101 – 175 unit employees	5
176 – 250 unit employees	6
251 – 325 unit employees	7
326 – 400 unit employees	8
401 – 475 unit employees	9
476 – 550 unit employees	10
551 – 625 unit employees	11
626 – 700 unit employees	12
701 – 775 unit employees	13
776 – 850 unit employees	14
851 – 925 unit employees	15
926 – 1000 unit employees	16
1001 – 1075 unit employees	17
1076+ unit employees	18

- C.** In addition to the stewards designated pursuant to Subsections A and B above, the Union may also designate one (1) chief steward for each CBP Port, Area or Headquarters Office. Each Chapter shall have at least one chief steward. A chief steward may represent any employee concerning matters related to the employment of the employee within his Chapter's jurisdiction. The preceding will not result in any additional cost, e.g. travel and per diem, to the Employer.
- D.** The Employer shall recognize the President of each existing NTEU Chapter representing CBP employees as having the authority to represent the Union in the administration of this Agreement and to represent bargaining unit employees concerning any matter relating to the employment of an employee within their respective jurisdiction. Where more than one (1) Chapter President exists within a DFO area, the DFO area shall be geographically apportioned by the Union to provide non-overlapping representational areas for each Chapter President. The Union shall notify the Employer of such apportionment. The Chapter President

may represent any employee concerning matters relating to the employment of the employee within his chapter's jurisdiction. The preceding will not result in any additional cost, e.g. travel and per diem, to the Employer.

**E.** In recognition of the complexity of CBP operations, e.g., 24/7 working schedules, multiple ports within one NTEU Chapter's jurisdiction, varying miles between ports, seasonal ports, the presence of uniform and non-uniformed employees, frequent changes in shift times, and the diverse preferences of Chapter representatives to perform CBP duties some or none of the time, the parties agree that the number of chapter representatives designated below will receive a block of time as noted each week so that both parties can plan and employees have known access to the union. The entitlement to block time is as follows:

1. Chapter representing more than 75, but less than 275 bargaining unit employees will be allowed at least one representative on 50% official time.
2. Chapters representing 275 or more employees shall be allowed at least one full-time representative on official time.
3. Chapters representing 550 or more employees shall be allowed at least two full-time representatives on official time.
4. Chapters representing 1,000 or more employees shall be allowed at least three full-time representatives on official time.
5. For every full increment of 400 employees above 1,000 the chapter will be allowed to appoint another full-time representative.
6. If a chapter also has between 10 and 20 ports, it will be entitled to another full-time representative. If it has more than 20, it will be entitled to two more.
7. However, no chapter will be entitled to more than five full-time representatives under 1-6 above.

Chapters may share a block of time among its representatives in half-block increments, e.g., if a chapter is entitled to one full-time representative, it could split that block in half between two representatives.

**F.** Union representatives who elect full-time status will notify the appropriate management official(s) of their status and its anticipated duration in accordance with local scheduling practices.

**G.** Chapters may elect to divide full-time Union representation responsibilities among more than one person.

**H.** Upon conclusion of their labor-management duties, full-time Union

representatives will return to positions in the same series and grade they occupied before assuming full-time union duties.

- I.** The Employer will designate a manager to whom a full-time Union representative will report for administrative purposes (e.g., leave, travel, etc.). Normally, this manager will be the Port director or his designee. Employees who are serving as full-time representatives will be rated in accordance with the provisions of the applicable Article of this Agreement while fulfilling their labor-management duties.
- J.** Performing full-time duties as a Union representative will have no effect on an employee's ability to participate in overtime. An employee covered by COPRA will remain in his participating group and his participation will conform with inspectional assignment policy and local excusal procedures.
- K.** Union representatives in full time status will not be required to perform the normal duties of their position unless by mutual agreement or the statute otherwise gives the employer the right to order the full-time union official to perform work assigned him or her.
- L.** In the event of operational demand employees on official time must be able to immediately report to work prepared to carry out the full scope of their respective duties.
- M.** Nothing in this subsection is intended to reduce the number of full-time Chapter representatives in place as of the effective date of this Agreement.

**Section 5.** For each representative allowed under the provisions of this Article, the Union may appoint an alternate representative. The alternate representative may serve as a representative only when the official representative is absent from duty or on an assignment outside his representational area.

**Section 6.A.** Local NTEU Chapters will provide the Employer a list of its Vice Presidents and other officers/stewards within thirty (30) calendar days of the effective date of this Agreement, and annually thereafter. In addition, the Chapters will provide the Employer a list of additions, deletions or changes to the list each month. Only those stewards and alternates on the steward's list will be recognized by the Employer as having authority to represent the Union. The Union at the National level will provide to the Employer a list of its Chapter Presidents within thirty (30) calendar days of the

effective date of this Agreement and changes to this list each month.

- B.** The Union may change stewards at any time by providing written notice to the appropriate management official. At least one (1) management official will be designated to receive such information within each port, Area, field headquarters office, and National Headquarters. Nothing in this Section shall prohibit a Chapter President or an NTEU National representative from representing the Union.

**Section 7.** Official time may be used in any reasonable location agreed to by the parties locally. In the event the local parties are unable to reach agreement, the Agency will provide the representative with a reasonable location to perform representational duties while on official time.

**Section 8.A.** The Employer has determined that, unless there are insufficient other qualified candidates, union officers or stewards will be considered for details or temporary promotions to supervisory positions only if they volunteer. When the Employer determines to detail or temporarily promote a union officer or steward to a supervisory position, the union officer or steward must relinquish all union responsibilities for the duration of the detail or temporary promotion.

- B.** This Section shall not prohibit a Union officer or steward from serving as an acting supervisor for brief periods of time so long as no conflict of interest is created.

**Section 9.** In accordance with the special job order accounting code established for that purpose, all approved time spent by representatives on representational functions will be charged to labor-relations time and so recorded by the Employer on the time and attendance report.

**Section 10.** Union representatives other than full-time representatives who wish to use official time authorized under this Article must obtain consent from their immediate supervisor before undertaking such activity. An SF-71 or other form mutually agreed to by the parties at the local level may be used for such requests. The representative shall inform the supervisor where he is going, the general purpose of his visit, i.e., the category of representational activity, and when he expects to return. Immediately upon return to the work site and prior to returning to duty, the representative shall inform his supervisor of his return.

**Section 11.** When a representative enters a work area or performs representational activities he must receive the consent of the immediate supervisor in charge of the work area. The representative shall inform the supervisor whom he wishes to confer with, the general purpose of the visit and how long he expects the conferee to be away from his duties. The conferee shall receive the agreement of his immediate supervisor prior to ceasing his duties. Whenever practicable, the conference shall take place in a meeting room as provided for in Article 29: Access to Facilities and Services.

**Section 12.** Workload requirements permitting, requests pursuant to Sections 10 and 11 above will normally be granted. If a request is denied due to work requirements, the supervisor will explain the reason and will indicate to the representative and/or employee when he expects it will be possible to grant the request.

**Section 13.** Where feasible, the employer shall make shift adjustments for representatives to attend labor-management meetings during their duty hours.

**Section 14.** Employees are permitted but not required to wear a uniform while on official time.

## **ARTICLE 31: EMPLOYEE RIGHTS**

**Section 1.** Employees covered by this Agreement shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided in the Civil Service Reform Act of 1978, such rights include the right:

**B.** 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

**C.** To engage in collective bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.

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

**Section 3.** Each employee covered by this Agreement has the right to be represented by the Union without discrimination and without regard to labor organization membership subject to the Union's right to refuse to represent the employees described in Section 4 of Article 5: Union Rights.

**Section 4.A.** Employees and Agency managers shall conduct themselves in a professional and businesslike manner, characterized by mutual courtesy, in their day to day working relationships.

**B.** Any discussions with individual employees concerning counseling, evaluations, workload review, or disciplinary actions will be conducted so as to insure the privacy of the employee.

**Section 5.A.** When an employee is ordered by a supervisor to perform any action and the employee believes the order is a violation of law, the employee may do any or all of the following:

- (1) Give the supervisor a written statement expressing the employee's objection to the order;
- (2) Use the Internal Affairs hotline to report the alleged violation;
- (3) Verbally inform the supervisor of his concerns.

**B.** Any such action by the employee must not interfere with his carrying out any lawful order. Failure to carry out a lawful order may result in disciplinary action. The supervisor shall assume full responsibility for the decision, but not for the employee's execution of the order.

**Section 6.** Except in the case of a grievance or other negotiated appeal provisions contained in this Agreement, nothing shall be construed to preclude an employee from:

- A.** Being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any dispute or appeal action; or
- B.** Exercising dispute or appellate rights established by law, rule, or regulation.

**Section 7.** An employee covered by this Agreement may, without fear of penalty or reprisal, engage in the disclosure of information which the employee reasonably believes evidences:

- A.** A violation of any law, rule, or regulation; or
- B.** Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

**Section 8.** Consistent with the procedures contained in Article 22: Investigations, an employee has the right to representation by the Union at any examination conducted 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.

**Section 9.A.** An employee will be notified of a written complaint received by management. A complaint for the purpose of this section is defined as a written statement, including any oral complaints reduced to writing by the Agency, by an identified complainant indicating dissatisfaction with an employee by reason of conduct, appearance or carelessness or propriety of an action taken by the employee.

**B.** Notification shall be provided by management as soon as practicable, normally within three business days, following the receipt of the complaint. Upon request, the employee shall be furnished with a copy of the complaint; or if the complaint involves more than one employee, that portion of the complaint related to the requesting employee. A copy of a written response by management will be furnished to the employee upon written request by the employee.

**C.** The Agency will afford the employee a reasonable period of time in which to prepare and give to the Employer a response to the complaint, which will be considered before the Employer responds to the complainant. Upon request, the Employer will advise the employee of its response by providing a copy or summary.

**Section 10.A.** The Agency has determined that the review of audio and video recordings is designed to reveal deviations from standards and unsafe conditions and practices so that appropriate corrective actions can be taken. Accordingly, audio and video recording devices will be used to augment the Agency's surveillance capabilities for port perimeters, secured areas and for interactions between employees and the public. Any Agency operated audio and video recording will be conducted in accordance with law, rule and/or regulations.

**B.** Unless the Agency has an internal investigative interest, Agency operated audio and video recordings are not intended to capture employee actions while in non-work areas. A non-work area includes bathrooms, break rooms, parking lots or other areas where official duties are not performed. Although not the intended purpose of the Agency's audio and video surveillance systems, nothing in this Section is intended to prohibit the Agency from proposing action against an employee in the event a recording captures potential misconduct in a non work area. In the event the Agency determines to operate audio and video recordings in non-work areas, it will notify NTEU and provide it the opportunity to bargain, as appropriate.



- C. In the event an audio or video recording is relied upon by the Agency when proposing a discipline or adverse action, the employee will be provided such recording and the opportunity to respond in accordance with Article 45: Disciplinary Actions and Article 46: Adverse Actions.

**Section 11.** At the completion of a sworn affidavit at the conclusion of an investigative interview, subjects are allowed to review their answers and to make any changes they deem are required. This opportunity to review includes the ability to listen to a portion of or the entire recording to verify answers before executing the affidavit. Employees have the ability to secure a NTEU representative to participate in all phases of the investigative interview in accordance with Section 6 of Article 22: Investigations.

**Section 12.** When the Employer exercises its legal right to search an employee's possessions at the work site (e.g., desk, locker, car, clothing, etc.) in a non-criminal matter, the employee and his representative will be allowed to be present during the search. If the employee and his representative are not present at the work site, the search will be delayed until such time as they are both available unless such delay impedes the purpose for which the search is conducted.

**Section 13.A.** Participation in the Combined Federal Campaign, United States Bond Drives, Blood Donor Drives and other worthy programs will be on a voluntary basis.

- B. Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary.

**Section 14.** The Employer will ensure that a copy of Article 22: Investigations is included in all orientation materials provided to newly hired employees.

**Section 15.A.** In consideration of an employee's right to privacy, any requested medical information will be kept in confidential files separate from an individual's personnel file.

- B. Employees will normally provide appropriately requested medical information to the requesting official who will ensure the information is protected in accordance with Subsection A. As an exception, in the event an employee has a reasonable privacy concern related to providing detailed medical information (e.g., information that includes a doctor's prognosis and diagnosis) directly to the

requesting official, upon employee request, the Employer will make alternative arrangements for the employee to deliver the required information directly to a medically certified Agency representative. The employee acknowledges the granting of such a request may result in a delay in the benefit sought by the employee.

- C. In the event a medically certified Agency representative provides medical information to CBP management officials for the purpose of making an informed management decision, the non-medically certified CBP management officials will only review applicable summary medical information in which they have an appropriate need to know.

## **ARTICLE 32: EMPLOYEE DEVELOPMENT**

**Section 1.** Training and development of employees within the unit is a matter of significant importance. In conjunction with this concept, the Employer, within budgetary limitations, will make available to an employee the training the Employer determines will improve individual and organizational performance and assist in achieving the Employer's mission and performance goals, including training for different positions within CBP or in other Federal agencies. The Employer and the Union agree to continue their encouragement of self-initiated development efforts of individual employees consistent with the terms of this Article.

**Section 2.A.** The Employer will maintain information about CBP provided training as well as other job-related educational resources. This information will be made available to all CBP employees. Employees seeking counseling and guidance regarding training opportunities should discuss the matter with their immediate supervisor and/or their Mission Support Staff.

**B.** CBP will inform employees at least annually of the availability of training and other job-related educational resources.

### **Section 3. In-Service Training**

**A.** Where the Employer offers in-service training to enhance job proficiency, excluding required and remedial training, the following procedures will apply:

- (1) The Employer will advertise in-service training programs to all CBP employees through an electronic web-posting or other appropriate method.
- (2) The in-service training advertisement will provide employees information about the offered training, any prerequisite qualifications, and application procedures.
- (3) Employees will be selected for such training in a fair and equitable manner as described in this Article 2: Fairness and Equitability. Absent just cause, qualified employees (e.g. employees within the targeted work unit) will be selected for such training in seniority order as defined in this Agreement.

(4) In the event of a posting failure which affects a group of employees, the remedy available under this Agreement shall be limited to priority consideration when such training is offered again.

**B.** Upon request, the local NTEU chapter will be informed of those employees selected for in-service training.

#### **Section 4. Non-CBP Training**

**A.** When an employee requests non-government training, the Employer will pay authorized expenses for such training at a facility approved by the Employer when the following conditions have been met:

- (1) the training has been applied for on an SF-182 or the appropriate form and approved in advance;
- (2) the training will improve individual and organizational performance and assist in achieving the Employer's mission and performance goals, including training for different positions within CBP;
- (3) existing training programs within CBP will not adequately meet the training need;
- (4) it is not feasible to establish a new training program to meet the need effectively;
- (5) reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere within the Government;
- (6) funds are available to pay for the training;
- (7) the course is not being taken solely for the purpose of obtaining a degree; and,
- (8) the approval of such training will not create an undue interference with operational requirements or an imbalance in staffing patterns.

**B.** An employee who fails to satisfactorily complete the training provided for in Section 4 shall reimburse the Employer for all tuition and related expenses incurred by the Employer for that portion of the training not satisfactorily completed.

- C. In accordance with applicable law and regulations, the Employer may waive in whole or in part a right to recover tuition and related expenses, if it is shown that the recovery would be against equity and good conscience or against the public interest. For example, waiver would normally be appropriate if the employee encountered unforeseen personal or health problems, medical emergency, or change in official duties.
- D. Upon request, the local NTEU chapter will be informed of those employees selected for Non-CBP training.

### **Section 5. Tuition Assistance Program**

- A. In addition to the mechanism for employees to request non-CBP training in Section 4, the employer will establish a supplemental Tuition Assistance Program (TAP) as an additional method of obtaining training not offered by CBP that will either provide employees improved skills for doing their current job or help them pursue career advancement in a field of work performed by the CBP.
- B. Participating employees who are approved may receive up to \$2,500 per open season.
- C. There will be three open seasons for employees to apply for TAP funding corresponding to the fall, spring and summer terms.
- D. Courses must be taken at an accredited college or university, including through the use of “non-traditional” methods such as distance learning courses offered at accredited universities or colleges.
- E. TAP applications will be evaluated with the following criteria:
  - (1) The requested course’s applicability to the applicant’s current position and career progression;
  - (2) An applicant’s narrative response justifying the request; and
  - (3) The operational requirements and priorities of CBP.
- F. Employees submitting incomplete application packages will be so informed as soon as possible upon discovery by CBP.

- G.** CBP will inform employees in writing in the event they are denied TAP assistance and the reasons for such denials.
- H.** CBP will make reasonable adjustments to the schedules of those receiving TAP assistance, if necessary, workload permitting.
- I.** Employees will be informed at least on an annual basis of the existence of the TAP, and will be provided access to all application and descriptive TAP materials.
- J.** Participants must complete the course with a passing grade (C or better or pass for a pass/fail course) in order to receive monetary assistance.
- K.** An employee who fails to obtain a passing grade shall reimburse the Employer for all assistance provided by CBP. CBP will consider waiver of reimbursement in accordance with Section 4.C.
- L.** An employee may receive assistance for one course per CBP-TAP term and no more than three courses per calendar year.

**Section 6.A.** When an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Employer will be given to the employee to enable him to perform the duties of the new position.

- B.** The lack of adequate training will be a defense to any action adverse to the employee.
- C.** When training is given by the Employer primarily to prepare employees for promotion, selection for the training will be made under the merit promotion procedures contained in this Agreement.

**Section 7.A.** Employees who are selected to assume the duties of a new position, but who subsequently do not satisfy the training requirements of the new position will be given the option of returning to their prior position.

- B.** The employer will consider the existence of any learning disabilities or handicaps and whether they were reasonably accommodated or not before taking action adverse to the employee based on his performance in training.

**Section 8.** Employees required to attend training will be given notification as far in advance as possible and, absent unusual circumstances, no later than two (2) weeks prior to the commencement of such training. This requirement may be waived by the employee.

**Section 9.** If the Employer determines that successful completion of a training course is required for placement or continued retention in a position, employees who fail to successfully complete the course may be subject to removal from the position, or not placed/retained in the position. Any such action will be taken in accordance with law and the terms of this Agreement.

**Section 10.** The Employer will reimburse employees for all training costs and expenses incurred as a result of training in accordance with applicable laws and regulations. For example, if law or regulation permits the Employer to reimburse professional employees, such as attorneys, accountants, and chemists for required continuing professional education, it will do so.

**Section 11.A.** In order to determine the quality of training, an evaluation through questionnaires may be conducted by the Employer after any national training conducted outside of the Federal Law Enforcement Training Center. Responses to the questionnaire may be made anonymously.

**B.** Employees at FLETC, CETC or similar training centers will be surveyed every two years concerning the living conditions. Un-sanitized copies of such surveys will be provided to NTEU although the name of the student may be sanitized.

**C.** After consulting with NTEU regarding the survey results pursuant to Subsection B, CBP will take necessary action to seek improvements, if needed.

**Section 12.** Training courses and testing procedures will be validated pursuant to government-wide rules and regulations and applicable law.

**Section 13.** By the end of the first year of this contract, the employer will create a reasonable upward mobility program for those unit employees who have not yet been selected for positions with career ladder potential to GS-11.

## **ARTICLE 33: SAFETY AND HEALTH**

**Section 1.** The Employer will make every reasonable effort, consistent with the mission of the Service and the inherent hazards of the work to be performed, to provide and maintain safe and healthful working conditions when and where it is within its authority and control to do so. The Employer has determined that whenever it becomes necessary to move an employee from a work area because of conditions or practices in that work area that pose a threat to that employee's health or physical safety, a reasonable effort will be made to find work for that employee elsewhere in the employee's post of duty.

**Section 2.** The parties recognize that not all safety standards and regulations formulated for industrial or business concerns are applicable to, or readily transferable to, the operations of a law enforcement agency. However, in fulfilling its obligations under Section 1 above, the Employer shall adopt, develop, issue and maintain safety standards and regulations that are appropriate to the Employer's operations. In issuing such standards and regulations, Section 19 of the Occupational Safety and Health Act of 1970, Executive Order 12196, 29 CFR 1960, and appropriate orders and issuances promulgated thereunder shall be used as a guide.

**Section 3.A.** Employees have a responsibility to promptly correct, if possible, and/or report unsafe conditions to appropriate supervisors. The supervisor will promptly take steps to correct conditions which he finds to be unsafe and/or to refer the matter to appropriate management authority. Employees will report all accidents, no matter how minor, to their supervisors at the time of the accident.

**B.** The Employer will initiate prompt and appropriate action to correct unsafe conditions whenever they are found to exist.

**Section 4.A.** Annual inspection of all CBP facilities will be conducted by a designated safety representative of the Employer. Facilities where there is a higher than average incidence of accidents and/or illness will be inspected more frequently as determined by the Employer. At the conclusion of each inspection, the official in charge of the facility and the appropriate chapter president shall be advised of any apparent unsafe or unhealthful conditions. Employee reports of unsafe or unhealthful working conditions shall be addressed in accordance with 29 CFR 1960.28. Nothing in this section is in derogation of any rights the Union may have pursuant to law, rule or regulation.



- B.** A representative or designee of the Union shall be provided with reasonable advance notice and an opportunity to accompany the safety inspector(s) on official time during any inspection conducted by the Employer or by the safety representative described in Section 4.A. The Employer will pay mileage costs for Union representatives who are bargaining unit employees for travel to and from inspections under this Section.

## **Section 5. Safety and Health Committees.**

- A.** The Employer and the Union will cooperate in the continuing effort to eliminate accidents and health hazards. To this end, a Joint Safety and Health Committee will be established at the National level. Committees will also be established at Headquarters, the National Finance/Logistics Center (NFC/NLC), Laboratories, Training Centers, and at the DFO and Port levels, unless the local parties agree that the work of such committees can be handled through other methods. Field headquarters employees will be covered by the Committee in place at their work location.
- B.** The National Safety and Health Committee shall be composed of eight (8) members to be selected as follows:
  - (1) Three (3) representatives of the Employer, one of whom shall be the senior safety officer or representative within the jurisdiction of the Committee. The safety officer or representative shall serve as Chairman of the National Committee.
  - (2) Three (3) employee representatives to be selected by the Union.
  - (3) One (1) employee representative to be selected from among the non-unit, non-represented employee groups.
  - (4) One (1) member from the NTEU National Office.
- C.** The Employer and the Union will establish the size of the Safety and Health Committees at other levels.
- D.** Safety Officers will be selected from among volunteers. The parties agree that Safety Officers should be given sufficient time, training, resources and encouragement to perform their duties as outlined in the CBP Occupational Safety and Health Handbook. Safety Officers will be monitored by local Safety and

Health Committees and will be invited to local Safety and Health Committee meetings.

- E.** Proposed enhancements to the CBP safety program will be referred to the National Safety and Health Committee for discussion.
- F.** Each Committee shall meet at least once each six (6) months, or at such other times as are agreed to by the parties. The Committee Chairman shall provide a written report of each meeting to the Commissioner, Port/Area Director, and designated Union representatives as appropriate.
- G.** Committees shall have access to CBP training materials, and will be provided training in accordance with applicable laws, regulations and the CBP Occupational Safety and Health Handbook.
- H.** Committees established pursuant to this Section shall be advisory in nature, and will advise, and will be consulted by the Commissioner, Headquarters, the National Finance/Logistics Center (NFC/NLC), Laboratories, Training Centers, DFOs and Port Directors on all aspects of the CBP occupational safety and health programs.
- I.** Committees shall monitor the performance of the CBP Occupational Safety and Health Programs. Committees are encouraged to review accident trends, recommend specific training needs, review adequacy of emergency evacuation procedures, and recommend promotional campaigns.
- J.** Committees shall have full access to all existing information relevant to their advisory and monitoring functions.
- K.** In the event that safety and health hazards requiring corrective action involve property leased by GSA on behalf of the Employer, or property owned by a private corporation and made available for the employer's use, Committee members may, as deemed appropriate by the employer, be utilized when dealing with GSA or the property owner when efforts are undertaken to resolve the problem.
- L.** Since the Committees are established as management advisory committees, committee members shall receive a reasonable amount of official time, and necessary travel and per diem expenses, to take part in the deliberations of the committees.

**M.** Port Safety and Health Committees will be responsible for acquiring information about hearing conservation programs, and for recommending whether such programs are needed in their jurisdictions. The National Safety and Health Committee will provide the Port Committees with information, encouragement and technical assistance to support their hearing conservation program development activities.

**Section 6.A.** The Employer will, to the extent practical and available locally from government sources, continue to offer whatever health services are obtainable for employees. At a minimum, this will include maintenance of the existing practice of making annual influenza vaccinations and other voluntary health improvement and screening activities available for employees at those locations where practicable.

**B.** In any work location where health facilities are not available on the premises, the Employer agrees to provide and maintain standard GSA first aid kits.

**Section 7.** If an ill or injured employee is sent to a medical facility for treatment, and a competent medical authority at the facility determines that the employee is unable to return to work, the employee may be granted sick leave in accordance with applicable law, regulations and the provisions of Article 37: Leave and Excusal. If the medical authority determines that the affected employee is able to return to work, the Employer will consider that recommendation in determining whether to return the employee to work.

**Section 8.** If it becomes necessary for an employee to leave work because of an incapacitating illness or injury, and normal transportation is not available or within the employee's capacity, the Employer agrees to assist in arranging transportation to a medical facility or to the employee's home, at the request of or on behalf of the employee. The Employer's monetary, pecuniary or tort liability is governed by law, regulations, Federal court decisions, and/or decisions of the Comptroller General and the Employer assumes only such responsibility or liability allowable by law, regulation or such decisions.

**Section 9.** When an employee is injured in the performance of his duties, he should report the injury to his supervisor in accordance with the provisions of 20 CFR 10.207. The Employer will provide the injured employee with forms and information provided for under the Agency's Workers' Compensation Program and will be assisted in obtaining appropriate benefits by a servicing Worker's Compensation advisor.

**Section 10.A.** An employee who sustains a disabling job-related traumatic injury, unless electing to utilize leave, is entitled to the continuation of his regular pay for a period not to exceed forty-five (45) calendar days in accordance with applicable law and regulation.

- B.** Should an employee suffer a recurrence of disability and again stop work, the employee may elect to continuation of regular pay, providing the forty-five (45) calendar days were not all exhausted during the initial period of disability. This is applicable, however, only during a forty-five (45) day period beginning from the date the employee first returned to work following the initial disability.
- C.** Subsequent absences necessary for examination, treatment, and therapy may be charged against the forty-five (45) days in accordance with applicable laws and regulations.
- D.** If an employee stops work under the provisions of this Section for only a portion of a day or shift (other than the day or shift when disability began), such day or shift will be considered as one (1) calendar day.

**Section 11.A.** A pregnant employee or an employee returning to work after an injury, illness or pregnancy with a medical certificate indicating that the employee should work restrictively and that full recovery is expected, will be considered for light duty by her supervisor on a case-by-case basis. An assignment to light duty appropriate to the specific medical condition will normally be granted for a temporary period, if such work is available and the assignment will not unduly disrupt work operations.

- B.** An employee on light duty will be eligible for assignment to overtime work associated with the light duty assignment, consistent with the organization's need for such work to be performed on an overtime basis and the medical restrictions placed on the employee.
- C.** The assignment of an employee to light duty or the assignment of a light duty employee to overtime under this Section will not be grounds for disputes by other employees in the work unit on the basis that they have had to assume added or burdensome duties.

**Section 12.** Safety equipment and protective devices shall be provided to employees as required and prescribed by applicable directives and regulations.

**Section 13.A.** The Employer may require an individual who has applied for, or occupies a position which has physical/medical requirements for selection or retention, or which is a part of an established program of medical surveillance related to occupational or environmental exposure or demands, to report for a medical evaluation under the following circumstances:

- (1) Prior to appointment or selection (including re-employment on the basis of full or partial recovery from a medical condition);
- (2) On a regularly recurring periodic basis; and
- (3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of the position.

**B.** The Employer may require an employee who is receiving worker's compensation benefits, or is assigned to limited duties as a result of an on-the-job injury, to report for a medical evaluation when the Employer has identified an assignment or position (including the employee's regular position) which the Employer reasonably believes the employee can perform consistent with the medical limitation of his condition.

**C.** The Employer may require an employee who has been released from his competitive level in a reduction-in-force to report for a medical evaluation when the position(s) to which the employee has reassignment rights requires specific physical capacities to perform the duties of the job, and those physical capacities are different from those required in the employee's present position. The Employer shall be aware of the affirmative obligations which require reasonable accommodation of a qualified employee with a disability.

**D.** When the Employer orders an employee to undergo a medical examination, it shall inform the employee in writing of its reasons for ordering the examination and the consequences of failure to cooperate.

**E.** The Employer shall designate the examining physician, or other appropriate practitioner, for all examinations ordered or offered by the Employer. In addition, at his expense, the employee has the opportunity to submit medical documentation from his or her personal physician which the Employer shall review and consider before making a final determination on medical suitability or fitness for duty.

**F.** The Employer may order a psychiatric examination or psychological assessment only when:

(1) The results of a general medical examination which the agency has ordered show no conclusive physical basis to explain actions or behavior which may affect the safe and efficient performance of the individual or others, or

(2) A psychiatric examination is specifically required by medical requirements or a medical evaluation program.

- G.** The Employer will make a good faith effort to secure evaluative services within the employee's local commuting area. However, in cases where the Employer's medical personnel/consultants indicate that the appropriate services are not readily available within that area, the employee may be required to travel to an alternate location. In such cases, the Employer will be fully responsible for all costs associated with such travel.
- H.** The Employer will pay all expenses incurred for agency ordered or offered medical examinations. Employees must pay for a medical examination conducted by a private physician or practitioner where the purpose of the examination is to secure a benefit sought by the employee (e.g., reassignment based on personal need, extended sick leave).
- I.** Employees required to undergo a medical examination will be provided copies of all medical documentation generated in conjunction with the examination upon written request from the employee. The documentation will be released by the Employer unless the information contained in the documentation concerns medical conditions of such a nature that a prudent physician would hesitate to inform a person suffering from those conditions of their exact nature or probable outcome. In the latter case, the information will be released to a licensed physician or mental health professional designated in writing by the employee.
- J.** In the event an employee no longer satisfies the established physical/medical standards of their current position, the Agency will consider the employee for other positions, for which the employee is qualified, within the duty location, prior to taking an administrative action. This provision is not intended to replace or conflict with established reasonable accommodation procedures, nor does this effort to place an employee in a different position establish that the Agency perceives in any way that the employee is an individual with a disability.
- K.** Nothing in this section shall be construed or applied in a manner that would expand or diminish the parties' rights and obligations under applicable law and regulation.

**Section 14.** The Employer shall, through coordination with the General Services Administration (GSA), perform periodic monitoring of asbestos levels in the Employer's buildings that have been identified by the GSA as having potential asbestos problems. The results of the monitoring shall be provided to the Union. In the event such monitoring reveals a level of exposure in excess of the standard established by the Office of Occupational Safety and Health Administration (OSHA), through coordination with GSA, the Employer agrees to move exposed employees to work sites that do not have excessive exposure as soon as practicable. To the maximum extent permitted by law and regulations, affected employees will be paid hazardous duty pay or environmental differential pay during the period of exposure. For purposes of this agreement, "period of exposure" means the time between the receipt of a conclusive report indicating a level of exposure above the GSA standard and the time affected employees are removed from such exposure.

**Section 15.** The Employer shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in agency occupational safety and health program activities, or because of the exercise by such employee on behalf of himself or others of any right afforded by Section 19 of the Occupational Safety and Health Act, Executive Order 12196, or 29 CFR 1960. These rights include, among others, the right of an employee to decline to perform his assigned task because of a 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 insufficient time to seek effective redress through normal hazard reporting and abatement procedures established by the Employer.

**Section 16.** The Union will be allowed to distribute brochures to employees describing the Union's optional insurance and benefit plans.

**Section 17.** Once a year, employees will be granted official time (not to exceed one (1) hour) to consult with Union-sponsored benefits counselors. This consultation may be done in conjunction with other health information initiatives (e.g., Health Fair, Open Season, etc.).

## **Section 18. Respirators**

- A.** In accordance with the Occupational Safety & Health Administration (OSHA) Respiratory Protection Standard (29 C.F.R. 1910) the Employer will determine which type of respirators are required to protect employees and under which work situations they are required to be used.
- B.** Similar to the CBP policy regarding the H1N1 situation, the Employer will inform employees of the circumstances under which an employee will be allowed to don Agency provided respirators, at their discretion, without supervisory approval. In the event an employee encounters a situation and is unclear that donning a respirator is appropriate, the employee should obtain supervisory approval prior to donning the respirator.
- C.** CBP will provide sufficient training to employees who are required to use respirators. The training will be comprehensive, understandable, and provided at a minimum on an annual basis.
- D.** The respirators, required training and necessary medical evaluations will be provided at no cost to the employee.
- E.** CBP will provide appropriate storage for approved respirators.
- F.** CBP will comply with all legal requirements concerning the maintenance, care, cleaning, disinfecting, storage, inspection and repair of respirators.
- G.** All medical evaluations to determine employees' ability to use a respirator will be limited to that specific purpose and will be conducted in accordance with the provision of 29 C.F.R. 1910.134(e).
- H.** To the extent possible, evaluations will be administered privately during employees' normal working hours. CBP will inform employees how to deliver or send any required questionnaire to the appropriate FOH recipient and will provide any required postage.
- I.** Employees required to wear a respirator will be fit tested in accordance with the provisions of 29 C.F. R. 1910.134(f).
- J.** The only information provided to CBP will be the results of the Medical Clearance, which does not contain any personal medical information.



- K.** If an employee is not medically cleared to wear a respirator in a mandatory use situation, the parties recognize that the OSHA standard prohibits management from assigning the employee to perform work duties that may expose them to the respiratory hazard. In such circumstances, management may assign the work to employees who have been medically cleared and fit tested for respirator use, or permit the employee to use a respirator that does not require a medical evaluation.
  
- L.** CBP will conduct respirator program evaluation as required by law. Upon request, CBP will provide NTEU a briefing to discuss the data obtained in those evaluations.

## **ARTICLE 34: SCHEDULING**

**Section 1.** This Article contains the procedures by which the Employer will schedule non-overtime work.

**Section 2.** The requirements of this Article do not apply to alternative work schedules established under Article 14: Alternative Work Schedules, with the exception of Sections 15 (Voluntary Daily or Weekly Tour of Duty Changes) and 16 (Rest Periods).

### **Section 3. Definitions.**

- A. *Administrative Workweek*** is a period of seven (7) consecutive calendar days designated in advance by the Employer.
- B. *Regularly Scheduled Administrative Workweek*** for a full-time employee, means the period within an administrative workweek when the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.
- C. *Basic Workweek*** for a full-time employee, means the forty (40) hour workweek established for the employee.
- D. *Tour of Duty*** means the hours of a day and the days of an administrative workweek that constitute an employee's regular schedule.
- E. *Regular Day Off (RDO)*** is a day during the administrative workweek on which an employee is not scheduled to work.
- F. *Seniority*** will be determined by:
  - (1) The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.

- (2) In the event it is necessary to resolve ties after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
- (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e., SCD) will be used.
- (4) In the event it is necessary to resolve ties after step (3), they will be resolved by coin flip.

Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

**Section 4.** The scheduling of employees shall be accomplished in a fair and impartial manner.

**Section 5.** Except when the Employer determines that it would be seriously handicapped in carrying out its functions or that costs would be substantially increased, the Employer will provide that:

- A. Assignments to tours of duty are scheduled in advance of the administrative workweek over periods not less than one (1) week;
- B. The basic forty (40) hour workweek is scheduled on five (5) days, Monday through Friday when possible, and the two (2) days outside the basic workweek are consecutive;
- C. The working hours in each day of the basic workweek are the same;
- D. The basic nonovertime workday may not exceed eight (8) hours;
- E. The occurrence of holidays may not affect the designation of the basic workweek;  
and
- F. Breaks in working hours of more than one (1) hour may not be scheduled in a basic workday.

**Section 6.** The Employer will establish employee work schedules (including basic workweeks, tours of duty and RDOs) to accomplish the mission of the Agency, and to correspond with the employee's actual work requirements.

**Section 7.** When the Employer knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, the Employer will reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The Employer will inform the employee of the change, and will record the change on the employee's time and attendance records.

**Section 8.** The Employer will make available projected employee non-overtime work schedules as far in advance as practicable, but not less than four (4) weeks in advance of the start of the pay period. Employees will be assigned and informed of overtime assignments in accordance with Article 35: Overtime. This provision is intended to establish a consistent national minimum standard and is not intended to change established practices at locations where projected employee schedules are normally made available more than four (4) weeks in advance of the start of the pay period.

**Section 9.** When changes to posted schedules are required, the Employer will notify affected employees as soon as practicable. Nothing in this Section relieves the Employer of its obligation under Section 5 of this Article.

**Section 10.A.** The Employer may authorize a special tour of duty of not less than forty (40) hours to permit an employee to take one or more courses in a college, university, or other educational institution when it is determined that:

- (1) The courses being taken are not training under Chapter 41 of Title 5, United States Code;
- (2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;
- (3) Additional costs for personnel services will not be incurred; and
- (4) Completion of the course will equip the employee for more effective work in

the Agency.

- B.** The Employer shall not pay to an employee any premium pay solely because a special tour of duty authorized under this Section causes the employee to work on a day, or at a time during the day, for which premium pay would otherwise be payable.

**Section 11.** The Employer will make individual employee schedules, as well as any changes thereto, available to those employees. Work schedules for all bargaining unit employees, as well as any changes thereto, will be made available to the appropriate NTEU Chapter President.

**Section 12.** Employees shall be compensated for hours of work in accordance with applicable laws and regulations.

**Section 13.** The Employer will also notify affected employees of any modification or alteration of an existing shift or tour of duty not less than seven (7) calendar days prior to its implementation.

**Section 14.A.** When staffing new shifts or tours of duty, the Employer will identify the numbers, types and grades of employees, the knowledge, skills and abilities required, as well as any other mission or operational requirements related to the nature of the assignment. Volunteers meeting these requirements will be solicited from appropriate work groups (as determined by the Employer). In the event more equally qualified and releasable employees volunteer, absent just cause, selections will be made in seniority order. If too few qualified and releasable employees from within the work group volunteer, qualified and releasable employees will be assigned in inverse seniority order. Employees selected under this procedure will be notified not less than seven (7) calendar days prior to the start of their new shift or tour of duty.

- B.** To the extent the above procedure conflicts with other provisions of this Agreement (e.g., the method for staffing post-rotational vacancies from outside the work unit under Article 13: Bid, Rotation & Placement), those other provisions will take precedence.

## **Section 15. Voluntary Weekly or Daily Tour of Duty Changes.**

**A.** In order to reduce any potential adverse impacts on employees from an exception determination under Section 5, the Employer will permit the following temporary weekly or daily tour of duty changes.

### **(1) Weekly or Daily Tour of Duty Swaps.**

(a) For the purpose of this Section, a swap is defined as the voluntary exchange of a scheduled daily (shift) or tour of duty (weekly) between two employees.

(b) Infrequent employee requests to temporarily swap shifts or tours of duty will be approved provided the employees involved in the swap are qualified to perform the duties encompassed in the swapped shift or tour of duty and the swap does not result in a negative impact on operations or an increased cost or conflict with overtime cap compliance procedures. Swaps may not be approved to the extent they undermine the purpose and intent of any other provision of this Agreement (e.g., work schedule preference provisions of Article 13: Bid, Rotation & Placement).

(c) In order to be considered under this Section, employee swap requests must be submitted to the appropriate management official by the involved employees not less than five (5) calendar days in advance of the day (for shift swaps) or start of the work week (for tour of duty swaps). Requests submitted less than five (5) calendar days in advance may be approved at the discretion of management.

(2) Once scheduled for a tour of duty accordance with this Article, an employee may voluntarily agree to changes that would result in a work schedule that may be inconsistent with the requirements of Section 5. For example, an employee subject to a swap contained in this Section, or an employee assigned to the midnight shift may voluntarily agree to change his/her tour of duty the following day to a day shift schedule to take advantage of a last-minute firearms qualifications opening at the gun range (e.g., caused by an employee previously scheduled requested sick or emergency annual leave), which would result in a schedule inconsistent with Section 5.A. and C.

**B.** Any schedule changes provided under this Section will be made notwithstanding any other provision of this Article, will be documented by the Employer, and are

not grievable by the employees involved or not involved in the schedule change, or by the Union.

**Section 16. Rest Periods.**

- A. The Employer will ensure employees are provided rest periods during the work day for the purpose of attending to employee personal needs.
- B. Such rest periods will be of reasonable duration and will be permitted at reasonable times during the work day, to include work performed on an overtime basis, consistent with the Employer's right to assign work and workload demands.

**Section 17.** Employees will be scheduled (or excused) and compensated for Holidays in accordance with the policies and procedures contained in Article 36: Holidays.

## **ARTICLE 35: OVERTIME**

This Article describes the procedures by which employees covered by this Agreement will be scheduled and assigned overtime work.

### **Section 1. COPRA Covered Employees.**

#### **A. Definitions.** For the purpose of this Article:

- (1) ***Anticipated Overtime*** is work necessary to be performed on an overtime basis that is known, and can reasonably be planned for and scheduled in advance.
- (2) ***Unanticipated Overtime*** is work necessary to be performed on an overtime basis that is not known, or cannot reasonably be planned for and scheduled in advance. This includes, but is not limited to, overtime work that cannot be scheduled in advance because of fluctuations or uncertainties in operational requirements.
- (3) ***Operational Requirements*** are conditions that affect the staffing needed for given assignments. This includes, but is not limited to, such items as threat level, staffing requirements, workload requirements, special enforcement operations, or natural or man-made disasters.
- (4) ***Qualified*** employee means one that possesses the knowledge, skills and abilities necessary to perform a particular assignment. The Employer will establish and apply such requirements in a manner consistent with applicable law, rule and regulation.
- (5) ***Least Cost*** means the minimum cost to the government or party in interest. Decisions, including, but not limited to, what hours should be covered by a tour of duty or whether an assignment should be treated as a continuous assignment or subject to commute compensation, should be based on least cost considerations. However, base pay comparison of eligible employees shall not be used in the determination of staffing assignments.
- (6) ***Low Earner*** is the employee with the lowest dollar amount of overtime (and premium pay after the employee has reached the 50% figure in overtime earnings) as calculated in Subsection H.
- (7) ***Overtime Pool*** consists of employees who are qualified to perform the overtime assignment.



(8) *COPRA* is the Customs Officer Pay Reform Act.

(9) *COSS* is the Customs Overtime Scheduling System.

**B. Anticipated Overtime.**

- (1) Anticipated overtime assignments will be scheduled and posted as far in advance as practical, but not less than seventy-two (72) hours in advance of an assignment. Duty locations that do not schedule in this manner must comply with this provision no later than one (1) year from the date of this Agreement. This provision is intended to establish a consistent national minimum standard, and is not intended to change established practices at locations where anticipated overtime assignments are normally scheduled and posted more than seventy-two hours in advance.
- (2) Employees who are assigned anticipated overtime are responsible for reporting for overtime assignments in accordance with posted assignments, absent extraordinary circumstances. When such circumstances are encountered, the employee will contact the locally designated management official as soon as possible for the purpose of requesting an excusal. When warranted, the locally designated management official may excuse the employee for either the entire assignment or any portion thereof.
- (3) Anticipated overtime assignments will be made on least cost, low earner principles, and in accordance with the call-out order contained in Subsection E.
- (4) Advanced scheduling may increase the likelihood for circumstances to arise resulting in the cancellation of a scheduled overtime assignment. When such circumstances are encountered, the procedures contained in subsection D.(2) will be followed.

**C. Unanticipated Overtime.**

- (1) Unanticipated overtime assignments will be made on least cost, low earner principles, and in accordance with the call-out order contained in Subsection E.
- (2) Management will make a reasonable effort to inform on-duty employees of their assignment to unanticipated overtime as far in advance as practicable, and where possible, at least two (2) hours in advance of the end of their scheduled assignment.

- (3) On-duty employees assigned unanticipated overtime provided less than two (2) hours in advance of the end of their scheduled assignment will be permitted a reasonable amount of time to make personal notifications concerning the unanticipated overtime assignment.

**D. General Overtime Rules.**

- (1) An overtime assignment shall begin when an employee reports to the first worksite to perform tasks associated with the assignment, and shall terminate when the tasks associated with the assignment are completed by the employee. When an employee is required to utilize specific resources (e.g., radio, computer, etc.) which the employee does not have the option to take from work to home, the overtime assignment shall begin when the employee reports to the location where the resources are located and shall stop when the associated tasks are completed and the resources are secured.
- (2) When employees' services on an overtime basis are determined not to be needed prior to the start of the assignment, every attempt will be made to notify affected employees in sufficient time to prevent the employees from reporting for duty.
- (3) Certain overtime assignments, by their very nature, do not have firm starting times, and therefore require that specific notification and verification procedures be followed. Examples of such include, but are not limited to, the clearing of private aircraft, small vessels, and perishable cargo. The Employer will identify and keep employees informed of assignments of this nature, as well as the specific procedures by which employees will be notified of and required to verify assignment start times.
- (4) An employee properly reporting for an overtime assignment (i.e., the requirements of subsections D.(2) and (3) do not apply) that is cancelled will be compensated up to a maximum of callback (to include commute), if so entitled. In such circumstances, the employee must remain available to perform work for a minimum of two (2) hours from the reporting time.
- (5) Absent operational requirements, employees will not be scheduled to work a combination of regular and/or overtime assignments that do not allow for eight (8) consecutive hours off-duty within each twenty-four (24) hour period. This twenty-four (24) hour period begins when the employee first reports to work (either on regular time or an overtime basis) after an off-duty period. In implementing this provision, management may make the necessary

adjustments to the affected employee's schedule, notwithstanding any other provision of this Agreement.

- (6) When employees are released from overtime assignments, involuntarily drafted employees will be released in high-earner order on a voluntary basis after which, if necessary, volunteers will be asked if they wish to be released in high earner order.

**E. Call-out Order.**

- (1) Overtime assignments will be made to COPRA covered employees in accordance with the following call-out order. The call-out order includes: all CBP Officers/CBP Agriculture Specialists (including trainee Officers/Agriculture specialists that possess the skill sets to complete the assignment) and supervisors who perform daily operational functions.
  - (a) Volunteers in the overtime pool (either on or off-duty) where payment of additional hours (i.e., commute compensation) is not required;
  - (b) Volunteers from part-time employees in the overtime pool (either on or off-duty) where payment of additional hours is not required;
  - (c) At the Employer's discretion, supervisors who are not fully integrated into the daily operational work schedule where payment of additional hours is not required;
  - (d) Involuntary drafts in the overtime pool (either on or off-duty) and payment of additional hours is not required;
  - (e) Volunteers in the overtime pool where payment of additional hours is required;
  - (f) Involuntary drafts in the overtime pool where payment of additional hours is required; and
  - (g) Involuntary drafts from part-time employees in the overtime pool where payment of additional hours is required.
- (2) In the event the call-out order is exhausted, as a last-resort, employees who have been granted an excusal may be drafted for overtime assignments.

F. Trades. In order to mitigate potential adverse impact resulting from overtime assigned through involuntary drafts, management will approve employee requests to trade overtime assignments provided the employees involved in the trade are qualified to perform the traded assignment and the trade does not result in a negative impact on operations, an increased cost (least cost) or conflict with overtime cap compliance procedures. Under this subsection, a trade is defined as the voluntary exchange of overtime assignments between two employees.

G. Exceptions & Excusals.

(1) The following exceptions apply to the procedures for assigning overtime contained in the Article:

- (a) Employees unavailable to report to the assignment at the prescribed time. In determining the appropriateness of this exception, management retains the discretion to make adjustments to assignment start and ending times, which may impact employee availability and/or prescribed time of the assignment.
- (b) When an employee performs assigned work during the hour immediately prior to the beginning of his/her regularly scheduled tour, the employee will remain in duty status until the start of the employee's scheduled tour.
- (c) When an employee performs assigned work during the hour immediately following the end of his/her regularly scheduled tour, the employee will remain in duty status from the end of his/her scheduled tour until completion of the assignment.
- (d) Employees will be required to complete a holdover assignment, which are those unanticipated overtime assignments made necessary by a task already begun during the employee's regular tour which, in the interest of continuity and efficiency, should be completed by the initiating employee (e.g. such as but not limited to a seizure, admissibility control, unanticipated operational event(s), etc.).
- (e) Employees who are unable to perform the full range of duties.

(2) Subject to operational requirements, employees will be excused from being assigned overtime through involuntary drafts when management determines:

- (a) A significant, but temporary hardship exists. To obtain such an excusal, the employee must submit a written request and supporting documentation to the Port Director (or designee).
- (b) As a result of a temporary medical condition, an employee cannot perform the full range of duties required under the employee's position. To obtain such an excusal, the employee must submit a written request and supporting documentation to the Port Director (or designee).
- (c) An employee who has worked on a regularly scheduled shift and overtime basis for sixteen (16) or more hours within a twenty-four (24) hour period, for a period of twenty-four (24) hours from when the employee first reports to work after a continuous eight (8) hour off-duty period. To obtain such an excusal, the employee must submit his/her request within one (1) hour of the start of the scheduled duty on the day following the employee's completion of sixteen (16) or more hours of work.
- (d) An employee on his/her last scheduled shift prior to a regular day off or scheduled annual leave. To obtain such an excusal, the employee must submit a request as early as possible, but no later than forty-eight (48) hours prior to start of his/her shift on the day the excusal is desired. Once granted, the employee will be considered excused from the assignment of all overtime until his/her next regular (i.e., non-overtime) tour of duty, with the exception of "hour before" overtime assignments.
- (e) Any other valid reason, at management's discretion.

#### **H. Calculation of Earnings.**

- (1) Overtime and premium pay will be tracked separately. Overtime earnings will be used as the basis for equalizing opportunity for overtime up to fifty percent (50%) of the statutory pay cap. When an employee's overtime earnings reach fifty percent (50%) of the statutory pay cap, the employee's premium pay and overtime pay will be combined and additional overtime assignments will be made on the basis of the combined earnings.
- (2) Upon request, employees who are unavailable to work overtime for three (3) consecutive pay periods or longer (including new reports and/or transfers to a particular Port) and are not restricted by the requirements of subsection I (Cap Compliance) will be averaged up upon their return to work. The average earnings for an employee will be the two-hundred percent (200%) overtime

figure as recorded in COSS for the date the employee is averaged in. This amount is not used as actual earnings for cap compliance purposes under subsection I.

**I. Cap Compliance**

(1) The statutory overtime and premium pay cap establishes the maximum allowable earnings for COPRA covered employees. It is necessary to apportion overtime and premium pay earnings in order to ensure the full range of numbers, types and grades of personnel required by the Agency throughout the fiscal year. After an employee's combined overtime and premium pay earnings are audited, their earnings will be prorated bi-weekly when:

- a) An employee's actual overtime earnings reach 50% of the statutory limitation on earnings, or
- b) An employee's actual combined overtime and premium pay earnings reach 75% of the statutory limitation on earnings.

Prorated amounts not earned during one pay period will be carried over to the next pay period during the balance of the fiscal year.

(2) An employee will not be prevented from working an overtime assignment if at the time of the assignment the employee is below his or her prorated pay limitation for the pay period, provided the assignment will not cause the employee's overtime and premium pay earnings to exceed the statutory pay cap. The employee's normal shift differential premium pay must be considered when projecting the employee's cap earnings for the remainder of the fiscal year. An employee's normal work schedule will be adjusted by the Employer to prevent the employee's overtime and premium pay from exceeding the cap.

**J. Annuity Integrity.** In accordance with 19 C.F.R. § 24.16, the amount of COPRA overtime employees within three (3) years of their statutory retirement eligibility may work is limited to the average yearly number of COPRA overtime hours the employee worked during his/her career. The Employer will monitor employee overtime earnings to ensure compliance with applicable regulations and the requirements of this subsection.

(1) Definitions. For the purpose of annuity integrity,

- (a) *COPRA overtime* refers to the specific compensation stipulated in 19 C.F.R. § 24.16 (e)(1), which does not include premium pay for Sunday, holiday, or night work.
- (b) *Within three (3) years of retirement eligibility* refers to the statutory minimum retirement eligibility criteria (i.e., years of service and age) applicable to the employee minus three (3) years for both years of service and age.
- (c) *Average annual overtime hours* refers to the total number of COPRA overtime hours worked divided by the total number of years the employee was covered by COPRA. The total number of hours is calculated from the beginning date the employee was first covered by COPRA through the end of the fiscal year following the date when the employee is within three (3) years of retirement eligibility.
- (d) *Restricted employee* refers to a COPRA covered employee within three years of retirement eligibility whose average annual overtime hours multiplied by the employee's current hourly pay rate is equal to less than half of the statutory COPRA overtime pay cap applicable when the employee was first covered by COPRA.
- (e) *Unrestricted employee* refers to a COPRA covered employee within three (3) years of retirement eligibility whose average annual overtime hours multiplied by the employee's current hourly pay rate is equal to or greater than half of the statutory overtime pay cap applicable when the employee was first covered by COPRA.

(2) Overtime Calculations and Adjustments.

- (a) All calculations will be based on fiscal years, with the exception of 1994. Note: 1994 was calculated on the calendar year (January 1 – December 31, 1994). COPRA began on January 1, 1994.
- (b) When calculating an employee's average annual overtime hours, the Employer will discount:
  - 1. Any fiscal year in which, for two (2) or more consecutive pay periods, the employee was unable to participate in COPRA overtime due to medical issues, or was on assignment or training with no availability of

COPRA overtime. This is contingent upon a valid employee request as stipulated under subsection (J)(3).

2. For a COPRA covered employee who converts from part-time to full-time, all fiscal years in which the employee was in a part-time status; (except 1994 which is by calendar year).

(3) Notification Procedures.

- (a) In the event the Employer determines an employee is restricted under this subsection, the employee will be advised of the determination in writing.
- (b) Once notified of the restriction, it is the employee's responsibility to notify management that adjustments should be made to the average annual overtime hours due to medical issues, duty assignments, or training lasting for two or more consecutive pay periods with no availability of COPRA overtime. It is the responsibility of the employee to provide any required documentation supporting this claim.
- (c) Upon request, the Employer will assist the employee in researching and locating existing records that support the employee's claim.
- (d) If an employee claim is specific to sick leave covering two (2) or more consecutive pay periods of absence, COSS records identifying this fact will be considered as proof of the employee's claim.
- (e) Valid employee claims will result in an adjustment of the employee average annual overtime earnings in accordance with subsection J(2)(b)1.
- (f) If the employee remains restricted after adjustments are made under this subsection, the Employer will advise the employee in writing and will include the number of overtime hours the employee may work in that fiscal year.

(4) Effect of Restrictions.

- (a) Restricted employees will be permitted to work COPRA overtime in an amount up to the employee's average annual overtime hours as defined and calculated under this subsection, and in accordance with overtime assignment procedures contained in this Agreement.



- (b) Employees first placed into a COPRA covered position who are within three (3) years of retirement eligibility will be restricted only to the average number of COPRA overtime hours worked by covered employees at the employee's Port during the fiscal year immediately prior to the employee's placement. If the average annual overtime hours multiplied by the employee's current pay rate is less than half of the statutory pay cap applicable when the employee is placed, the employee will be restricted for purposes of this subsection. Conversely, if this calculation is equal to or greater than half of the statutory overtime pay cap, the employee will be unrestricted for purposes of this subsection.
- (c) If the previous fiscal year's average overtime hours for a port to which an employee permanently transfers is greater than the employee's previously established average annual overtime hours, the employee's average will be increased to match the port average. If the previous year's port average overtime hours multiplied by the employee's hourly rate exceeds half of the applicable statutory overtime pay cap, the employee will no longer be restricted. If the previous year's port average overtime hours are less than the employee's previously established average annual overtime hours, the employee will maintain the restriction to his/her previously established average overtime hours.
- (d) In the event a restricted employee is determined unrestricted under this subsection, the employee will remain unrestricted for the remainder of his/her career.
- (5) Nothing in this subsection shall prevent the assignment of COPRA overtime to a restricted employee when it is determined by management to be in the best interest of the Agency (i.e., a waiver is obtained) and the assignment is not in conflict with law, rule, regulation or the terms of this Agreement.

## **Section 2. Employees Not Covered by COPRA.**

- A.** Employees will be compensated for performing overtime work in accordance with applicable laws and regulations.
- B.** Upon written request, an employee will receive temporary exemption from the requirement to work overtime for documented, legitimate medical reasons, and for other severe personal hardships. Staffing and workload requirements permitting, such exemptions will be granted.

- C.** Overtime assignments will be made and rotated in a fair and impartial manner, i.e., consistent with law and regulation, and consistent with existing agreements and practices not in conflict with this Agreement. In the event management elects to change an existing practice, it will serve notice in accordance with Article 26: Bargaining.
- D.** Upon reasonable advance request, and subject to supervisory approval, qualified employees will be allowed to exchange overtime assignments. Such requests will be approved if the exchanges do not result in a negative operational impact, an increase in cost, or adversely impact upon the administration of limits established by law placed upon the permissible amount of overtime for employees.
- E.** Employees will receive notice of overtime assignments as far in advance as possible.
- F.** Employees on a scheduled day off or on approved annual leave will not be required to work overtime during such periods unless operational and staffing requirements so dictate.

## **ARTICLE 36: HOLIDAYS**

This Article describes the policies and procedures by which employees will be scheduled (or released) and compensated for Holidays and/or Religious Observances.

**Section 1.** Holiday means any day designed as a holiday by a Federal statute or declared by an Executive Order. For reference, Federal holidays (and the date on which they fall) are:

- (1) New Year's Day (January 1st);
- (2) Birthday of Martin Luther King, Jr. (third Monday in January);
- (3) Washington's Birthday (third Monday in February);
- (4) Memorial Day (last Monday in May);
- (5) Independence Day (July 4th);
- (6) Labor Day (first Monday in September);
- (7) Columbus Day (second Monday in October);
- (8) Veterans Day (November 11th);
- (9) Thanksgiving Day (fourth Thursday in November);
- (10) Christmas Day (December 25th);
- (11) Inauguration Day (January 20th of each fourth year after 1965 for employees whose duty locations are in the District of Columbia, or Montgomery and Prince George counties in Maryland, or Arlington and Fairfax counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia); and
- (12) Any other day designated by Federal statute or declared by an Executive Order.

### **Section 2. General Policies.**

- A.** A full-time employee who is not required to work on a holiday will receive his/her basic rate of pay for all of the non-overtime hours (s)he would otherwise work on that day.
- B.** A part-time employee is entitled to a holiday when the holiday falls on a day (s)he is regularly scheduled to work. A part-time employee who is excused from work on a holiday will receive their basic rate of pay for the hours they are regularly scheduled to work on that day.
- C.** If a holiday falls on an employee's regular day off and the employee is called in to work overtime on that day, s/he is entitled to pay at the overtime rate for all hours worked on the holiday and not holiday premium pay. Employees performing non-overtime work on their "in lieu" of holiday will receive holiday premium pay.

**D.** For the purpose of this Article, seniority will be determined by:

- (1) The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.
- (2) In the event it is necessary to resolve times after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
- (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e. SCD) will be used.
- (4) In the event it is necessary to resolve ties after step (3), they will be resolved by coin flip.

Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

### **Section 3. Holiday Observances and Compensation.**

**A. COPRA Covered Employees.** Employees covered by the Customs Officer Pay Reform Act (COPRA) will observe holidays and be provided holiday premium pay in accordance with 19 C.F.R. § 24.16 and this Section (provided for informational purposes).

- (1) Premium pay differentials may only be paid for non-overtime work performed on holidays, Sundays, or, at night (work performed, in whole or in part, between the hours of 3:00 p.m. and 8:00 a.m.). An employee shall receive payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holiday, Sunday, and night work.
- (2) An employee who performs any regularly-scheduled work on a holiday will receive pay for that work at the officer's hourly rate of base pay, which

includes authorized locality pay, plus premium pay amounting to one-hundred (100) percent of that base rate. Holiday differential premium pay will be paid only for time worked. Intermittent employees are not entitled to holiday differential.

- (3) When a holiday is designated by a calendar date, the holiday will be observed on that date regardless of Saturdays and Sundays. Employees who perform regularly-scheduled, non-overtime, tours of duty on those days will be paid the holiday differential. Holidays not designated by a specific calendar date, shall be observed on that date, and employee who perform regularly-scheduled, non-overtime, work on those days will be paid the holiday differential.
- (4) Inauguration Day is a legal public holiday for the purpose of COPRA. Employees whose duty locations are in the District of Columbia, or Montgomery and Prince George counties in Maryland, or Arlington and Fairfax counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia, who perform regularly scheduled, non-overtime, work on that day shall be paid the holiday differential. When Inauguration Day falls on a Sunday, the next succeeding day selected for the public observance of the inauguration of the President is the legal public holiday.
- (5) If a legal holiday falls on an employee's regularly-scheduled day off, the employee shall receive a holiday "in lieu of" that day. Holidays "in lieu of" shall not be granted for Inauguration Day. An employee who works on an "in lieu of" holiday shall be paid the holiday differential.
- (6) If an employee is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the twenty-four (24) hour calendar day of a holiday – for example, a tour of duty starting at 8 p.m. on a Monday holiday following a scheduled day off on Sunday and ending at 4 a.m. on Tuesday - the employee shall receive the holiday differential (up to eight (8) hours) for work performed during that shift. If the employee is assigned more than one regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the twenty-four (24) hour calendar day of a holiday – for example, a tour of duty starting at 8 p.m. on the Wednesday before a Thursday holiday and ending at 4 a.m. on Friday - the management official in charge of assigning work shall designate one of the tours of duty as the employee's holiday shift and the employee will receive holiday differential (up to eight (8) hours) for work performed during the entire period of the designated holiday shift. The employee will not receive holiday differential

for any of the work performed on the tour of duty which has not been designated as the holiday shift but will be eligible for Sunday or night differential as appropriate.

- (7) Employees who are regularly scheduled, but not required, to work on a holiday shall receive their hourly rate of base pay for that eight (8) hour tour plus any Sunday or night differential they would have received had the day not been designated as a holiday. To receive holiday pay under this paragraph, the employee must be in a pay status (at work or on paid leave) either the last work day before the holiday or the first work day following the holiday.
- (8) An employee who works only a portion of a regularly-scheduled, non-overtime, holiday shift will be paid the holiday differential for the actual hours worked and the appropriate differential (Sunday or night) for the remaining portion of the shift such employee was not required to work. The night differential premium pay shall be calculated based on the rate applicable to the entire shift.

**B. Employees Not Covered by COPRA.** Employees not covered by COPRA will observe holidays and provided holiday premium pay in accordance with 5 C.F.R. § 550, as appropriate. This includes:

- (1) An employee who is required to work during non-overtime hours on a holiday will receive his/her rate of basic pay, plus holiday premium pay at a rate equal to his or her rate of basic pay, for each hour of holiday work.
- (2) An employee who is required to perform any work during non-overtime holiday hours is entitled to a minimum of two (2) hours of holiday premium pay.
- (3) In the event a holiday is observed on a full-time employee's regular day off, the employee will normally be provided an "in lieu of" holiday on the employee's regularly scheduled non-overtime work day immediately preceding the holiday. The exception is when the holiday falls on the first regular day off of the employee's administrative work week, in which case the employee will be provided an "in lieu of" holiday on the following work day.
- (4) In accordance with 5 C.F.R. 610.405, part-time employees are not entitled to an "in lieu of" holiday when a holiday falls on a non-work day.

#### **Section 4. Holiday Scheduling.**

- A.** Absent the existence of a supplemental agreement specifically applicable to local practices addressing such issues as the selection of “in lieu of” holidays, current holiday procedures will apply. If there are multiple procedures in a port or like entity, those flowing from the Customs-NTEU agreement/relationship shall apply as of the beginning of the next Holiday solicitation period. However, once the employer declares its intention to replace multiple local practices with a single policy or practice regarding these issues and that has more than a de minimis impact, the impact and procedures of that decision shall be negotiated with NTEU.
  
- B.** Absent the existence of a locally negotiated agreement under Section 4.A. of this Article, the Employer will use the following procedure when excusing employees from work on a holiday:
  - (1) If the Employer determines that more than one (1) employee is excusable from within the work group from which the excusal is to be made, management will solicit volunteers from within that work group.
  
  - (2) In the event:
    - 1. More excusable employees volunteer than are required, excusals will be granted in seniority order.
  
    - 2. Too few excusable employees volunteer, employees will be excused in inverse seniority order.
  
- C.** Where employees are not regularly scheduled to work on a holiday and the employer determines more than one (1) employee is qualified and eligible from within the work group from which the holiday assignment is to be made, management will solicit volunteers from within the work group from which the selection is to be made. In the event:
  - (a) More qualified employees volunteer than are required, selections for assignments will be made in seniority order.
  
  - (b) Too few qualified employees volunteer, assignments will be made in inverse seniority order.
  
- D.** Employees will be assigned to work holidays in a manner that does not conflict with applicable compensation cap or annuity integrity requirements and

procedures.

## **Section 5. Religious Observances.**

- A. An employee whose personal religious beliefs require the abstention from work during certain periods of time may request annual leave, Leave Without Pay (LWOP) or elect to engage in overtime work for time lost for meeting those religious requirements in accordance with applicable law and government-wide rules, regulations and the policies and procedures contained in this Section.
- (1) Requests for annual leave or LWOP for such purpose will be considered and approved in accordance with the procedures contained in Article 37: Leave and Excusal.
  - (2) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of its mission, the Employer shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.
  - (3) For the purpose stated in subsection A.(2) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of compensatory time off shall be repaid by the appropriate amount of compensatory overtime work within five (5) pay periods of its use. Time not repaid will be charged to the employee's annual leave account at the end of the fifth (5th) pay period by amending the time card(s) as appropriate. Compensatory time off under this Section may be earned and used in quarter-hour increments.
  - (4) If at the time requested, no productive work is available for the employee to perform on compensatory overtime, alternative times will be arranged by the Employer in accordance with law and government-wide rules and regulations.
  - (5) The premium pay provisions for overtime work do not apply to compensatory overtime work performed under this Section.
  - (6) The Employer will approve requests within each work unit in seniority order, absent mutual agreement.



## **ARTICLE 37: LEAVE AND EXCUSAL**

The purpose of this Article is to establish the policy and procedures by which employees request and management reviews and considers leave and excusal.

### **Section 1. General Policies.**

- A.** Leave and excused absences may be requested, approved and used in quarter-hour increments.
  
- B.** Leave and excused absences will be requested as far in advance as possible through the use of an Office of Personnel Management (OPM) Form SF-71, "Request for Leave or Approved Absence" (or equivalent). Requests submitted through the Customs Overtime Scheduling System (COSS) meet this requirement. Emergency requests for leave may be made telephonically to the designated management official, and will be followed up with a formal request upon the employee's return as appropriate.
  
- C.** In the event an unforeseen emergency arises that prompts an employee to request unscheduled leave, such leave will be requested as follows:
  - (1) If the emergency arises while the employee is at work, the employee will notify the Employer of the nature of the emergency, the anticipated extent of his/her absence, and seek the Employer's approval for the appropriate type of leave.
  
  - (2) If the emergency arises when the employee is not at work, and the need to take leave would prevent the employee from reporting to work as scheduled, the employee must notify his/her supervisor (or designated alternate) at the earliest available opportunity, but absent just cause, no later than one (1) hour after the time in which the employee is schedule to report for duty. At the time the emergency request for leave is made, the supervisor (or designated alternate) will advise the employee as to whether the request for leave is approved (including provisional approvals subject to follow-up documentation when appropriate). If the supervisor (or designated alternate) is not available, the employee must leave a message with a telephone number where (s)he can be reached.
  
  - (3) If the emergency extends beyond the period for which leave was originally requested, the employee must again notify the Employer and request additional leave.

- D. The Employer will review, consider and approve employee requests for leave and excused absence in a fair and impartial manner.
- E. If any request for leave or excused absence is denied, the Employer will provide the employee with an explanation for the denial upon request.

**Section 2. Annual Leave.**

- A. The entire leave year will be available for annual leave requests, and the Employer will allow each employee to schedule annual leave as (s)he desires, subject to approval by the appropriate official based on workload and staffing needs. This includes approving annual leave requests in a manner that permits each employee, if (s)he wishes, to request at least one (1) period of two (2) consecutive weeks of annual leave each leave year.
- B. When making annual leave requests in advance, employees will not be required to provide details as to the specific reason, and may give a reason of “personal business” if asked by the Employer.
- C. Local Annual Leave Procedures.

(1) Upon the effective date of this Agreement and at any time thereafter, the Employer and the Union may, by mutual agreement, adopt a local annual leave procedure.

(a) The scope of such mutual agreements may include:

1. The time periods in which employees within appropriate work units or groups will compete for available leave periods;
2. The dates for submission of leave requests;
3. The posting of leave schedules; and/or
4. The criteria, priorities and/or the methods for resolving conflicts between leave requests among employees competing for available leave periods within an organizational segment.

(b) Mutual agreement refers to the ability of the local parties to establish procedures only if both parties agree to do so voluntarily. It does not

confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute process.

- (c) Local annual leave procedures adopted through mutual agreement may not conflict with law, rule, regulation or the terms of this Agreement.
  - (d) Any local mutual agreement reached under this subsection must be placed in writing and signed by the parties, and will be binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the annual leave request cycle following receipt of the notice.
- (2) Absent the establishment of a local procedure under Section 2.C.(1) of this Article, the following will serve as the default procedure:
- (a) Request Solicitation Period. When the Employer determines scheduling requirements or complexities (e.g., at a Port of Entry) necessitate or make it efficient to use a yearly process by which employees within a particular work unit or organizational subcomponent request and compete for available annual leave periods (i.e., in one and two week blocks), the following procedure will be used:
    - 1. No later than October 15<sup>th</sup> of each year, the Employer will solicit employee requests for annual leave for the upcoming leave (calendar) year. The solicitation period will be no less than fourteen (14) calendar days. By mutual agreement between the Employer and the union, the Employer may solicit requests and schedule leave on a fiscal year instead of a leave (calendar) year basis. In such cases, the solicitation will occur no later than August 15<sup>th</sup> of each year.
    - 2. Following the close of the solicitation period, the Employer will review and approve the requests in accordance with Section 2.A. of this Article. In the event a greater number of requests are submitted for a given period than can be approved, the Employer will approve requests in seniority order. For purposes of this subsection, seniority will be determined by:
      - a. The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and

Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.

- b. In the event it is necessary to resolve ties after step a., the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
- c. In the event it is necessary to resolve ties after step b., the total time in Federal government service (i.e., SCD) will be used.
- d. If a conflict still remains, the conflict will be resolved by coin flip.

Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

- 3. The Employer will post or otherwise make available the resulting list of approved requests for the upcoming leave year to employees no later than December 15<sup>th</sup> (or October 1<sup>st</sup> if fiscal years are used).

(b) Ad/Hoc Leave Requests. The Employer will review and approve leave requests it receives throughout the leave year in accordance with Section 2.A. of this Article. If the Employer is presented with a greater number of unprocessed requests for a given day or period than can be approved, the Employer will approve requests in seniority order (using the seniority rules contained in Section 2.C.(2)(a)2. of this Article).

**D.** Should the Employer find it necessary to cancel previously approved leave, it will inform the employee as soon as the reason is known to the Employer. The reasons for canceling leave will be provided in writing for all leave that was requested in writing. Employee requests for rescheduling approved leave which has been canceled, shall be processed in accordance with this Article.

**E.** To the extent it has not otherwise been requested and approved, an employee with use or lose annual leave (as reflected in the Leave and Earnings Statement provided by the Employer) will submit annual leave requests for the balance of the leave year before September 1<sup>st</sup> of each year.

**F.** Annual leave requested and approved in writing before November 15<sup>th</sup> of each year and subsequently cancelled by management and forfeited by the employee may be restored when:

- (1) Exigencies of public business existed that were of such importance and duration as to prevent the use of annual leave that was scheduled in advance before the end of the leave year;
- (2) The employee experienced a period of sickness that interfered with the usage of scheduled annual leave, and occurred or continued so late in the leave year that annual leave could not have been rescheduled to avoid forfeiture; or
- (3) The forfeiture was caused by an administrative error on the part of the Employer.

**G.** The Employer will inform employees of the procedure by which forfeited annual leave may be restored each leave year.

**H.** Advanced Annual Leave. Requests for advanced annual leave may be made by an employee and will be evaluated by the Employer in accordance with the terms of this Article when:

- (1) The employee is eligible to earn annual leave;
- (2) The employee has served more than ninety (90) days in his appointment;
- (3) The employee is not under leave restriction;
- (4) The employee makes the request in writing (i.e., memo) and provides a rationale for the request;
- (5) The employee does not request more advanced annual leave than would be earned during the remainder of the year; and
- (6) The liquidation of the advance may be anticipated by subsequent accruals of the leave or recovery of the value of the advanced leave (e.g., by withholding salary or other funds due to the employee, etc.) in the event of the employee's separation.

If an employee's request for advanced annual leave is denied, the employee will be provided written notification of the denial.

### **Section 3. Sick Leave.**

- A.** Sick leave may be requested by employees for personal medical needs, to provide care for a family member, to make arrangements for and attend the funeral of a family member, to care for a family member with a serious health condition, and for adoption-related purposes.
- B.** The Employer will approve employee requests for sick leave for purposes and in amounts as required by applicable law, rule and regulation.
- C.** When an employee knows in advance that sick leave will be required, (s)he will request sick leave at the time the necessity for the leave is determined.
- D.** The employee is responsible for contacting his/her supervisor (or designated alternate) about the need for unscheduled sick leave as soon as possible, but, absent just cause, no later than one (1) hour after the time in which the employee is scheduled to report for duty. If the supervisor is not available, the employee must leave a message with a telephone number where (s)he can be reached. Upon return to duty, the employee will follow up on the request by making the necessary written submission(s).
- E. Supporting Documentation.**
  - (1) Regardless of the duration of the absence, the Employer may consider an employee's certification as to the reason for his/her absence as administratively acceptable evidence of the need to use sick leave. However, for an absence in excess of three (3) work days, or when determined necessary by the Employer (e.g., when there exists reasonable grounds to suspect the employee of leave abuse), the Employer may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence.
  - (2) "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 incapacitation while the patient was receiving professional treatment.
  - (3) When requested, employees will provide such evidence within fifteen (15) calendar days from the date of the request, absent just cause.

- F. Upon request by the employee, an approved absence which would otherwise be chargeable to sick leave will normally be changed to annual leave if the request is made at the time the request for approval of the leave is submitted.
- G. Advance Sick Leave. Requests for advanced sick leave may be made by an employee and will be evaluated and approved by the Employer in accordance with the terms of this Article when:
- (1) The employee is eligible to earn sick leave;
  - (2) Advanced sick leave is required by the exigencies of the situation for a serious disability or ailment of the employee or a family member, or for purposes related to the adoption of a child.
  - (3) The employee makes the request in writing (i.e., memo) and supports the request with a medical certificate;
  - (4) The Employer has a reasonable expectation that (s)he will return to duty and repayment can reasonably be expected;
  - (5) The employee is not currently under leave restriction; and
  - (6) The total amount advanced to the employee does not exceed two hundred and forty (240) hours.
- H. The Employer will comply with the requirements of Section 15 of Article 31: Employee Rights regarding the handling and protection of medical information provided by employees under this Section.

#### **Section 4. Leave Without Pay.**

- A. Leave Without Pay (LWOP) is an employee requested and Employer approved temporary absence from duty in a non-pay status. Absent just cause, all LWOP must be requested and approved in advance.
- B. As LWOP can impact various employee benefits and other personnel actions, the Employer will ensure information is readily available for employees on such impacts. In addition, a representative of the Employer will be available to discuss such impacts with an employee who is contemplating making an LWOP request.

- C.** In accordance with applicable law, rule and regulation, the Employer must approve LWOP in following specific circumstances:
- (1) Family and Medical Leave Act of 1993 (FMLA) requests under Section 5 of this Article;
  - (2) Entitlements under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA);
  - (3) Requests from an employee who is a disabled veteran and presents an official statement from a medical authority that medical treatment is required in connection with the disability (provided prior notice of the period during which absence for treatment will occur is given to the Employer); and
  - (4) Employees who are in receipt of compensation from the Department of Labor for work-related injuries or occupational diseases may not be in a pay status, and therefore must be carried in a LWOP status.
- D.** In the following circumstances, requests for LWOP may be made by an employee and will be evaluated by the Employer in accordance with the terms of this Article:
- (1) To serve as the elected National President or Executive Vice President of the NTEU, or to serve full-time in an appointive position of the Union;
  - (2) To attend school for one (1) year in full-time study when: the study is related to the employee's position; the employee has worked for CBP for at least five (5) years; the employee is performing at least at the acceptable level; and the employee agrees to return to CBP upon completion of the study period;
  - (3) For a period of up to six (6) months when an employee has an illness or injury that would otherwise be covered by sick leave, the employee's annual and sick leave has been exhausted, and the employee agrees to return to CBP at the conclusion of the LWOP period. The amount of LWOP granted will be only what is necessary, and when combined with leave approved under another provision of this Article for the same purpose, the total absence may not exceed six (6) months.
- E.** In all other cases, the Employer will appropriately consider and approve employee requests for LWOP. In granting requests, the Employer will consider whether the value to the government, the public good, or the needs of the employee are



sufficient to offset the administrative inconvenience and the cost of granting the request. Such factors as increased job ability, protection or improvement of an employee's health, job performance, and retention of a desired employee may be considered. In addition, the Employer should have a reasonable expectation that the employee will return to duty at the end of the LWOP (except in cases where an employee is relocating).

**F.** Approved LWOP may be retroactively changed to annual leave if:

(1) Due to an administrative error or misunderstanding, the employee was not aware that (s)he had an annual leave balance or that annual leave could have been used; or

(2) The employee is accepted into the Voluntary Leave Transfer Program and donated leave is available.

**G.** An employee who returns to duty after a period of LWOP of forty-five (45) calendar days or less will be returned to the same position, or if not available a similar position, held at the employee's post of duty prior to the period of LWOP.

**H.** An employee who returns to duty after a period of LWOP of more than forty-five (45) days will be returned to the same position, or if not available a similar position, held at the employee's post of duty prior to the period of LWOP; or, if not available, placed in a like position in the commuting area.

**Section 5. Family and Medical Leave Act (FMLA).**

**A.** The Family and Medical Leave Act (FMLA) entitles eligible employees (see 5 CFR § 630) to take leave without pay (LWOP), or to substitute appropriate accrued paid leave, for up to a total of twelve (12) administrative work weeks during a twelve (12) month period for the following reasons:

(1) Birth of a son or daughter of the employee and the care of such son or daughter;

(2) Placement of a son or daughter with the employee for adoption or foster care;

(3) Care of an employee's spouse, child under eighteen (18) years of age, or parent, who has a serious health condition; or

(4) Serious health condition of the employee that makes him/her unable to perform the essential functions of his/her position.

**B.** In accordance with Section 585(b) of Public Law 10-181, a Federal employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered service member with a serious injury or illness (incurred in the line of duty while on active duty in the Armed Forces) and provides care for such service member is entitled to entitled to:

(1) Up to twenty-six (26) weeks of unpaid military family leave during a twelve (12) month period to care for the service member.

(2) If eligible for military FMLA leave under this subsection and regular FMLA under subsection A. above, a combined total of no more than twenty-six (26) weeks of all FMLA leave during a single twelve (12) month period. For example, if on January 1<sup>st</sup> an employee (who also takes care of a covered service member) takes six (6) weeks of regular FMLA for the birth of a child, the six (6) weeks of regular FMLA is subtracted from the combined twenty-six (26) week entitlement, leaving the employee with twenty (20) weeks of military family leave available to be requested through December 31<sup>st</sup> of that year.

**C.** The twelve (12) month period begins on the date the employee first takes leave under FMLA.

**D.** A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

(1) A period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or medical care facility;

(2) A condition that results in incapacity requiring an absence of more than three (3) consecutive calendar days involving continuing treatment by a health care provider; or

(3) Continuing treatment/supervision by a health care provider for a chronic or long-term condition that, if not treated, would likely result in incapacity of more than three (3) consecutive calendar days.

**E.** Requests for FMLA leave must be accompanied (or followed up by) administratively acceptable medical documentation from a qualified health care

provider supporting the request. Department of Labor Form WH-380, “Certification of Health Care Provider” satisfies this requirement.

- F.** A “health care provider” is a licensed Doctor of Medicine or Doctor of Osteopathy; a health care provider recognized by the Federal Employees Health Benefits Program; a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner.
- G.** The Employer will protect and handle any medical information by the employee in accordance with Section 15 of Article 31: Employee Rights.
- H.** When possible, a requesting employee must provide notice of his/her intent to take FMLA leave not less than thirty (30) calendar days before the leave is to begin. When not possible, the employee will provide notice as soon as practicable.
- I.** Requesting employees must submit the necessary supporting medical documentation no later than fifteen (15) calendar days after the request for FMLA leave is submitted. If, due to circumstances beyond the employee’s control, the medical certification is not available within the fifteen (15) calendar day period, the employee must submit it no later than thirty (30) calendar days after the request for FMLA leave. The employee’s supervisor may waive the requirement for an additional medical certificate in a subsequent twelve (12) month period if the FMLA leave is for the same chronic or continuing health condition.
- J.** FMLA leave under subsections A.(1) and (2) of this Section may be taken on an intermittent basis if the employee so requests, and the employee’s supervisor reasonably determines that such a schedule will not adversely impact the accomplishment of the mission. FMLA leave under subsections A.(3) and (4) of this Section may be taken on an intermittent basis or on a reduced leave schedule (employee’s usual number of hours of regularly scheduled work per day is reduced), only when medically necessary to care for a seriously ill family member or for the serious health condition of the employee.
- K.** An employee may elect to substitute annual leave and/or sick leave, consistent with applicable law and regulations for using annual or sick leave, for any FMLA LWOP. An employee who elects to substitute paid leave for FMLA leave must notify his/her supervisor of that election prior to the date the FMLA leave begins.

- L. Upon returning from FMLA leave, an employee will be returned to the same position, or if not available, an equivalent position with equivalent benefits, pay, status and other terms and conditions of employment. An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.

**Section 6. Leave for Maternity or Paternity Purposes.**

- A. Employees may request, and the Employer will evaluate and approve leave for maternity and paternity (including adoption) purposes, in accordance with the terms of this Article.
- B. Requests under this Section may be for a period of up to six (6) months, and include a combination of sick leave, annual leave, and LWOP (including under FMLA) in accordance with the corresponding Sections contained in this Article.
- C. Nothing in this Section requires an employee to exhaust accrued annual and/or sick leave prior to requesting LWOP under this Section.

**Section 7. Military Leave.**

- A. Military leave is absence from duty from the employee's civilian position without loss of pay (including pay for regularly scheduled overtime) to perform military duty.
- B. In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), an employee performing service with the uniformed services will be permitted, upon request, to use military leave or accrued annual leave during such service.
- C. In order to be entitled to military leave, an employee must be:
  - (1) A member of a Reserve component of the Armed Forces or the National Guard;
  - (2) A full-time, part-time or indefinite employee who does not have an intermittent work schedule; and

(3) Serving in an appointment that is not limited to one (1) year or less.

- D.** Eligible employees accrue fifteen (15) calendar days (i.e., 120 hours) of military leave per fiscal year for active duty, active duty training, inactive duty training and funeral honors duty. An employee may carry over a maximum of fifteen (15) days into the next fiscal year.
- E.** Eligible employees may accrue an additional twenty-two (22) work days (i.e., 176 hours) of military leave per calendar year for emergency duty as ordered by the President or a State governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property, or when performing full-time military service as a result of a call or order to active duty in support of a contingency operation.
- F.** In accordance with 5 U.S.C. § 6323 (c), members of the National Guard of the district of Columbia are provided unlimited military leave for certain types of duty ordered or authorized under Title 39 of the District of Columbia Code.
- G.** In accordance with 5 U.S.C. § 6323 (d), Reserve and National Guard Technicians only are entitled to forty-four (44) work days (i.e., 352 hours) of military leave in a calendar year for duties overseas under certain conditions. This entitlement is in addition to the entitlement to fifteen (15) days of military leave under 5 U.S.C. § 6323 (a) and Section 7.D. of this Article.
- H.** Whenever possible, employees must submit requests for military leave in advance, which will be accompanied by a copy of the military orders (if available) or a copy of the weekend drill schedule.
- I.** The minimum charge for military leave is one (1) hour. An employee may be charged military leave only for hours that the employee otherwise would have worked and received pay. Time taken on a work day for traveling to the military training location cannot be charged to military leave unless the military orders encompass the required travel time.
- J.** Holidays and non-duty weekends are not charged against military leave.
- K.** Military leave does not have to be exhausted prior to using other appropriate types of leave (i.e., annual leave or LWOP) to perform military duty, and may be intermingled with other leave. In accordance with 5 C.F.R. § 353.208, an employee may request, and the Employer will approve, the use of accrued annual

leave, previously earned compensatory time off, previously earned credit hours, or LWOP intermittently when (s)he is activated into military service.

- L.** An employee's civilian pay will remain the same for periods of military leave under 5 U.S.C. § 6323 (a) and Section 7.D. of this Article, including any premium pay (except Sunday premium pay) an employee would have received if not on military leave. For military leave under 5 U.S.C. § 6323 (b) and (c), and Sections 7.E. and F. of this Article, the employee's civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave in order to retain both civilian and military pay.
- M.** Federal civilian employees returning from a qualifying deployment for at least forty-two (42) consecutive days on active military duty in support of the Global War on Terrorism (GWOT), will receive five (5) days of uncharged leave (excused absence) only once in a 12-month period. A qualifying deployment is any military service in connection with Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or other military operations subsequently established under Executive Order 13223.

## **Section 8. Court Leave.**

- A.** Court leave is an approved absence from duty without loss of pay or charge to an employee's accrued leave to perform jury duty in a Federal, state or municipal court or to serve as a witness for the United States, the District of Columbia, or a state or local government.
- B.** Court leave must be requested and approved in advance, and the request must be accompanied by the summons, court order, subpoena or other official request.
- C.** Court leave will be granted for absences during an employee's regularly scheduled tour of duty, including regularly scheduled overtime. It can be granted only for those days and hours the employee would otherwise be in a pay status.
- D.** Employees assigned to night shifts or standby tours of duty are granted court leave comparable with employees assigned to regular day shift work. Since jury or witness duty generally requires an employee's presence in court during daytime hours, an employee who is scheduled to work at night will be granted court leave during the day on which the night shift begins or ends.

- E.** If an employee's absence is properly chargeable to court leave, the employee may not elect to have the absence charged to annual leave. If an employee is on annual leave when called for jury duty or witness service, court leave will be substituted.
- F.** When an employee on court leave is excused or discharged by the court, the employee must return to duty unless doing so would be impractical. An employee excused or discharged by the court for a substantial portion of a work day is not entitled to court leave, but must report for duty (or request appropriate leave). As a general rule, an employee will contact his/her supervisor to determine if (s)he should report for duty.
- G.** Once the employee has completed his/her jury or witness service, (s)he must submit a certificate of attendance, signed by a clerk of the court or other appropriate official to his/her supervisor for retention with timekeeping records. Such certificates should identify fees and expenses allowances provided.
- H.** Since court leave permits an employee to fulfill his/her obligation to the court without any loss of pay, the employee is responsible for collecting lost wage compensation provided by the applicable jurisdiction and forwarding it to the National Finance Center (Payroll Branch, P.O. Box 68903, Indianapolis, Indiana 46268). Such compensation must be delivered by money order or personal check. In the event the employee fails to collect fees payable or waives payment of such fees, an equivalent amount will be withheld from his/her salary. Full-time employees may retain fees for compensation paid for jury service on holidays and other non-workdays.
- I.** Employees may keep any expense fees they receive while on court leave.

## **Section 9: Home Leave.**

- A.** Home leave is a period of approved absence with pay authorized by 5 U.S.C. § 6305 for employees stationed abroad.
- B.** Employees serving outside the United States who meet the requirements of 5 U.S.C. § 6304 (b) for the accumulation of a maximum of forty-five (45) days (i.e., 360 hours) of annual leave are eligible for home leave.
- C.** Home leave will accrue and be granted in accordance with applicable law, rule, regulation and this Agreement.

- D. Home leave for eligible employees at Preclearance stations accrues at the rate of five (5) days per twelve (12) months of service. Home leave accrues without limit.
- E. The Employer will exercise its right to approve home leave in a fair and impartial manner when the employee has completed a basic service period of twenty-four (24) months of continuous service abroad and the employee has been selected to return for at least a twelve (12) month assignment.
- F. Home leave may be used only in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States.
- G. Request for home leave will be made when the employee submits his/her request for an additional assignment outside the United States.
- H. Subject to approval by the appropriate official, based on workload and staffing needs, home leave will be used within the ninety (90) days after the employee becomes eligible under Section 9.E. of this Article. Requests for extensions will be considered by the Employer on a case-by-case basis. However, the ninety (90) day period will be extended when the home leave request is disapproved by the Employer because of operational or mission requirements.
- I. Home leave will generally be requested to be taken in blocks of ten (10) days. However, employees who have accrued additional home leave may request the extension of their home leave period to the extent such leave is available.
- J. Nothing in this Section prohibits an employee from requesting annual leave in combination with home leave.

**Section 10: Excused Absences.**

- A. Excused absence, often referred to as “administrative leave,” is an authorized absence from duty without loss of pay or charge against leave.
- B. An employee may be excused from duty when the absence is not specifically prohibited by law, and is:
  - (1) Directly related to CBP’s mission;
  - (2) Officially sponsored or sanctioned by CBP;



(3) Determined to enhance the professional development or skills of an employee in his/her current position; or

(4) Brief and is determined to be in the interest of CBP.

C. Absent just cause, the Employer will approve employee requests for excused absence in the following circumstances:

(1) Voting. In the event polls are not open at least three (3) hours before or after an employee's regularly scheduled hours of work, excused absence at either the beginning or end of the daily tour of duty, depending on which requires less excused absence. In those rare circumstances where an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the amount of excused absence may be increased to the amount necessary, but not more than one (1) day. Upon employee request, time needed in excess of one day may be charged to annual leave (or LWOP if annual leave is exhausted).

(2) Blood Donations. To give blood or platelet donations to an officially authorized blood bank, or in emergencies transfusions to individuals, for the period it takes to make the donation or transfusion and recover, not to exceed four (4) hours. In addition, the employee will be granted excused absence for reasonable travel time to/from the donation/transfusion location. Should the employee desire or need additional time, (s)he may request accrued annual leave, sick leave, compensatory time, credit hours or LWOP. This subsection does not cover an employee who gives blood for his or her personal use or receives compensation for donations.

(3) Civil Defense Activities. Up to five (5) workdays per calendar year to participate as a volunteer in emergency rescue/protective work or to participate in a federally recognized civil defense program. Emergency situations include, but are not limited to, extreme weather conditions or disasters such as fire, flood or other natural phenomena, and search operations. At the conclusion of the employee's participation in the emergency work or civil defense program, (s)he must provide acceptable evidence certifying his/her attendance through the excused absence period.

(4) Internal Examinations. To take examinations related to employment with CBP, e.g., examinations to establish an employee's qualifications for promotion in CBP.

- (5) External Examinations. To take examinations which are directly related to the employee's current or prospective duties within CBP (e.g., CPA exam for accountants, bar exam for attorneys), including travel to and attendance at an oral interview required as a prerequisite to the grant of a professional license. The time authorized under this provision is limited to a single examination for any one (1) employee.
- (6) Employee Interviews. To attend interviews or testing when competing for positions within CBP.
- (7) Hazardous Weather Conditions. When the Employer determines it is necessary to close a post of duty because of hazardous weather or emergency conditions, or when such conditions prevent an employee from reporting to work when the post of duty is not closed. In the latter circumstance, in order to be granted excused absence, the employee must provide the Employer with evidence that (s)he made a reasonable effort to report to work but that such conditions prevented him or her from doing so. Factors the Employer will consider in granting such requests may include: the distance between the employee's residence and place of work; the mode of transportation normally used by the employee; efforts by the employee to report to work; the success of other similarly situated employees to report to work; physical disability of the employee; and local travel restrictions. Excused absences granted under this provision will only be for the period in which the employee was reasonably prevented from reporting for work.
- (8) Medical Examinations and Treatment. To undergo a medical examination requested by an authorized CBP official, or to obtain medical services required for official purposes or administered as part of the official Safety and Health program, including travel time. An employee undergoing initial examination and emergency treatment for a work-related injury on the day of the injury will also be granted excused absence.
- (9) Bone Marrow and Organ Donation. Up to seven (7) work days per calendar year to serve as a bone marrow donor, and up to thirty (30) work days per calendar year to serve as an organ donor.
- (10) Meetings and Conferences. To attend a convention, conference or meeting that is not directly related to official duties if management determines the employee's attendance will contribute to the goals of CBP. After evaluating the request, the Employer will grant or deny the excused absence. If denied, the employee may request annual leave or LWOP to attend.

- (11) Relocation. To enable an employee who is relocated by the Employer outside his/her commuting area to make pre-moving and post-moving arrangements, as permitted in accordance with applicable law, regulations and this Agreement. In addition, nothing in this subsection prohibits the Employer from granting employee requests for annual leave or leave without pay in combination with excused absences for such pre- and post-moving arrangements.
- (12) Funeral of Immediate Relative in the Armed Forces. Up to three (3) days of excused absence to make arrangements for and/or to attend the funeral or memorial service for an immediate relative who died in a combat zone (as determined by the President of the United States), as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces.
- (13) Funeral of a Fellow Law Enforcement Officer. For a Federal law enforcement officer to attend the funeral of a fellow law enforcement officer or Federal firefighter who was killed in the line of duty. For the purposes of this provision, CBP has determined employees who receive the enhanced retirement are eligible for this benefit.
- (14) Veterans to Attend Funeral Services. For a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, up to four (4) hours in any given day to participate as a pallbearer or as a member of a firing squad or guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States.

**D.** Supervisors may excuse occasional brief absences from duty of less than one (1) hour when the employee provides the supervisor with an acceptable explanation for the absence.

## **ARTICLE 38: TEMPORARY ASSIGNMENTS**

**Section 1.** This Article contains the procedures applicable to assignments that are temporary in nature and not otherwise addressed in this Agreement.

### **Section 2. Definitions.**

- A. *Position*** is the duties and responsibilities assigned by competent authority and requiring employment of a person.
- B. *Duty Station*** refers to those facilities and work locations to which an employee is assigned (i.e., Port of Entry, city or county).
- C. *Temporary Assignment*** includes any circumstance in which an employee is directed by the Employer to perform the duties and responsibilities of a position and/or at another facility, location or duty station other than the one to which (s)he is normally assigned when the employee is expected to return to his or her regular duties and facility, location or duty station at the end of the assignment. Examples of temporary assignments include details, temporary reassignments and temporary promotions.
- D. *Seniority*** will be determined by:
  - (1) The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.
  - (2) In the event it is necessary to resolve ties after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
  - (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e., SCD) will be used.

- (4) In the event it is necessary to resolve ties after step (3), they will be resolved by coin flip.

Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

### **Section 3. General Policies.**

- A.** Temporary assignments will be used when the Employer determines such assignments are necessary for meeting the temporary needs of the Agency's work and/or programs, or for training or employee development purposes. Such assignments will be made in accordance with the policies and procedures contained in this Article.
- B.** Prior to making a temporary assignment under this Article, the Employer will inform the employee of the intended assignment, as well as its expected duration and end date.
- C.** When a temporary assignment is to a position outside of the commuting area of the employee's permanent duty station, the Employer will reimburse the employee for travel and/or moving expenses in accordance with applicable law, regulation (including the Federal Travel Regulations) and the terms of this Agreement.
- D.** When temporary assignments are made for training or developmental purposes (not under a formal training and development program), employees do not need to fully meet all of the qualification requirements of the position to which temporarily assigned.
- E.** The Employer may return an employee serving in a temporary assignment to his/her regular assignment at any time.
- F.** The Employer will not use temporary assignments in lieu of taking corrective action under discipline and adverse action procedures.

### **Section 4. Temporary Assignments Procedures.**

- A.** So that the Employer possesses the necessary flexibility to immediately meet emerging and unanticipated work requirements, as well as to assist in the training and development of employees, the Employer may temporarily assign any

employee to any position for a period of not more than thirty (30) consecutive calendar days. When made for training and development purposes, the Employer will exercise its discretion in this subsection in a fair and impartial manner.

- B.** When the Employer anticipates an assignment under this Section will be more than thirty consecutive (30) calendar days in duration, and more than one (1) employee is qualified from within the work group from which the temporary assignment will be made, volunteers will be solicited. In the event more qualified employees volunteer than are required, absent just cause, selections will be made in seniority order. If too few qualified employees within the work group volunteer, absent just cause, employees will be assigned in inverse seniority order.
  
- C.** In the event the Employer determines it is necessary to fulfill temporary needs lasting more than ninety (90) calendar days through the involuntary temporary assignment of a significant number of employees from more than one duty station to positions outside of the commuting area of the employee's permanent duty station (e.g., the northern border initiative), the Employer will notify NTEU (at the national level) and upon request, negotiate over the procedures by which employees are assigned and appropriate arrangements for employees adversely affected by the Employer's determination. Upon NTEU request, such negotiations will continue on a post-implementation basis. This provision does not apply to regularly occurring temporary assignments for which employee interest is periodically solicited (e.g., instructor opportunities at the Academies).
  
- D.** When the Employer assigns an employee to a higher graded position, or position with known promotion potential, in addition to the procedures contained in subsections A. and B., the following will apply:
  - (1) The Employer will not exercise its discretion to assign an employee to a higher graded position without promotion for periods of thirty (30) consecutive calendar days or less solely for the purpose of avoiding promoting an otherwise qualified and eligible employee who is performing the duties of the position.
  
  - (2) When the higher graded position has been filled through a temporary assignment without promotion, if the employee serves in the assignment for thirty one (31) consecutive calendar days, and the employee meets the qualifications and time-in-grade requirements, the Employer will effect a temporary promotion at the beginning of the pay period in which the thirty first (31<sup>st</sup>) day falls.

(3) For temporary assignments to a higher graded position, or position with known promotion potential, of more than sixty (60) consecutive calendar days, the procedures within Article 41: Merit Promotion will be used.

**E.** At no time may an employee noncompetitively serve in any temporary assignments to higher-graded positions, or to positions with known promotion potential, with or without promotion, or in any combination thereof, for more than one hundred and twenty (120) calendar days during any twelve (12) month period.

## **ARTICLE 39: REASSIGNMENTS**

CBP and NTEU recognize the value of retaining highly experienced and productive employees in the accomplishment of the Agency's mission. With this in mind, CBP and NTEU have agreed to establish the following mechanisms by which employees may express an interest in and/or be reassigned.

### **Section 1. Definitions.**

- A. *Reassignment:*** Unless defined otherwise, refers to the permanent change of an employee from one duty station (i.e., Port of Entry, city or county) to another, within the same occupational series, without promotion or demotion.
- B. *Covered employees:*** Except as supplemented below, the provisions of this Article apply to all CBP employees covered by this Agreement who are not the subject of any pending performance action, pending disciplinary action, or pending investigation of alleged misconduct. Actions and investigations on which a decision has been made (and if applicable, issued to the employee) are not pending.
- C. *Seniority*** will be determined by:
- (1) The total time an employee has served in his or her occupation (e.g., CBP Officer, CBP Agriculture Specialist, Import Specialist, etc.), including time in an equivalent position (e.g., Customs and Immigration Inspectors for CBP Officers and PPQ Officers for CBP Agriculture Specialists) at the employee's heritage agency. For seniority purposes, Customs Canine Enforcement Officer, Immigration Inspector (Canine) or PPQ Officer (Canine) is considered creditable equivalent heritage agency time to the CBP Officer and CBP Agriculture Specialist positions, respectively.
  - (2) In the event it is necessary to resolve ties after step (1), the total time an employee has served in CBP and heritage agency, regardless of position, will be used.
  - (3) In the event it is necessary to resolve ties after step (2), the total time in Federal government service (i.e., SCD) will be used.
  - (4) In the event it is necessary to resolve ties after step (3), they will be resolved by coin flip.



Less than full-time employment will be credited for seniority purposes in accordance with the above on a pro rated basis.

## **Section 2. Employee Requested Reassignments.**

- A. Coverage.** In addition to the requirements of Section 1.B., this Section applies only to full-time permanent employees who are not assigned to Preclearance and overseas locations. Return procedures for Preclearance are found in Article 40 Section 6.
- B. Policies.**
- (1) The Employer will consider employee initiated requests for reassignment in accordance with this Section to duty stations at which the employee's Office (e.g., Office of Field Operations, Office of Trade or Office of Information Technology) has employees of the same occupation and grade.
  - (2) When filling a position with other than a probationary or trial period employee, the Employer will consider the placement of employees under this Section. Absent just cause, when qualified employees are available for placement, the Employer has elected to offer placements through these procedures for at least one out of every two positions it fills with non-probationary/non-trial period employees. This Section does not apply to the placement of employees through the procedures contained in Article 13: Bid, Rotation and Placement.
  - (3) As such reassignments are primarily for the benefit of the employee, all relocation costs associated with reassignments granted under this Section are the responsibility of the employee.
  - (4) Employees may withdraw a voluntary reassignment request submitted under this Section at any time by delivering written notification to the management representative responsible for administering the applicable voluntary reassignment process described below.
  - (5) In the event an employee accepts a reassignment, accepts a reassignment and subsequently declines prior to his/her release, or declines or fails to respond to an offer of reassignment under this Section, the employee will not be eligible for future voluntary reassignments for a period of three (3) years. This provision does not prohibit an employee from applying to management-initiated vacancy announcements or submitting a request for reassignment on the basis of a hardship (Subsection E) in the event the circumstances leading to

the hardship develop after the voluntary reassignment was offered under this Subsection.

- (6) Where required to be provided by this Article, an employee's resume (or Optional Form 612) will be used by the Employer for the purpose of reviewing the employee's qualifications and determining what training, if any, would be required if placed.
- (7) Management will consider reassignment requests under this Section in the following priority order:
  - (a) Placements made as a result of third-party decisions (or related settlements);
  - (b) Career Transition Assistance Program (CTAP) eligibles;
  - (c) Re-employment Priority List (RPL) eligibles;
  - (d) Grade retention eligibles;
  - (e) Priority consideration eligibles;
  - (f) Special consideration for re-promotion eligibles;
  - (g) Medical and educational hardships (granted in the order in which they are received);
  - (h) Spousal hardships (granted in the order in which they are received);
  - (i) Preclearance returnees;
  - (j) Voluntary reassignments.

**C. Voluntary Reassignments.**

- (1) For covered CBP Officers and CBP Agriculture Specialists within the Office of Field Operations (OFO), the following voluntary reassignment procedures shall apply:
  - (a) On an annual basis, voluntary reassignment requests will be solicited from eligible employees through a nationwide posting.

- (b) In addition to the requirements of Section 2.A., eligible employees are those that have successfully performed in their current occupation with CBP for the previous two (2) years.
- (c) Employees will be provided thirty (30) calendar days from the date of the solicitation to submit reassignment requests. Such requests must include a current resume (or Optional Form 612), a self-certification statement of seniority, and identify up to three (3) duty stations to which the employee wishes to be reassigned.
- (d) Within ninety (90) calendar days of the date employee requests are due, the Employer will establish a roster of employees in each occupation who desire a voluntary reassignment for each duty station, in seniority order. The Employer will establish a procedure by which NTEU and the twenty (20) most senior employees who requested a voluntary reassignment for each duty station will be able to obtain their status.
- (e) Unless a formal written withdrawal is submitted, an employee request will be considered active until the next solicitation.
- (f) When filling a vacancy at a particular duty station through voluntary reassignment, absent just cause, the most senior qualified employee will be selected. When making selections under this subsection for positions within a Port's core functions (i.e., passenger processing and cargo), the Employer has elected to provide the employee the necessary training (as determined by management) for the employee to perform the core function prior to or following the employee's placement. As an exception, the Employer may elect to bypass the most senior employee when (s)he lacks skills and/or training and the placement of the employee would hinder port operations. If a request is denied, the employee will be informed of the reasons for the denial upon request.
- (g) Absent exigent circumstances, an employee selected for reassignment under these procedures will notify management of his/her acceptance or declination within five (5) calendar days of the offer.
- (h) In the event an employee declines, or fails to respond to an offer, in addition to the requirements of Section 2.B.(4), the employee will be removed from all voluntary reassignment rosters.

- (2) For employees in occupations other than CBP Officers and CBP Agriculture Specialists and/or outside OFO, the following procedures shall apply:
- (a) An employee may request a voluntary reassignment under this Section at any time by submitting a written request to the gaining Port or Division Director (or designee) with a copy to his/her current Port or Division Director (or designee) [*or equivalent management officials*]. Such requests must include a current resume (or Optional Form 612) and a self-certification statement of seniority.
  - (b) Management at the gaining duty station will maintain, and consider active, requests received for a period of not less than one (1) year. Employees may submit a formal withdrawal during this period at any time.
  - (c) The Employer will establish a procedure by which NTEU and the requesting employee may obtain the status of an active reassignment request.
  - (d) When filling a vacancy at a particular duty station through voluntary reassignment, absent just cause, the most senior qualified employee with an active request will be selected. If denied, the employee will be informed of the reasons for the denial upon request.
  - (e) Absent exigent circumstances, an employee selected for reassignment under these procedures will notify management of his/her acceptance or declination within seventy-two (72) hours of the offer.

**D. Position Exchanges.**

- (1) The Employer will consider a request from no more than three (3) eligible employees in the same occupational classification and grade level who wish to voluntarily exchange their duty stations at any time.
- (2) To be considered, a copy of the request must be submitted to each employee's Port Director or Division Director (or designee) [*or equivalent management official*], and include a copy of each employees' current resume (or Optional Form 612).
- (3) Management will normally respond to such requests within forty-five (45) calendar days.

- (4) If the employees meet the qualifications requirements of the position at their respective gaining duty stations, absent just cause, the requests will be granted. When evaluating exchange requests for an exchange between up to three (3) CBP Officers or up to three (3) Agriculture Specialists assigned to core functions of their respective Ports and the core functions are in different operating environments (e.g., land border port vs. airport vs. seaport), the Employer has elected to provide the employees the necessary training (as determined by management) for the employee to perform the core function prior to or following the exchange. As an exception, the Employer may deny the exchange request when an employee lacks skill and or/training and the granting of the exchange would hinder port operations.
- (5) Nothing in this subsection will prevent the Employer, at its discretion, to grant a position exchange where any of the requesting employees do not fully meet the qualifications and training requirements of the position(s) at the gaining duty station(s).
- (6) Effective dates for exchanges involving either two or three employees will be the same.
- (7) If one employee involved in a two person or three-way exchange withdraws from the arrangement, the entire request will be considered void.
- (8) Exchanges granted under this Subsection are not grievable, either by the employees involved or not involved in the exchange, or the Union.
- (9) The Union agrees not to arbitrate situations when one or more employee(s) withdraws from a request for a two-person or three-way exchange request, thereby nullifying the request of the other one or two employees.

**E. Hardship Reassignments.**

- (1) The following procedures have been established so that employees experiencing hardships may be provided consideration for reassignment at other duty stations in an expedited manner and with greater priority than most other reassignment requests. As a result, hardship circumstances have been defined to exist in narrow circumstances.
- (2) Only hardships impacting the employee or the employee's immediate family will be considered under this Subsection. Immediate family include the

employee's spouse, parent (or legal guardians), sibling and/or children. "Step" relationships are included in the definition of immediate family.

- (3) Employees covered by this Subsection include all full-time permanent employees covered by this Agreement (notwithstanding Section 2.A.), provided the circumstances leading to the hardship occurred after the employee accepted employment at the current duty station.
- (4) Qualified hardships include when an employee (or immediate family member) experiences:
  - (a) A medical condition:
    1. That is serious in nature, and
    2. The condition is not treatable in the employee's current duty station (e.g., a severe condition which might be alleviated by relocation to another geographic area would not be considered a significant hardship unless the condition cannot be alleviated or controlled by recognized medical treatment in the employee's current duty station);
  - (b) A condition requiring special educational facilities where there are no equivalent facilities in the employee's current duty station; or
  - (c) Separation of an employee from his or her spouse when:
    1. The spouse is employed by the Employer at the time of the circumstances leading to the separation;
    2. The separation is a direct result of the employee's involuntary permanent assignment to a duty station outside the employee's current commuting area; and
    3. The separation did not exist prior to the employee's acceptance of employment at his or her current duty station.
- (5) To be considered, an employee hardship reassignment request must contain verifiable documentation concerning the circumstances (including medical documentation if applicable) that give rise to the hardship. The Employer may request additional documentation if deemed necessary.

- (6) Prior to requesting a hardship reassignment, employees should seek to develop alternatives to relocation if applicable (e.g., securing assistance from the Employee Assistance Program, local and state social services, other counseling services, etc.). Alternatives to reassignment for accommodating hardships include Voluntary Reassignments (Subsection C), Position Exchanges (Subsection D), and applying to vacancy announcements for positions of equivalent grade.
- (7) All hardship requests will be filed with the requested Field or Division Office (or equivalent) with a copy provided to the current Field or Division Office (or equivalent). Employees will notify current and requested duty stations in the event they wish to withdraw their requests.
- (8) Requests for a hardship reassignment within the geographic area of the same Field or Division Office (or equivalent) will be processed by that Office.
- (9) Requests for a hardship reassignment between two Field or Division Offices (or equivalent) will be evaluated and decided by the requested (potential gaining) Office.
- (10) The deciding official shall review and provide the employee a written response to the request within forty-five (45) calendar days of receiving the request or supplemental information requested from the employee, whichever occurs later. The written response will indicate whether the request has been granted, and if denied, the reasons for the denial.

### **Section 3. Management Directed Reassignments.**

- A.** The Employer retains the right to identify and direct the reassignment of any employee to any position of equivalent grade based on the needs of the Agency, including but not limited to workload fluctuations, new programs, new locations and/or the need to realign existing resources. This Section describes the procedures by which such reassignments will be made.
- B.** The procedures contained in this Section will apply to management directed reassignments, including but not limited to:
  - (1) The reassignment of bargaining unit employees from unit to non-unit positions and;

- (2) The reassignment of CBP Officer (Canine) to a CBP Officer position. As an exception, in the event a canine assigned to a specific CBP Officer (Canine) retires, expires or otherwise becomes inoperative and the Employer does not intend to provide the CBP Officer (Canine) a new canine, the Employer may elect to reassign the affected employee to a CBP Officer position at the same grade and duty station. In the event a CBP Officer (Canine) is involuntarily reassigned under this provision, (s)he will be given priority consideration for any CBP Officer (Canine) position filled at his/her duty station for a period of not less than one (1) year from the date of the reassignment.

**C. Reassignments within a Duty Station.**

- (1) If the Employer determines that more than one (1) employee is qualified from within the work group from which a reassignment within the duty station is to be made, management will solicit volunteers from within the work group from which the selection is to be made.
- (2) In the event:
  - (a) More qualified and releasable employees volunteer than are required, selections will be made in seniority order.
  - (b) Too few qualified and releasable employees within the work group volunteer, employees will be assigned in inverse seniority order.

**D. Directed Reassignments Outside the Duty Station.**

- (1) If the Employer determines that more than one (1) employee is qualified from within the work group from which a reassignment outside the duty station is to be made, management will solicit volunteers from within the work group from which the selection is to be made.
- (2) In the event more qualified and releasable employees volunteer than are required, selections will be made in seniority order.
- (3) In the event too few qualified and releasable employees volunteer, management may proceed with reassigning the volunteers in accordance with the provisions of this Section. In the event the Employer determines it is necessary to involuntarily reassign employees outside the duty station, the Employer will provide the Union notice and the opportunity to bargain in accordance with Article 26: Bargaining.



(4) Costs associated with reassignments under this subsection shall be the responsibility of the Employer, and will be provided in accordance with established policy and procedures for a permanent change of station.

**Section 4.** Nothing in this Article shall preclude the Employer from reassigning an employee to a position within his/her duty station or commuting area for the purpose of correcting or minimizing deficiencies in the employee's performance or conduct. In such circumstances, and where there are multiple duty stations within the same commuting area, the Employer will determine whether the correction or minimization can be successfully accomplished through the reassignment of the employee to a position within the employee's current duty station prior to directing the reassignment of the employee to another duty station.

**Section 5.** Employees selected for reassignment under this Article will be provided reasonable notice (as far in advance as practical, but normally not less than thirty (30) calendar days) of the date they are expected to report to their new duty station. However, the parties understand that conditions beyond the control of management may necessitate a brief notification period.

**Section 6.** An employee reassigned to a duty station outside of his or her commuting area may request and will be granted excused absence without charge to leave to enable him/her to make pre-moving and post-moving arrangements in accordance with applicable law, regulations and Section 10.C.(11) of Article 37: Leave and Excusal.

## **ARTICLE 40: PRECLEARANCE**

**Section 1.** This Article covers the policy and procedures by which employees will be selected for, assigned to and returned from Office of Field Operations (OFO) Preclearance locations.

**Section 2.** When filling positions at Preclearance locations, the Employer will utilize the same announcement and application solicitation procedures as those used for positions filled through merit promotion. Such announcements will have an agency-wide area of consideration, and contain relevant information concerning the expected tour length and return policies.

### **Section 3. Assignment Duration and Return Service Requirements.**

- A.** Once selected and assigned, the Employer's current policy is that the employee will serve a two (2) year initial tour, with an opportunity for the Employee to apply for a two (2) year extension, followed by the opportunity to apply for a one (1) year extension. Nothing in this subsection is intended to prohibit the Employer from exercising whatever authority it has in law and government-wide regulation to release the employer from his/her established tour. Requests for extensions may be filed as soon as 180 days prior to the planned end of a tour and they will be acted upon no later than ten (10) calendar days so that the employee has as much notice as possible of his or her pending return or extension. If there are more extension requests than slots available, the more senior employee(s) will be selected to extend.
  
- B.** When filling positions under Section 2 of this Article, the Employer will only consider employees who have completed a return service period of not less than five (5) years from the end date of the Employee's previous Preclearance tour. In the event the Employer determines it is necessary to consider employees who have not completed the return service period (e.g., when the Employer anticipates an announcement will not generate a sufficient pool of well-qualified candidates), it will so indicate on the posted vacancy announcement and inform NTEU.
  
- C.** In the event the Employer elects to alter its policies regarding the general assignment duration and return U.S. service requirements contained in this Section, it will provide the Union notice and the opportunity to bargain in accordance with Article 26: Bargaining.

#### **Section 4. Preparation and Reporting Procedures.**

- A.** Selected employees will be informed of and normally expected to complete the requirements for foreign assignments within one hundred and twenty (120) calendar days following selection notification.
- B.** Official reporting dates will be provided to selected employees as far in advance as practicable, but not less than sixty (60) calendar days in advance of the effective date. Employees will be reimbursed for any legally reimbursable expenses reasonably incurred as a result of their departure for the preclearance port with less than sixty (60) days notice.
- C.** Selected employees will be provided at least forty (40) hours of administrative leave in order to make relocation arrangements. Neither the employee nor union may grieve a violation of this obligation if the employee is given at least 40 hours of time or leave.

**Section 5.** While assigned to a Preclearance facility, employees will be considered within the area of consideration for CBP vacancy announcements with a nationwide area of consideration, as well as those with an area of consideration that includes the duty location from which the employee was selected for the Preclearance assignment, to which they apply. If selected, an employee's travel and relocation cost reimbursement will be determined by the conditions stated on the vacancy announcement to which the employee applied.

#### **Section 6. Extension Request and Return Procedures.**

- A.** No more than one-hundred and eighty (180) calendar days before the end of tour, but not less than one-hundred and twenty (120) calendar days prior to the end of the initial tour, as well as the conclusion of any extensions, employees are expected to formally request an extension or express intent to return to the United States. At the time an employee expresses an intent to return to the United States, the employee will follow the procedures in Section 6.C below.
- B.** Absent just cause, requests for extensions consistent with the assignment durations described in Section 3 will be approved.
- C.** When preparing to return to the United States, the Employer has determined an employee has the ability to return to the location from which the employee was selected for the Preclearance assignment. If the employee does not wish to return to his or her originating location, the employee will identify five (5) locations in

priority order to which the employee prefers to be reassigned. This list may contain locations identified by Port, Field Office or a combination of both.

- D.** The returning employee will be placed at one of the requested locations where there is a vacancy consistent with his or her prioritized list. If there are no vacancies at any of the locations provided by the employee in their prioritized list, the Employer will provide the employee a list of at least five (5) locations within the field office(s) of the employee's prioritized duty location(s) where they may choose to be reassigned due to a current vacancy (as identified by the field office). Absent placement via this process, the employee will be returned to her or her home port or to a mutually agreeable location.
- E.** Returning employees will be informed of the date to which they are expected to report to the location to which they are placed as far in advance as practicable, but not less than sixty (60) calendar days in advance of the date they are expected to report. Reporting dates will be established no later than sixty (60) calendar days from the end of the scheduled tour. Employees will be reimbursed for any legally reimbursable expenses (in excess of their authorized allowances) reasonably incurred as a result of their delayed departure from Preclearance. Nothing in this provision prevents a mutual agreement between CBP and a returning employee to delay their departure from preclearance.
- F.** When making placements under this Section for positions within a Port's core functions (e.g. passenger processing and cargo), the Employer has elected to provide the employee the necessary training (as determined by management) for the employee to perform the core function prior to or following the employee's placement.
- G.** During the above process, the Employer will provide returning employees a point of contact that may be contacted regarding the status of their return request and assignment.

## **ARTICLE 41: MERIT PROMOTION**

**Section 1.** The purpose of this Article is to clarify and/or supplement the procedures by which the Employer will solicit and evaluate applications from employees for bargaining unit positions subject to competition.

**Section 2.** The Employer will establish, maintain and make available to employees its Merit Promotion Plan in accordance with 5 C.F.R. § 335 and applicable provisions of this Agreement.

### **Section 3. Action Coverage.**

- A. Actions Covered.** Except for actions identified in subsection B., the Employer will utilize merit promotion procedures for all promotion actions to bargaining unit positions as well as the following:
- (1) A temporary promotion, or detail to a higher grade position or a position with known promotion potential, of more than sixty (60) consecutive calendar days;
  - (2) Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 C.F.R. § 410.302;
  - (3) Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted under reduction-in-force regulations);
  - (4) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service;
  - (5) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service; and
  - (6) Any other action for which management determines utilization of these procedures may be appropriate or beneficial.

**B. Actions Not Covered.** These procedures do not apply to:

- (1) Conversion of a temporary promotion to permanent promotion when the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates through its inclusion on the announcement.
- (2) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
- (3) A position change permitted by reduction-in-force procedures;
- (4) A career ladder promotion;
- (5) A promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities;
- (6) A temporary promotion, or detail to a higher grade position or a position with known promotion potential, of sixty (60) consecutive calendar days or less;
- (7) Promotion to a grade previously held on a permanent basis in the competitive service (or in another merit system with which the Office of Personnel Management (OPM) has an interchange agreement) from which an employee was separated or demoted for other than performance or conduct reasons;
- (8) Promotion, reassignment, demotion, transfer, reinstatement, or detail to a position having promotion potential no greater than the potential of a position the employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement and did not lose because of performance or conduct reasons);
- (9) Consideration of a candidate not given proper consideration in a competitive promotion action; and
- (10) Any other action permitted by law or government-wide regulation without competition.

#### **Section 4. Area of Consideration.**

- A.** Areas of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of positions covered.
- B.** As a general rule, the minimum area of consideration for actions covered by this Article will be CBP wide within the commuting area of the position being filled.
- C.** Employees on a temporary assignment outside of the commuting area for a period of one (1) year or less will be considered within the area of consideration of their permanent position of record.

#### **Section 5. Announcements.**

- A.** At a minimum, vacancy announcements will include the following information, if applicable:
  - (1) Vacancy (or job opportunities) identification;
  - (2) Number of vacancies;
  - (3) Position title, series and grade (or pay rate);
  - (4) Full performance level of the job;
  - (5) Duty location(s);
  - (6) Opening and closing dates;
  - (7) Qualification requirements;
  - (8) Selective placement factor(s);
  - (9) Salary range;
  - (10) Duties of the job;
  - (11) Basis of rating (evaluation method(s) to be used);
  - (12) Area of consideration;
  - (13) Whether moving and related expenses are authorized;
  - (14) Position bargaining unit eligibility;
  - (15) Instructions on what to file and how to apply;
  - (16) Declination procedures (usually for large, nationwide announcements with multiple locations);
  - (17) Equal opportunity nondiscrimination statement;
  - (18) Reasonable accommodation statement; and
  - (19) Veterans' eligibility information and any other special requirements such as CTAP language, including the definition of well qualified.

- B.** All qualification requirements and evaluation criteria must be based on a valid job analysis. To be valid, there must be a rational relationship between performance in the position being filled (or in the target position in the case of an entry position) and the requirements or criteria being used.
- C.** For those positions filled using occupational tests, specific instructions regarding testing times, locations and any other administrative information will be determined on a case-by-case basis. Factors considered in determining test administration may be based on such factors as applicant location, response volume, hiring needs, etc.
- D.** To increase the efficiency of this procedure when a significant number of essentially identical positions are expected to be filled over an extended period, nothing will prohibit the Employer from establishing long-term announcements, e.g., open continuous announcement or announcements with a fixed closing date, permitting the establishment of a pool of applicants from which certificates may be issued up to one year from the issuance of the first certificate. In these circumstances, vacancy announcements must specify the intent to establish long-term use and indicate how long certificates may be used.
- E.** Announcements subject to this procedure will be posted on the internet and open for a minimum of seven (7) calendar days.
- F.** The decision to pay or not to pay moving and related expenses must be made before the issuance of the vacancy announcement. As a general rule, the Employer will pay relocation expenses for employee transfers that are in the interest of the Government and are not primarily for the convenience or benefit of the employee. The decision not to pay moving and related expenses may be made if a sufficient supply of qualified local candidates potentially exists. A statement addressing whether payment of moving and related expenses has been authorized must be included in the vacancy announcement. When authorized, payment of moving and related expenses will be provided in accordance with the Federal Travel Regulations and applicable terms of this Agreement.
- G.** The Employer will establish a method, accessible through the Employer's internet web site (e.g., [www.cbp.gov](http://www.cbp.gov)), by which employees and the Union may obtain a complete listing of all open announcements, as well as complete copies of the announcements themselves. Nothing will prohibit the Union from establishing a link on its own web sites to this information.



## **Section 6. Application Procedures.**

- A.** To be considered for announced positions, employees must apply in accordance with the application procedures contained and explained in the announcement.
- B.** Employees within the area of consideration who are absent for legitimate reasons, e.g., on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, will receive appropriate consideration for those positions to which they apply.
- C.** All employee application materials must be received by the closing date of the announcement. The Employer will grant exceptions to this requirement to employees who are unable to apply to an announcement by the closing date due to unique circumstances, such as extended military service. In such situations, the Employer will allow an employee to apply and receive consideration after the closing date of an announcement, provided no selection has been made.
- D.** Upon request, and subject to workload requirements, employees will be permitted a reasonable amount of duty time, and to use the Employer's equipment (i.e., computers), to perform all requirements (including developing resumes) associated with applying for positions announced under this Article. To reduce the amount of time required, employees will store electronic resumes in the automated application system so that they may be used in applying to subsequent announcements.
- E.** The Employer will establish a method for potential applicants within the stated area of consideration who need additional assistance in following the on-line application procedures (e.g., those without reasonable access to the internet) to obtain such assistance. In unusual and specific circumstances, the Employer may provide alternative methods for submitting the required information (e.g., by facsimile). In such cases, the employee must still comply with all other requirements of the announcement, including but not limited to the submission of all required application material by the announcement closing date.

## **Section 7. Evaluation Procedures for Minimally Qualified and Eligible Applicants.**

- A.** Applicants meeting basic qualification and eligibility requirements will be evaluated for positions and receive a rating based on how well they meet the job related knowledge, skills and abilities (KSAs) contained in the announcement.

- B.** For applicants who are evaluated based on narrative responses to the required KSAs and/or information provided in the employment application or resume, the following procedures will be used:
- (1) The evaluation will be performed by one or more individuals familiar with the position being filled.
  - (2) The information provided by the applicant will be reviewed and compared to the required KSAs contained in the announcement using an evaluation instrument consisting of four levels for each KSA - Excellent, Good, Moderate and Barely Acceptable, and will be scored four (4), three (3), two (2) and one (1) respectively. If the information provided by the applicant shows no evidence of possessing a particular KSA or if there is insufficient information on which to base a rating, a zero (0) score will be assigned.
- C.** For applicants who are evaluated based on answers to job-related questions, scores will be assigned to each answer.
- D.** Applicant ratings will be transmuted based on a total possible score of one hundred (100) points. The minimum qualifying score will be seventy (70) points.
- E.** Only tests approved by OPM and/or the Employer, as part of a comprehensive set of assessment procedures, may be used. Without OPM approval, the Employer cannot implement a written test to determine basic eligibility (i.e., on a pass-fail basis), or as the single evaluation instrument in assessing in-service applicants.
- F.** Applicants may be evaluated based on responses to standard questions under a structured interview method. This assessment will be used in conjunction with other assessments. The results of the interview may be scored and applied to an applicant's overall rating or used on a pass/fail basis. When structured interviews are used, if one applicant within an evaluation category (e.g., best qualified) is provided the opportunity to participate in a structured interview, all employees within that evaluation category will be provided the opportunity to participate in a structured interview.
- G.** Applicants will be considered for selection based on the rating received from the evaluation process. The applicant's final rating is a reflection of his/her overall education, training and/or experience for a particular position and will determine further selection consideration. Those applicants who meet the basic eligibility requirements and are determined best qualified may be referred for selection consideration.

- H.** In an effort to assist the Employer in achieving its diversity goals, a sufficient number of best-qualified applicants will be placed on the referral certificate in score order. All names within twelve (12) points of the top score, including all those with tied scores, will be referred to the selecting official, with three (3) additional applicants referred for each additional vacancy. The minimum number of referrals is five (5) and the maximum number is fifteen (15) plus all tied scores. Applicant scores will not be shown on the referral certificate.
- I.** Applicants for whom competitive procedures do not apply, a.k.a., alternative staffing candidates, will be considered and referred to the selecting official, on a separate referral certificate for selection consideration at the same time as the competitive referral certificate. Applicants subject to this referral procedure who meet the basic qualification and eligibility requirements of the position will be placed on the referral certificate in alphabetical order.

## **Section 8. Selection Procedures.**

- A.** When reviewing the applicants on the competitive certificate, the selecting official will consider current employees before considering outside applicants.
- B.** Selecting officials may interview all, some or none of the applicants referred on any certificate. Interviews may be conducted in person or by telephone or videoconference (or equivalent method).
- C.** Selecting officials may choose any applicant referred on the best-qualified list. However, in cases where fewer vacancies are filled than initially identified, selections must be made within the allowable number of referrals for each vacancy in accordance with Section 7.G. Nothing will prevent the employer from making a greater number of selections from a certificate than the number of vacancies initially identified in the announcement, provided doing so is consistent with government-wide rules and regulations.
- D.** Selecting officials may elect to make a selection, or not, from any referral certificate, and/or may select from any other appropriate source, including, but not limited to, reemployment priority lists, reinstatement, transfer, handicapped, or Veteran Recruitment Act eligibles, or those within reach on an appropriate OPM certificate. In making such determinations, the Employer has an obligation to determine which source is most likely to best meet the agency mission objectives, contribute fresh ideas and new viewpoints, and meet the Employer's affirmative action goals.

- E. Selecting officials will make selections in a timely manner. For other than long-term vacancy announcements, the Employer will establish a goal of completing the selection process within forty-five (45) days of the certificate issuance date. Except for unusual circumstances, a certificate will not be valid for more than one hundred and twenty (120) days after its issuance date.
- F. Once a candidate has been selected and accepted the position, the candidate will not receive further consideration under that vacancy announcement. Similarly, if an applicant's employment status has changed since applying for a position under a vacancy announcement which results in the applicant meeting the criteria for being a noncompetitive eligible, he/she will be considered as an alternative staffing candidate under that announcement.

## **Section 9. Information and Documentation.**

- A. A temporary record of each action taken under the Employer's merit promotion plan will be maintained for a period of at least two (2) years from the date of selection or until the action has been formally evaluated by OPM (whichever comes first). Merit promotion files that are related to EEO complaints or grievances will be maintained in accordance with the National Archives and Records Administration, General Records Schedule for Civilian Personnel Records, provided the Employer was timely notified office of such actions prior to the end of the normal retention period. The documentation should be sufficient to allow reconstruction of the entire promotion action, including documentation on how candidates were rated and ranked.
- B. Upon request, the following information may be released to an applicant or his/her designee (with written authorization):
  - (1) Whether the applicant was qualified and/or referred for selection;
  - (2) If not qualified, the reasons;
  - (3) Whether the applicant was referred for selection;
  - (4) Name of the selectee;
  - (5) Cutoff score (lowest score referred); and
  - (6) Rating/scores of best-qualified candidates.
- C. Information that may not be released includes, but is not limited to confidential examining material (e.g., answer keys, rating schedules and crediting plans, rating sheets and test booklets); information that may intrude upon the privacy of other

individuals; and materials that would compromise the objectivity or fairness of the examination and evaluation process.

**Section 10. Grievances.** Employees and/or the Union have the right to file a complaint relating to a promotion action taken under this Article. Such complaints will be submitted and addressed under Article 27: Grievance Procedure. While the procedures used by the Employer to identify and rank qualified candidates may be proper subjects for formal complaints and grievances, non-selection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance.

**Section 11. Post-Selection Actions.**

- A. Upon request by an employee referred but not selected under this procedure, the selecting official will meet with the employee for the purpose of discussing how the employee may improve his/her standing in the event another position is filled using this procedure in the future.
  
- B. An employee occupying a position with established career ladder promotion potential will be promoted on the first pay period after a period of fifty-two (52) weeks, or whatever lesser period may be applicable, provided the supervisor has determined the employee has demonstrated the ability to perform at the higher grade level, all qualification and administrative requirements have been met, the employee's current rating of record is at least fully successful (or equivalent) and there is sufficient higher level work to be performed.

## **ARTICLE 42: AWARDS AND RECOGNITION**

**Section 1.** Recognition of employee accomplishments is an important element in effective workforce management. In accordance with 5 C.F.R. § 451.102, an *award* is something bestowed or an action taken by the Employer to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. This Article contains the policy and procedures for distributing awards for the bargaining unit.

**Section 2.A.** The Agency retains the discretion to determine how much of its budget will be allocated for awards. Budget permitting, the Agency has determined that the amount of funds dedicated to a bargaining unit employee awards pool at a Port of Entry (or equivalent level) will normally be one (1) percent of the total annual bargaining unit salary (including base salary and locality pay). In the event the Agency (at the national level) determines its budget will not permit the dedication of this amount to the awards pool, it will notify and provide NTEU the opportunity to bargain (at the national level) in accordance with law and the procedures contained in Article 26: Bargaining.

- B.** The Agency will ensure the percentage of funds dedicated to awards for the bargaining unit (calculated in terms of total annual bargaining unit salary) at a Port of Entry (or equivalent level) will be no less than the percentage of funds dedicated to the non-bargaining unit pool (calculated in terms of total annual non-bargaining unit salary).
- C.** The Agency will ensure that no less than eighty-five (85) percent of the annual bargaining unit award funding at a Port of Entry (or equivalent level) is made available for distribution as Superior Achievement Awards under Section 4 of this Article. The remainder shall be available for distribution as Other Awards under Section 5 of this Article.
- D.** Awards that provide monetary recognition will be in the form of a lump sum payment.

**Section 3.** No later than thirty (30) calendar days following the commencement of the first performance year in which this Article applies, the parties will publicize the procedures, appropriate forms, and time frames associated with this article to all employees. This includes the Agency conducting a formal discussion for unit employees to receive additional information and raise questions. Union representation will be allowed to attend and participate in these discussions in accordance with the official time procedures contained in Article 30: Official Time.

**Section 4.** Superior Achievement Awards (SAA). The SAA is an annual award, given at the end of the performance year to recognize an individual, group, or team's significant achievements accomplished throughout that year. At the end of each fiscal quarter, following the procedures outlined in Section 4A., a Joint Awards Committees (JAC) will review the nominations for the awards.

**A. Joint Awards Committees.**

- (1) At the commencement of each performance year, the Port Director (or equivalent management official or designee) and the local NTEU Chapter President will establish a JAC. Such committees will be made up of three (3) representatives each from NTEU and CBP. Representatives are generally expected to serve on the JAC for the entire performance year.
- (2) Employees serving as union representatives on the JAC will do so while on official time in accordance with Article 30: Official Time.
- (3) The JAC will be responsible for evaluating nominations for SAAs for bargaining unit employees and submitting recommendations for such awards to the designated management official for final approval.
- (4) The required quorum for any JAC meeting is two (2) representatives each from NTEU and CBP.
- (5) To ensure the JAC is prepared to execute its responsibilities under this Article, it will jointly review these procedures at the commencement of each meeting.
- (6) JAC deliberations concerning awards nominations and recommendations will be considered confidential by both parties. This provision, however, is not intended to prohibit either party from presenting evidence or providing testimony regarding the conduct of a JAC in a third party proceeding (e.g., arbitration, EEO complaint or Unfair Labor Practice Complaint) where such evidence or testimony is relevant or necessary to the adjudication of the case.
- (7) For a given quarter's nomination and after the approving official has approved, modified, or rejected the JAC recommendations for the SAAs, the JAC Administrator or designated management JAC member will notify (in writing via email or letter) the supervisors of the employees who received an approved SAA recommendation for the quarter. Only the employee name will be shared with the supervisor. The reason for the award and the number

of shares awarded will not be shared with anyone outside of the JAC or the approving official until official notification occurs after the end of the fiscal year.

- (8) JAC members may not participate in or be present during the deliberation of an award for which they are nominated or initiated the nomination.

**B. Award Nomination Procedures.**

- (1) The Employer will establish, in collaboration with NTEU (at the national level), a standardized form to submit award nominations.
- (2) To be eligible for consideration for an award under this process, employees nominated for either individual or group/team awards must have been rated at the “Successful” level during their most recent annual proficiency rating, and the performance under consideration for recognition must have occurred during the current performance rating cycle. It is intended that nominations are relative to activities that occurred during the quarter for which solicitations are being requested. However, while the JAC is not required to do so, it has the discretion to consider all nominations submitted at any time during the current performance rating cycle. In order to do so, the JAC must in the first quarter meeting, by mutual agreement, devise in writing, the manner in which they will consider nominations outside of the solicitation period. The JAC must then consistently apply that standard throughout each nomination period for that year. The JAC may not situationally devise a procedure after the first quarter meeting. Additionally, procedures devised by a particular JAC are valid only for the JAC that developed them.

Nominations for awards under this process will be submitted in the following ways:

- (a) Groups/Teams: may be nominated by agreement of the group/team’s members; sponsor or supervisor of the group/team; and/or nominated by a CBP employee who uses or benefits from the group’s/team’s services or products.
- (b) Individuals: may be nominated by a peer/co-worker; the employee him/her-self; a manager or supervisor; or by the other members of a group/team of which the individual is a member.



To ensure employee initiated nominations have been processed and forwarded to the JAC, employees may also provide a copy of submitted nominations to his/her Chapter President (or designee). Nothing in this provision is intended to prevent JAC consideration of an award nomination for which the Union was not provided a copy.

- (3) At the conclusion of each of the fiscal quarters, the Port Director (or equivalent management official or designee) will formally solicit nominations from employees and/or supervisors to identify award-worthy performance of a specific covered employee, group or team during that quarter, or period deemed appropriate by the JAC as established in Section 4B. (2).
- (4) Employees will be provided a minimum of fourteen (14) calendar days from the date of the solicitation announcement to submit award nominations to the nominated employee's supervisor.
- (5) Supervisors will review each nomination form received during the solicitation period and validate (and document on the form) the nominated employee's eligibility for an award, as well as the employee's performance of the activity identified in the nomination. The supervisor may also provide any additional information (s)he wishes the JAC to consider in the evaluation of the nomination. Completed nomination forms, including any nominations supervisors wish the JAC to consider will be submitted to the designated Joint Awards Committee members within fourteen (14) calendar days from the date of the end of the solicitation period.
- (6) Within fourteen (14) calendar days from the date of receipt of the award nominations, the JAC will meet for the purpose of evaluating the nomination and, using consensus decision making methods, make a written recommendation as to which nominees will receive awards under the criteria established in Section 4.C. of this Article. For the purpose of this submission, all nominees for which a majority (i.e., more than fifty (50) percent) of the committee agrees should receive an award will be forwarded as an award recommendation.
- (7) When evaluating award nominations, the JAC will give deference to the supervisor's determination as to whether the employee is eligible for the award.

- (8) In accordance with applicable law, rule and regulation, employees may not receive awards under this process for the performance of union representational functions.
- (9) Within fourteen (14) calendar days of receiving the JAC recommendations, the official with award approval authority will consider the recommendations and accept, modify or reject them. If recommendations are rejected or modified, the approving official will provide the JAC with a reasonably detailed written explanation of the decision. The JAC may request reconsideration of rejected/modified recommendations by making a written request with a justification for reconsideration within seven (7) days of the receipt of the written explanation. A response on any request for reconsideration will be provided to the JAC no later than seven (7) days following receipt of the request. Final decisions rejecting or modifying JAC recommendations may be grieved at the final step of the negotiated grievance procedure as described in Section 12.C of Article 27: Grievance Procedure. Accepted recommendations (including no award) may not be grieved.

**C. Evaluation of Award Nominations.**

- (1) Absent the establishment of alternative criteria in accordance with subsection C.(2) of this Section, when the JAC determines a submitted nomination warrants the granting of an award, it will use the following table to determine the appropriate number of “shares” that will be awarded:

		<i><u>Extent of Impact</u></i>	
		<u>Limited:</u>	<u>Extended:</u>
<u>Value of Benefit</u>	<u>Illustrations:</u>	Affects the functions, mission, or personnel of one facility or field location, or an organizational element of headquarters.	Affects the functions, mission, or personnel of an entire field area or major office; or subsequently surpasses established performance standards, expectations, or goals.
<u>Moderate:</u>	An activity or achievement that surpasses established performance standards, expectations, or goals; a significant contribution to the accomplishment of the office or Agency goals; or behavior that exemplifies the Agency's core values.	1 Share	2 Shares
<u>Substantial:</u>	A reduction in unit costs or maintenance of highly efficient operations by such direct action as minimizing waste, engaging in efficient and sustained high performance of assigned tasks, improving utilization of manpower and facilities, or revised operating procedure, or unusual skill in the application of present procedures.	3 Shares	4 Shares

- (2) Port Directors (or equivalent management officials or designees) and Chapter Presidents are authorized to modify the award criteria identified in the above table by mutual agreement. "By mutual agreement" means that the parties do so voluntarily, and does not confer or infer any right or obligation to engage in bargaining, or to submit any disagreement over a proposed variation to grievance, arbitration or any other impasse dispute procedures. Such agreements must be in writing and signed by the parties prior to the commencement of the performance year. Such agreements are binding until such time as either party provides written notice to the other of its intent to withdraw. Withdrawals will be effective at the beginning of the performance year following receipt of the notice.

- (3) An employee or team may only receive one award under this process for a particular accomplishment.

**D. Calculation and Distribution of Awards.** At the end of the performance year, the Employer will use the following procedure to determine the amount of and distribute Superior Achievement Awards:

- (1) The value of a share at a Port of Entry (or equivalent level) will be determined by dividing the bargaining unit awards pool for that Port of Entry (or equivalent level) by the total number of shares issued through the JAC process at that Port (or equivalent level).
  - (a) Employee awards at a Port of Entry (or equivalent level) will be calculated by multiplying the share value calculated in Section 4.D.(1) by the number of shares awarded to the employee through the JAC process. All employees receiving an annual SAA award will be limited to the amount for which the Director of Field Operations (or equivalent management official) is authorized to grant (currently \$2500.00), regardless of the number of shares awarded to the employee. Award pool funds not expensed through this process will be available for distribution throughout the year to bargaining unit employees under Section 5 of this Article.
    1. The minimum value of an SAA in this process may not be less than \$100.00. Should an employee's award value be less than \$100.00 that award should be converted to a Special Act award for the SAA value or may be substituted with a non-traditional award such as a gift card for an amount that does not exceed \$100.
  - (b) Absent circumstances beyond the control of the Employer (e.g., the agency's annual budget has not been approved), all awards issued under this process will be distributed within ninety (90) days of end of the performance cycle. In the event such circumstances occur, the Employer will notify the Union as soon as practicable.
  - (c) Concurrent with their distribution, the Employer will locally post a list of all Superior Achievement Awards to include the name, position and description of performance prompting the award.

**Section 5.A. Other Awards.** Awards under this section are designed to permit managers to quickly recognize one-time and short-term efforts of employees or groups/teams that result in service of an exceptionally high quality or quantity. Examples of such efforts include situations where employees or groups/teams:

- (1) Produce exceptionally high quality work under tight deadlines;
- (2) Produce added or emergency assignments in addition to their regular duties;
- (3) Demonstrate exceptional courtesy or responsiveness in dealing with customers or colleagues; or
- (4) Exercise extraordinary initiative or creativity in addressing a critical need or difficult problem.

**B.** These awards may be recognized in one or a combination of the following:

- (1) Special Act Cash Award: Monetary award for satisfying the criteria in Section 6.A.
- (2) Time-Off Recognition: Time-Off recognition is time off work without charge to leave.
- (3) Non-Traditional Awards. Non-traditional awards include items with the CBP seal, logo or another specially designed inscription related to the CBP mission/work, ranging from those approved and conferred by the Commissioner to smaller recognition items such as paperweights. In addition, supervisors have the authority to give other non-traditional awards such as theater tickets or merchandise up to \$100.00 per award item, but no more than a total of \$400.00 per employee per calendar year.

**C.** Agency managers have the discretion to grant awards under this section without conducting a formal nomination process. However, when management grants an award under this section, the awardee(s) will be notified of the management official granting the award and a brief description of the basis for the award. Furthermore, when granting a Special Act Cash Award under subsection B.(1) above, employees may request and Agency managers will consider providing the award in the form of time off under subsection B.(2) in an amount with a cost equivalent to but not more than the dollar value of the award. Agency managers will exercise their discretion to approve such requests in a fair and equitable manner.

**Section 6.** Quality Step Increases (QSIs). QSIs increase an employee's basic rate of pay from one step in the grade to the next higher step. Management will grant these increases responsibly, judiciously and in accordance with regulation and policy, with awareness of their long-term financial impact on budgets. In order to be eligible for a QSI all of the following criteria must be met:

- A. Employee receives a "successful" rating of record;
- B. Employee demonstrates performance significantly above that expected for the position as determined by the following criteria:
  - (1) Displays outstanding performance to meet organizational goals or improves the efficiency, effectiveness, and economy of the Government;
  - (2) Excels in all critical performance areas as documented by specific examples; and
  - (3) Exhibits timeliness in performance;
- C. Employee must not have received a QSI in last fifty-two (52) weeks; and
- D. Employee level of exceptional performance is expected to continue in the future.

**Section 7. Foreign Language Awards Program.**

- A. The Memorandum of Understanding addressing the Employer's Foreign Language Awards Program (FLAP), as ordered by the Federal Service Impasses Panel on April 11, 2008 is contained in Appendix F. This program exists separate and apart from the award system(s) described in this Article.
- B. The Employer will incorporate the use of Voice Recognition System testing technology into its FLAP for additional languages (e.g., Dutch and Arabic) to the extent the testing technology becomes available, is validated as meeting the Employer's needs, and is cost effective. The Union may request that the Employer evaluate such technology at any time.

## **ARTICLE 43: USE OF FORCE & FIREARMS**

**Section 1.A.** Determinations as to when, where, under what circumstances, and which employees shall be authorized or required to carry firearms and/or other weapons are reserved solely to the Employer subject to agreements negotiated with NTEU and applicable law.

**B.** The CBP Use of Force Policy Handbook (Handbook) and the accompanying “Agreement between U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU)” dated October 2010 sets forth the Agency’s use of force policy in addition to the terms of this Article. The Handbook and the Agreement can found on CBPnet ([click here](#)).

**C.** Any firearms policies or regulations issued by the Agency during the life of this Agreement that apply to bargaining unit employees, shall conform to applicable laws, regulations and the provisions of this Agreement and, in addition to any changes to the Handbook, shall be subject to the bargaining rights and procedures contained in Article 26: Bargaining. Employees will be notified of, and have access to, all negotiated agreements resulting from future use of force policy changes.

**Section 2.** CBP will provide legal support, to the extent authorized by federal law, for CBP officers involved in civil or criminal actions as a result of performing duties under this policy, provided that the officer acted in good faith and with a reasonable belief in the lawfulness of his actions.

**Section 3.** No employee will be subject to conditions hazardous to his health in the course of training and qualification in the use of firearms and other weapons.

**Section 4.** Authorized officers, i.e. those authorized to carry a firearm, have the ability to forward questions regarding Use of Force policy directly to the Use of Force Policy Division for a response.

**Section 5.** Authorized officers who have successfully qualified may carry their weapons to and from their residences and may make reasonable stops between their residence and work. In order to assist with their compliance, authorized officers will be provided sufficient training regarding off-duty carry of CBP issued weapons.

**Section 6.** The Agency will provide managers and supervisors with additional guidance that will assist them in making swift and appropriate determinations in the weapon removal process, e.g., not every violation under the table of offenses may prompt the removal of a firearm.

**Section 7.A.** The Agreement between U.S. Customs and Border Protection (CBP) and the National Treasury Employees Union (NTEU) dated August of 2006 addressing a due process procedure for CBP Officers, to include Seized Property Specialists, will continue to apply.

**B.** The authorized officer's nexus letter will be modified to include an area for the Agency to provide the nexus for the firearm removal in situations that were previously identified as "other."

**C.** The authorized officer's investigation status letter will be expanded to include an estimated time frame for completion.

**D.** An authorized officer's firearm removal nexus letter and subsequent investigation status letter(s) will also include the statement: "A COPY OF THIS LETTER MAY, AT YOUR OPTION, BE FURNISHED TO YOUR NTEU REPRESENTATIVE."

**Section 8.** In the event the Agency restricts an authorized officer's off-duty carriage authority for cause, the provisions of the "due process" Agreement referenced in Section 7 above will be followed.

**Section 9.** In the event an authorized officer has temporarily had their authority to carry a firearm rescinded, the officer will be assigned duties that do not require the carriage of a firearm until the officer's situation is resolved. During this time, the Agency will make a reasonable effort to assign these officers to duties that may provide for overtime compensation.

**Section 10.** In the event an officer can no longer demonstrate the proficiency necessary to maintain the authority to carry a firearm, the Agency will consider the employee for other positions for which the employee is qualified prior to taking any other



administrative action. This provision is not intended to replace or conflict with established reasonable accommodation procedures.

**Section 11.** Absent other outstanding misconduct issues, an authorized officer who has had a domestic violence conviction (i.e. Lautenberg Amendment) expunged will be treated as if the conviction had never occurred, e.g. the authorized officer will be permitted to carry a firearm in accordance with the provisions of the Handbook.

**Section 12.** If a bargaining unit authorized officer is to be interviewed by any representative of the Agency concerning their involvement in a use of deadly force incident, the authorized officer shall be advised of their right to an NTEU representative, pursuant to the terms of Article 22: Investigations. The interview will not be held until the authorized officer has had a reasonable opportunity to regain their composure and to secure NTEU representation.

**Section 13.** Authorized officers involved in a use of deadly force incident will be strongly encouraged to receive immediate medical attention.

**Section 14.A.** In accordance with Chapter 6 of the Use of Force Handbook, the Agency has determined that while performing official duties, authorized officers who carry firearms are required to be trained in both and carry at least one approved intermediate force device (i.e. OC spray or a CSB).

- B.** Those authorized officers in the field who have previously been certified to carry OC Spray by either CBP, the former United States Customs Services, the former Immigration and Naturalization Service or the former Border Patrol, regardless of whether or not such certification required an OC spray exposure, will be permitted to continue the carry of OC as an intermediate weapon.
- C.** Those authorized officers in the field who have never been previously certified to carry OC spray, and voluntarily choose to carry OC spray as an intermediate force option, must successfully complete the OC spray exposure exercise.
- D.** All authorized officers attending basic training must successfully complete the OC spray exposure exercise during their initial certification.
- E.** Re-certification in the use of OC spray will not require an OC spray exposure.

F. No pregnant authorized officer will be required to undergo an OC spray exposure.

**Section 15.A.** In accordance with the *Handbook*, the Agency has determined a minimum of eight (8) hours of use of force training will be conducted each qualification period. This will include four (4) hours for firearms training and recertification and four (4) hours for intermediate force training and recertification.

B. Eight (8) hours of remedial training will be provided to those failing to qualify with a firearm.

C. Eight (8) hours of remedial training will be provided to those failing to qualify with an intermediate device.

D. Upon request, CBP will provide NTEU an annual report containing data which reflects the number of Form CA-1 “Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation” filings that involved employee injuries during firearms and intermediate force training.

**Section 16.A.** In addition to quarterly qualifications, as well as unusual circumstances, authorized officers will be provided with sufficient materials to clean and maintain their Agency-issued or Agency-authorized firearms on duty time in accordance with established guidelines and legally implemented procedures.

B. Upon request by a local NTEU chapter, CBP will consult with the Chapter concerning the cleaning and maintenance of authorized firearms.

**Section 17.** As a general rule, any required proficiency training, demonstration or qualification will be held during the authorized officer's normal tour of duty. If the authorized officer's normal tour of duty does not coincide with the scheduled training, demonstration or qualification, the Agency will modify the work schedule seven (7) days in advance of the administrative workweek, absent an authorized officer's voluntary agreement to do otherwise.

**Section 18.** The Agency will ensure medical personnel are available (either in person or by phone) when conducting use of force training exercises, including training concerning OC spray.

**Section 19.** Basic first aid training will be made available to Range Officers to enable them to provide emergency first aid until a more qualified medical technician is available.

**Section 20.** In accordance with the provisions of Chapter 9 Section E “CBP Authorized Competitive Shooting Teams” of the Use of Force Handbook, upon written approval from the Agency, duty time will be authorized for officers participating in authorized firearms competitions as Agency representatives.

**Section 21.** To assist authorized officers when applying for concealed weapon permits pursuant to Public Law 108-277, 18 USC 926B, the Agency will issue guidance to authorized officers once finalized. Once the guidance is finalized, NTEU will be provided a copy.

**Section 22.** Nothing in this Agreement or CBP policies and regulations shall be construed as interfering with the right of an employee as a private citizen to carry a privately-owned weapon in an off-duty status in accordance with applicable state or local law.

**Section 23.** Firearms instructors will be selected in accordance with the parties’ Bid, Rotation and Placement Agreement. In locations that do not consider Firearms Instructors as included in a “work unit”, existing selection procedures for the collateral duty will continue to apply.

**Section 24.A.** It is important that CBP appropriately determine whether an officer should have the authority to carry a firearm and that where CBP conducts investigations that involve the revocation of that authority, they will be flagged for priority over other investigations and conducted in an expeditious manner consistent with Section 24.D.

**B.** To increase oversight and attempt to expedite the investigations referenced in Section 24.A., the Office of Field Operations will inform (on a quarterly basis) the CBP office that is conducting the investigation, e.g., the Office of Internal Affairs, of those authorized officers who have had their weapon removed and are pending an administrative investigation. In return, the Office of Internal Affairs, or applicable office, will provide the Office of Field Operations a status of the individual investigations and an estimated time frame for completion.

The removal of firearm carriage authority pursuant to Section 2 of the Handbook does not prohibit the return of the firearm pursuant to the procedures set forth in Section 24.C. below.

**C.** (1) At least once a quarter, the Office of Field Operations will use the data assembled in Section 24.B. to review each revocation and reevaluate if an officer's firearm can be returned. In the event management determines there is no longer a nexus between the alleged conduct and the threat to the safety of the officer or others, the firearm will be returned as soon as practicable.

(2) An impacted employee's investigation status letter will be amended to inform the employee that although the firearm will not be returned at that time, the revocation will be re-evaluated at the next quarterly review.

**D.** Investigations involving the revocation of firearm carriage authority will not be confined to any time frame, will not require investigations to be concluded prematurely and will not take priority over all other CBP investigations.

**E.** In the event the firearm has not been returned pursuant to Section 24.C. above, once an investigation has been completed and the Agency has not proposed terminating the employee, the firearm will normally be provided back to the employee within ten (10) calendar days of the decision not to terminate the employee's employment unless there is a reasonable belief that returning the firearm may jeopardize the safety of employee(s), CBP operations, or the traveling public. It is understood that CBP has determined that an employee will have their firearm and credentials removed while serving any suspension.

**F.** In the event either party requests to reopen the Use of Force Handbook mid-term agreement, or NTEU requests information in order to make a determination whether or not to reopen this Agreement, the following cumulative report will be provided to NTEU with an appropriate employee identifier, that will include:

- CBP investigating unit;
- The reason supporting the removal of the firearm;
- The date the investigation was opened;
- The status of the investigation e.g. on-going, completed;
- The expected time frame for the completion of the investigation.

Nothing in this provision waives NTEU's right to request additional information pursuant to applicable law.

- G.** In the event a decision to revoke firearm carriage authority is found to be improper, in whole or in part, any remedy may include reimbursing the employee for appropriate back pay, in accordance with the provisions of law, e.g. the Back Pay Act.

**Section 25.A.** Off-duty storage for Agency-issued firearms at the discretion of armed employees, including overnight storage, shall be permitted only at facilities the CBP determines currently have storage available that is adequately secure.

- B.** Where CBP determines that a facility has adequately secure storage, but the facility does not have the capacity to fully accommodate employee interest in off-duty storage, employee requests for off-duty storage of their weapons shall be granted in the following order:

- (1) Authorized officers experiencing significant hardships will be provided off-duty storage.

- (2) Remaining off-duty storage at a duty location will be open to authorized officers for discretionary use with priority granted on the basis of seniority service at the post of duty.

- (3) This language is not intended to diminish the availability of secured storage provided under current practice at individual facilities.

- C.** To ensure that new or retrofitted facilities will have adequate off-duty firearms storage (i.e., storage to accommodate at least 25 percent of armed employees), CBP will add on-site storage capability to the technical design standards. Once a new facility is scheduled for construction or an existing location is scheduled for retrofitting, CBP will inform NTEU in accordance with existing Agreements and practices.

- D.** Either party may reopen the provisions concerning off-duty storage of firearms after the policy has been in effect for 1 year. In preparation for reopener bargaining, the parties shall jointly determine employee interest in off-duty firearm storage. Thereafter, the provisions, including any modifications thereto, shall remain in effect concurrently with the master collective-bargaining agreement.

**Section 26.A.** If a pregnant employee authorized to carry firearms in the course of her duties wishes to perform the full range of duties envisioned in the position to which she is assigned, the Employer may request a medical certificate stating that the employee is physically capable of performing the full range of duties.

**B.** Employees who elect to perform the full range of duties must qualify in accordance with appropriate firearms policy.

**C.** Light duty for a temporary period will be considered for a pregnant officer or for an officer returning to work after an injury, pregnancy or illness, provided that such work is available and the assignment will not unduly disrupt the work unit's operation. In such cases, the officer must provide a medical certificate indicating that the officer should work restrictively and that full recovery is expected.

**Section 27.** In accordance with 29 CFR 1614.704, employees with certified disabilities who are in positions requiring the carry of a weapon may be eligible for reasonable accommodation, as long as the accommodation does not constitute an undue hardship to the Employer. Employees who believe they may be eligible for reasonable accommodation should contact an EEO Counselor and/or the Union.

**Section 28.A.** The parties nationally will establish a joint-working group to address firearms-related issues.

**B.** The parties agree that the potential use of tactical suspenders by CBP Officers will be the first issue to be explored by the joint-working group. At a minimum, the joint-working group will address the feasibility of tactical suspenders as a tool in the different work environments of CBP, as well as the different brands and types of tactical suspenders used in law enforcement.

## **ARTICLE 44: ATTIRE AND APPEARANCE**

The purpose of this Article is to clarify and/or supplement the Employer's policies and procedures related to attire and appearance for uniformed and non-uniformed bargaining unit employees as reflected in the negotiated National Uniform Program Handbook (*Handbook*) as modified by this Article.

### **Section 1. Uniformed Employees.**

- A.** The Employer will maintain and make information readily available to employees regarding its uniform program. At a minimum, such information will identify the types of employees required to wear a uniform, describe the procedures for ordering and purchasing uniform and related gear and explain the Employer's uniform wear policies and appearance standards.
- B.** The Employer's uniform program, including its wear policies and personal appearance standards will be established and maintained in a manner consistent with applicable law and regulation, as well as Federal Service Impasse Panel decisions not in conflict with this Article.
- C.** Uniformed employees are responsible for reporting to his/her first assignment in a neat, clean and complete uniform. Uniforms must be free from tears, visible repairs or other highly visible blemishes. Only uniform items and related gear officially authorized through the Employer's uniform program are authorized for wear (including authorized optional items). An employee reporting to his/her first assignment in a soiled, torn, unkempt or incomplete uniform may be relieved from duty.
- D.** In order to address the extreme heat and humidity in certain work environments, employees will be permitted to wear cargo shorts authorized under the Employer's uniform program in all Class 3 environments. Nothing in this subsection is intended to alleviate an employee's responsibility to adhere and follow safety standards and requirements.
- E.** The Employer will permit uniformed employees who serve as union officials to wear a NTEU pin or identification tag, to be designed and paid for by the Union and subject to Agency review and approval of the design, on the CBP uniform. When worn, such pin or identification tag will be centered on the right breast pocket flap of the uniform shirt.

- F.** The Employer will provide uniformed employees an annual allowance to be used toward the purchase of authorized uniform items and related gear.
- (1) For full-time CBP Officers, CBP Agriculture Specialists and Seized Property Officers, the allowance provided under this subsection will be in the amount of \$1,000 for the first fiscal year the employee is required to wear a uniform and \$800 each fiscal year thereafter.
  - (2) For part-time CBP Officers and CBP Agriculture Specialists with regular schedules of twenty (20) hours or more per week, the allowance provided under this subsection will be in the amount of \$600 per fiscal year.
  - (3) For part-time CBP Officers and CBP Agriculture Specialists with regular schedules of less than twenty (20) hours per week, the allowance provided under this subsection will be in the amount of \$360 per fiscal year.
  - (4) For other authorized uniform positions, including CBP Technicians, the allowance provided under this subsection will be as follows:
    - (a) For full-time employees, \$800 the first fiscal year the employee is required to wear a uniform and \$640 each fiscal year thereafter.
    - (b) For part-time employees with regular work schedules of twenty (20) hours or more per week, \$600 per fiscal year.
    - (c) For part-time employees with regular work schedules of less than twenty (20) hours per week, seasonal employees and cooperative education/intern students, \$360 per fiscal year.
- G.** If an employee transfers into a uniformed position that is authorized a different class of uniform that was not authorized in the previous position, the employee will be provided an allowance adjustment of forty (40) percent of the ongoing allowance of the position to which they are transferred.
- H.** The Employer will maintain a mechanism by which employee requests for waivers from the Employer's uniform wear policy and personal appearance standards for medical or religious reasons will be reviewed and addressed. Such requests and resulting responses will be in writing. During the period an employee request submitted under this subsection is pending review and response by the Employer, the employee will not be required to conform to the specific policy or standard for



which the waiver was requested. The Employer will approve waivers in a fair and impartial manner.

- I.** (1) The parties will establish a six-person work group made up of equal numbers of Union and Agency representatives drawn from diverse work areas to conduct studies and make recommendations to the parties at the national level on cost effective methods of implementing uniform upgrades/conversion and other uniform issues as they arise. Either party may request to bargain modifications to the Handbook based on the deliberations of the work group.

(2) The workgroup will meet twice a year and will attempt to operate by consensus. At least one of the meetings will be face-to-face. NTEU representatives will participate in an official time status. CBP will pay the travel and per diem expenses of NTEU's representatives.

- J.** In the event the Employer exercises its right to change, modify, amend, or alter its uniform program in a manner that affects bargaining unit employees, it will provide notice and the opportunity to bargain over such changes in accordance with law and Article 26: Bargaining.

- K.** When the Employer becomes aware that a uniformed employee, as a result of the performance of official duties, has been subjected to threats, harassment, or other conduct leading to a reasonable fear on the part of the employee for his/her safety (including the safety of his/her family), the Employer will:

(1) Promptly discuss the matter with the employee and authorize the use of a pseudonym for a period of not less than one hundred and twenty (120) days while the matter is being reviewed. At the end of this period, the Employer may extend the authorization for the use of the pseudonym in sixty (60) day increments pending the outcome of the review.

(2) Upon request and subject to applicable state law, rules and regulations, the Employer will provide the employee a letter supportive of an employee's request to his/her state Department of Motor Vehicles (DMV) for personal address confidentiality.

## **Section 2. National Uniform Program Handbook.**

The National Uniform Program Handbook will be modified to reflect the following:

- A.** Employees will be neat, clean and professional in personal attire and appearance at all times while on duty as modified by the negotiated Personal Appearance Standards-Quick Reference Matrix (Appendix E). Any other national or local grooming standards to the contrary are null and void.
- B.** Uniformed employees are authorized to wear outerwear indoors with all classes of uniforms, except with the Class 1 Ceremonial uniform. The only outerwear items not authorized for wear indoors (with exceptions to when employees are transitioning from indoors to outdoors and vice versa) are the raincoat and extreme cold weather parka.
- C.** Any other changes required by the parties' Agreement in this Article.

## **Section 3. Non-uniformed Employees.**

- A.** Non-uniformed employees will maintain a professional appearance, consistent with norms prevailing in the local community. Employees will be attired in a manner appropriate for their position and the duties being performed, such as office duty, court duty, field duty, rough duty or other assignments.
- B.** Attire and/or personal appearances that create a real or potential health or safety hazard, interfere or are likely to interfere with the accomplishment of the Agency's mission by reducing an employee's ability to effectively deal or interact with either the public, fellow employees, governmental agencies or other organizational entities are prohibited.
- C.** A weekly business-casual dress day, consistent with subsections A. and B., will continue to be extended to all non-uniformed employees.
- D.** (1) When required to perform work in rough duty situations, the Employer will provide non-uniformed employees with the necessary protective clothing. In such cases, the Employer will make a sufficient number of garments available for this purpose, in a range of sizes. Maintenance costs for protective clothing owned by the Employer will be paid for by the Employer. Maintenance costs for protective clothing owned by the employee will be paid for by the employee.

(2) Upon request, employees assigned duties on a regular or semi-regular basis that are traditionally performed by uniformed employees, e.g. import specialists performing cargo examinations, will be provided individual uniform items to protect their clothing and persons on an as-needed basis.

**E.** The Employer will permit non-uniformed employees who serve as union officials to wear a NTEU pin or identification tag on their business attire, to be designed and paid for by the Union and subject to Agency review and approval of the design.

## **ARTICLE 45: DISCIPLINARY ACTIONS**

**Section 1.** This Article applies to bargaining unit employees who have completed their probationary or trial period.

**Section 2.** A disciplinary action for purposes of this Article is defined as a written reprimand or a suspension from duty and pay of fourteen (14) calendar days or less.

**Section 3.** Disciplinary actions taken against an employee will be for such cause as will promote the efficiency of the service. Discipline will be taken in a manner that is fair and impartial, and timely (i.e., so as not to create an unreasonable delay that materially prejudices the employee).

**Section 4.** Disciplinary penalties will be imposed to correct behavior, teach the employee and others that certain actions are unacceptable for an employee of CBP, and to demonstrate and support the expected high standards of conduct for CBP. As such, discipline under this Article will be taken with a progressive or corrective (rather than punitive) approach, and will give appropriate consideration to the criteria contained in Appendix D: Douglas Factors.

**Section 5.** Procedures for effecting disciplinary actions are as follows:

**A. Letters of Reprimand:** A letter of reprimand will state the reason(s) for its issuance and inform the employee of the right to grieve under the contractual grievance procedures. A letter of reprimand will remain in the employee's Official Personnel Folder (OPF) for a period of eighteen (18) months, unless management exercises its discretion to remove it earlier. In the event the Employer exercises this discretion (either independently or upon request by the employee or Union) it will inform the appropriate Union representative.

**B. Suspensions of Fourteen (14) Days or Less:**

(1) The employee will be given fifteen (15) calendar days advance written notice stating the specific reason(s) for the proposed suspension. With the notice, the employee will be provided, to the extent such information exists and is related to the action, a copy of those portions of all written documents which contain information or evidence relied upon by the Employer as the basis for the

action, those portions of written documents that are favorable to the employee, and the investigative report. In addition, in the event the Employer reviewed video or audio surveillance recordings in proposing the action, such recordings will be made available for review by the employee.

(2) The employee will be given fourteen (14) calendar days from receipt of the notice of suspension and supporting material to present an oral and/or written reply to the proposed suspension. The employee will have the right to be represented by the Union, or by an attorney or other representative of his own choosing in connection with the oral and/or written reply. Extensions of the reply period may be made by mutual agreement of the parties. All extensions granted will be confirmed in writing or electronic mail.

(a) Oral Replies:

1. Absent just cause, any request for an oral reply must be made within seven (7) calendar days of receipt of the notice of suspension.
2. Upon request by either party, oral replies will be presented in person. By mutual agreement, oral replies may be provided by telephone or other technological means (including video teleconferencing).
3. Oral replies will generally be heard at or near the employee's duty location, and CBP will provide time and reimburse the employee and his or her union representative to travel to and from the oral reply location.
4. In the event management elects to hold the oral reply at a location outside the employee's duty location, CBP will be responsible for all travel and per diem costs, as well as time for the employee and his or her Union representative to travel to and from the oral reply location.
5. To the maximum extent possible, NTEU will make a reasonable effort to designate a representative at or near the employee's work location to participate in oral replies. In the event NTEU elects to designate a representative outside of the geographical jurisdiction of the employee's NTEU Chapter, NTEU will be responsible for the travel and per diem expenses for its representative to attend the oral reply.
6. In the event the employee chooses anyone other than an NTEU representative, NTEU will be invited to the oral reply merely to observe.

7. CBP will provide a summary or transcript of any oral reply made to the affected employee and/or his/her designated representative prior to the time a final decision is made. The employee and representative will be given a reasonable period, based on the length of the summary or transcript, to identify and submit corrections they feel are appropriate. The summary or transcript, including all submitted corrections will be provided to the deciding official before the final decision is made.

(b) Written Replies: Written replies must be received by the designated official prior to the end of the fourteen (14) calendar day reply period.

(3) After receipt of the written and/or oral reply, and any corrections to the summary or transcript submitted by the employee or representative, the Agency will issue a final decision. In the event no written or oral reply is provided, the decision will be issued after the end of the fifteen (15) calendar day notice period. The final decision will advise the employee of the specific reason(s) for the decision and of the right to grieve the action under the negotiated grievance procedure.

(4) In cases where a suspension is proposed for reasons of off-duty misconduct, the Agency's written notification provided for above will also contain a statement describing the nexus between the off-duty misconduct and the efficiency of the service.

**Section 6.** In cases where suspensions without pay for periods of fourteen (14) days or less are proposed (for purposes other than an emergency suspension related to an adverse action) and it is the first instance of a proposed action for misconduct by the employee, the employee, the Union and the deciding official may agree that alternative remediation in lieu of suspension (or part of it) is appropriate.

**A.** The alternative remediations covered by the provisions of this Article include, but are not necessarily limited to, referrals to the Employee Assistance Program, election for counseling/training, changes in assigned duties, disqualification for a particular assignment, community service, leave without pay, donation of annual leave to a leave transfer program, combination of leave without pay and community service, combination of reduced suspension and community service and divestment by the employee of any conflict of interest.

**B.** After receipt of a letter proposing a suspension of fourteen (14) days or less, either party may request a meeting to discuss alternative remediation. Any meeting will

be attended by the employee, a union and management representative, and the deciding official (or designee). The deciding official (or designee) must attend in person if in the commuting area. Otherwise, the deciding official can participate by telephone. An equal number of additional Agency and Union representatives may also attend with the intent to limit the number of attendees to those necessary to make a decision. This discussion will occur prior to the presentation of the oral reply.

**C.** In the event a meeting is not requested in Subsection B., in order to promote awareness and use of alternative remediation, the employee (and his/her representative) and the management official receiving the oral reply in Section 5.B.(2)(a) above will discuss whether alternative remediation is appropriate. This discussion will occur prior to the presentation of the oral reply.

**D.** Employees shall not be required to admit misconduct until complete agreement is reached to utilize alternative remediation. If agreement is reached, alternative remediation will be implemented as described in subsection E., below. If no agreement is reached, no inference of misconduct can be drawn from the request for an alternative remediation meeting. Further, no part of the discussions, deliberations, offers or recommendations generated at any step of the alternative remediation process will be used in any way by either party.

**E.** All such alternative remediations shall be set forth in a letter that contains the following:

- (1) An accurate and full description of the employee's misconduct;
- (2) The employee's admission of having engaged in the misconduct;
- (3) The employee's promise to correct the inappropriate behavior;
- (4) Descriptions of the specific suspension that would have been called for and the specific alternative remediation;
- (5) Acknowledgment that the letter will be retained by the Employer for a period not to exceed two (2) years to support possible future remediation based on new acts of misconduct committed by the employee during that period;
- (6) The specific remedial action that will be imposed if the employee fails to comply with the terms of the alternative remediation letter (remedial action may be less than that originally proposed);

- (7) A waiver of the employee's appeal and/or dispute resolution rights;
- (8) A statement that the agreement was voluntarily entered into by the employee, the Union and the Employer; and
- (9) Signatures of the employee, the deciding official, and the Union and management representatives.

F. Actions taken based on the Employer's allegation of non-compliance with an alternative remediation letter may be grieved under the negotiated grievance procedure.

**Section 7.** Suspensions taken under this Article will be served on consecutive days following the commencement of the suspension. To the maximum extent possible, effective dates for suspension of ten (10) to fourteen (14) days will be set so that the suspension is served across two adjoining pay periods, and the suspension does not cover more than five (5) regular duty days in either pay period.

**Section 8.** The Agency will, after a bargaining unit employee has designated the Union as his/her representative in a proposed disciplinary action, simultaneously serve a copy of the final decision letter on the employee and the Union. The preferred method of simultaneous service will be in person. If the designated representative is not present with the employee at the time of service, simultaneous service may be accomplished by e-mail, facsimile, or U.S. mail postmarked the same day as service of the decision on the employee. If the Union has not advised the Agency of a specifically named Union representative, the Agency will serve the corresponding Chapter president representing the Chapter where the employee made his/her Union designation.



## **ARTICLE 46: ADVERSE ACTIONS**

**Section 1.** This Article applies to employees who have completed their probationary or trial period.

**Section 2.** An adverse action for purposes of this Article is defined as a removal, suspension from duty and pay for more than fourteen (14) calendar days (including an indefinite suspension), reduction in grade, reduction in pay, or furlough of thirty (30) calendar days or less, unless excluded by law or government-wide regulation.

**Section 3.** Adverse actions taken against an employee will be for such cause as will promote the efficiency of the service. Adverse actions will be taken in a manner that is fair and impartial, and timely (i.e., so as not to create an unreasonable delay that materially prejudices the employee).

**Section 4.** Adverse action penalties will be imposed to correct behavior, teach the employee and others that certain actions are unacceptable for an employee of CBP, and to demonstrate and support the expected high standards of conduct for CBP. As such, adverse actions under this Article shall generally be progressive in nature, and will give appropriate consideration to the criteria contained in Appendix D: Douglas Factors.

**Section 5.** Procedures for effecting adverse actions are as follows:

- A.** The employee will be given thirty (30) calendar days advance written notice stating the specific reason(s) for the proposed action. With the notice, the employee will be provided, to the extent such information exists and is related to the action, a copy of those portions of all written documents which contain information or evidence relied upon by the Employer as the basis for the action, those portions of written documents that are favorable to the employee, and the investigative report. In addition, in the event the Employer reviewed video or audio surveillance recordings in proposing the action, such recordings will be made available for review by the employee.
- B.** The employee will be given fourteen (14) calendar days from receipt of the notice and supporting material to present an oral and/or written reply to the proposed action. The employee will have the right to be represented by the Union, or by an attorney or other representative of his own choosing in connection with the oral

and/or written reply. Extensions of the reply period may be made by mutual agreement of the parties. All extensions granted will be confirmed in writing or electronic mail.

(1) Oral Replies:

- (a) Absent just cause, any request for an oral reply must be made within seven (7) calendar days of receipt of the notice of proposed action.
- (b) Upon request by either party, oral replies will be presented in person. By mutual agreement, oral replies may be provided by telephone or other technological means (including video teleconferencing).
- (c) Oral replies will generally be heard at or near the employee's duty location, and CBP will provide time and reimburse the employee and his or her Union representative to travel to and from the oral reply location.
- (d) In the event management elects to hold the oral reply at a location outside the employee's duty location, CBP will be responsible for all travel and per diem costs, as well as time for the employee and his or her Union representative to travel to and from the oral reply location.
- (e) To the maximum extent possible, NTEU will make a reasonable effort to designate a representative at or near the employee's work location to participate in oral replies. In the event NTEU elects to designate a representative outside of the geographical jurisdiction of the employee's NTEU Chapter, NTEU will be responsible for the travel and per diem expenses for its representative to attend the oral reply.
- (f) In the event the employee chooses anyone other than an NTEU representative, NTEU will be invited to the oral reply merely to observe.
- (g) CBP will provide a summary or transcript of any oral reply made to the affected employee and/or his/her designated representative prior to the time a final decision is made. The employee and representative will be given a reasonable period, based on the length of the summary or transcript, to identify and submit corrections they feel are appropriate. The summary or transcript, including all submitted corrections will be provided to the deciding official before the final decision is made.

(2) Written Replies: Written replies must be received by the designated official prior to the end of the fourteen (14) calendar day reply period.

**C.** After receipt of the written and/or oral reply, and any corrections to the summary or transcript submitted by the employee or representative, the Employer will issue a final decision. In the event no written or oral reply is provided, the decision will be issued after the end of the thirty (30) calendar day notice period. The final decision will advise the employee of the specific reasons(s) for the decision and of the right to grieve the action under the negotiated grievance procedure or appeal the action to the Merit Systems Protection Board (MSPB), but not both.

(1) An employee who elects to appeal an action to the MSPB may be represented by the Union, an attorney, or another representative of his/her choosing.

(2) An employee who elects to appeal an action through Article 27: Grievance Procedure may be represented only by the union. If the union appeals the action to arbitration, the employee may be represented only by the union.

**D.** In cases where an action is proposed for reasons of off-duty misconduct, the Agency's written notification provided for above will also contain a statement describing the nexus between the off-duty misconduct and the efficiency of the service.

**Section 6.** Suspensions taken under this Article will be served on consecutive days following the commencement of the suspension. To the maximum extent possible, effective dates for suspensions will be set so that the suspension is served across at least two (2) adjoining pay periods.

**Section 7.** The Agency will, after a bargaining unit employee has designated the Union as his/her representative in a proposed adverse action, simultaneously serve a copy of the final decision letter on the employee and the Union. The preferred method of simultaneous service will be in person. If the designated representative is not present with the employee at the time of service, simultaneous service may be accomplished by e-mail, facsimile, or U.S. mail postmarked the same day as service of the decision on the employee. If the Union has not advised the Agency of a specifically named Union representative, the Agency will serve the corresponding Chapter president representing the Chapter where the employee made his/her Union designation.

## **ARTICLE 47: EQUAL EMPLOYEMENT OPPORTUNITY**

**Section 1.A.** The Employer will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability, or reprisal for filing a claim on one of these bases, except where required by statute or pursuant to bona fide occupational qualifications.

**B.** The Union agrees that in carrying out its representational activities, the Union will not engage in any discrimination against any employee because of race, color, religion, sex, national origin, age, disability or reprisal, except where required by statute or pursuant to bona fide occupational qualifications.

**C.** The Employer in the employment context and the Union in carrying out its representational activities, as applicable, agree not to discriminate because of marital status, political affiliation, sexual orientation, parental status or protected genetic information.

**Section 2.A.** The Union recognizes that the development of diversity/inclusion, civil rights and civil liberties programs, including equal employment opportunity programs, are management functions for which management is fully responsible.

**B.** The Employer shall make available to the Union and employees a copy of the regulations, directives and policies it issues to carry out its programs regarding civil rights and civil liberties.

**Section 3.** Where the development and implementation of diversity/inclusion, civil rights and civil liberties plans and programs involve changes in personnel policies, practices, or working conditions, the Employer will fulfill its bargaining obligations with the Union under Chapter 71 and Article 26: Bargaining.

**Section 4.** Nothing in this Agreement shall preclude the Employer from dealing directly with civil rights organizations, special emphasis committees, affinity groups, or any other organization not qualified as a labor organization, on diversity/inclusion, civil rights and civil liberties matters or policies involving unit employees so long as such dealings do not detract from or violate the rights of the Union under applicable laws or this Agreement, or assume the character of formal consultation on matters of general employee-management policy affecting the bargaining unit.

**Section 5.A.** Any employee who believes that he or she has been discriminated against on any of the grounds set forth in Section 1 A. above may file one of the following:

- (1) A grievance pursuant to the provisions of Section 6 of this Article (hereinafter “an EEO grievance”);
- (2) An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by Section 1 A. of this Article;
- (3) A statutory EEO complaint pursuant to Equal Employment Opportunity Commission (EEOC) regulation 29 C.F.R. § 1614 (statutory process); or
- (4) An appeal to the Equal Employment Opportunity Commission where there is an allegation of discrimination prohibited by Section 1.A. of this Article but no otherwise appealable action and the employee has already received a Final Agency Decision.

**B.** An employee who believes (s)he has been discriminated against on any grounds set forth in subsection 1.C. of this Article may file a grievance under the procedures contained in Article 27: Grievance Procedure, or if appropriate a Complaint of Possible Prohibited Personnel Practice with the office of Special Counsel, but not both.

**C.** The selection of the grievance procedure contained in this Article to process an EEO grievance involving discrimination as described in Section 1.A. shall in no manner prejudice the right of an aggrieved employee to request the MSPB to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to 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.

**D.** Irrespective of anything in this agreement, nothing excludes the employee or the union from using the Grievance Procedure of Article 27 for EEO mixed cases, e.g., where the allegation of discrimination is accompanied by allegations that the contract or non-discrimination-related regulations and statutes are alleged to be violated.

**E.** Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

## **Section 6. EEO Complaint and Negotiated EEO Grievance Procedures**

### **A. Pre-complaint/Pre-grievance Stage.**

- (1) An employee who believes s/he has been illegally discriminated against by the Employer on the bases identified in Section 1.A. of this Article must contact a Diversity and Civil Rights (DCR) Officer within forty-five (45) calendar days of the date of the alleged discriminatory act or, in the case of a personnel action, within forty-five (45) calendar days of the effective date of the personnel action.
- (2) The DCR Counselor will counsel the employee in accordance with 29 C.F.R. § 1614 and applicable EEOC directives (e.g., MD-110).

### **B. Upon request by the employee, the Union, and/or the Employer, mediation will be used in an attempt to foster a voluntary resolution of the case. To increase the likelihood of success of the mediation process, the Employer and the Union will insure the representatives it designates to participate in the mediation possess a reasonable level of authority to resolve the case. Where mediation is used, the pre-complaint/pre-grievance counseling period will be extended for a period of not more than sixty (60) calendar days.**

### **C. If the parties are unable to resolve the case during the thirty (30) calendar day counseling period, or ninety (90) day calendar period where mediation is used, the counselor will conduct a final interview at which time the employee may elect to withdraw the case, or request a Notice of Right to File a Formal Discrimination Complaint (NORTF). When a NORTF is requested, it will explain the employee's right to file under the Negotiated EEO Grievance Procedure (NEGP) or statutory complaint process, within fifteen (15) calendar days of receipt of the NORTF. The employee will be required to sign for receipt of the NORTF.**

An employee shall be deemed to have exercised his/her option under this Section at such time as the employee first timely files a formal EEO complaint under the statutory procedure or timely files an EEO grievance in accordance with the provisions of this Article.

### **D. At the conclusion of the pre-complaint stage, an employee may initiate an EEO grievance by submitting a grievance in accordance with Section 12.B. (Formal Submission Step) of Article 27: Grievance Procedure within fifteen (15) calendar days of receipt of the NORTF. In addition to the requirements of that Section, the employee's submission must contain a formal allegation of discrimination**

(including identification of the alleged discriminatory act or personnel action, the specific bases of discrimination alleged (i.e., race, color, religion, sex, national origin, age, or disability, or reprisal as described in Section 1.A), along with a copy of the NORTF. The grievance will be based on the standards articulated in 29 C.F.R part 1614. If the formal EEO grievance is dismissed in whole, the grievant shall have the right of appeal available under 29 C.F.R. § 1614.110.

A copy of the grievance, along with related information from the employee (or his/her representative) must be concurrently served on the Executive Director, Office of Diversity and Civil Rights (DCR) or his/her designee. Upon receipt of the grievance, the Executive Director, DCR (or his/her designee) will provide a copy of the counselor's report to the employee (or his/her representative) and the management official to which the grievance was filed.

If the employee is not satisfied with the Step 2 (the Formal Decision Section 12.B. of Article 27) decision of the Port Director or equivalent management official (or designee) the employee may file a Step 3 grievance with the Director, Field Operations or equivalent management official (or designee) within fourteen (14) days of receipt of the Step 2 decision pursuant to the procedures of Article 27 section 12.C. of the CBP. The step 3 grievance must include the CBP form 280 and the Step 2 grievance decision.<sup>1</sup>

Thereafter, in those cases where the parties have been unable to reach a resolution, CBP will produce a Report of Investigation (ROI) within 150 days of the end of the pre-complaint process. This ROI will meet all the standards of the reports that are done under the current statutory process. For example, it will include signed and sworn statements from relevant witnesses, copies of all relevant documents, and statistical analysis where appropriate. Copies of the report will be given to the employee and his or her representative, along with the responsible management official. In addition, if the ROI is not presented within 150 calendar days from the filing of the grievance, the union shall have the authority, but is not required, to proceed immediately to arbitration.

The EEO Grievance Process will be stayed before the Step 3 grievance meeting until the ROI has been distributed to both parties. Within seven (7) days of receiving the Step 3 grievance and the ROI and the expiration of the Mediation

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<sup>1</sup> Users of this Article should be aware of and should also apply the Procedures for Processing EEO Grievances (Procedures) document and accompanying Memorandum of Understanding (MOU) that was signed between CBP and NTEU on April 1, 2013. The April 1, 2013 Procedures document incorporates the prior January 31, 2012 Procedures document terms except where they were changed by the April 1, 2013 Procedures document, as well as adding some new terms. To find the April 1, 2013 Procedures document, please go to Appendix G.

period outlined in F.2.d. of the Procedures for Processing EEO Grievances document, the Director, Field Operations or equivalent management official (or designee) will, upon request, meet with the employee and representative, if any. In the event the employee does not request a meeting to discuss the grievance, the Director, Field Operations or equivalent management official (or designee) may request a meeting.

The Director, Field Operations or equivalent management official (or designee) will respond to all allegations raised (EEO Based and Non-EEO based) within seven (7) days of the meeting, or if no meeting is held, within fourteen (14) days of the appeal, i.e. provide the Step 3 grievance response specified in Article 27 Section 12.C.

Upon notification by management that the Grievant failed to timely file a Step 3 grievance, DCR will cease all further action to investigate EEO based allegations and the EEO grievance will be considered closed with no further right to appeal.

In addition, if the ROI is not presented within 150 calendar days from the filing of the formal EEO grievance, the union shall have the authority, but is not required, to proceed immediately to arbitration.

- E.** Within forty-five (45) days of receiving the report, responsible management and union officials may attempt to mediate the dispute with the employee. If they are unable to produce a voluntary settlement during that time, the dispute may be moved to arbitration by either party to this agreement. The party invoking arbitration shall inform the other party in writing within fifteen (15) days after the expiration of the forty-five (45) days referenced above. No part of the discussions, deliberations, conclusions, offers or recommendations generated at any step of the alternative resolution procedure shall be binding in any way on either party once the matter in dispute has been advanced to arbitration, nor shall any of these elements be used by either party as evidence in an arbitration hearing.

Within fifteen (15) days after invoking arbitration, management will assign the dispute to a third party neutral who will use a mediation- arbitration process to settle the dispute. The ideal solution will be a mediated one, but the arbitrator will have the power to issue a final and binding written arbitration decision resolving all issues in dispute. The arbitrator shall be empowered to hold a hearing, swear witnesses, order the production of documents, and do whatever else is necessary that an arbitrator or EEOC administrative judge could normally do to develop a complete record, i.e., draw an adverse inference where warranted. The arbitrator shall also be empowered to order any remedy than an arbitrator, EEOC, or an



EEOC administrative judge could in the same case. The arbitrator will schedule matters so that he or she can normally close the case no later than 120 days after it has been assigned.

If management fails to assign the dispute within the fifteen (15) days mentioned above or the ROI is more than fifteen (15) days overdue, the employee and his or her representative shall have the authority to assign the dispute to one of the arbitrators on the list of approved arbitrators rather than wait for the process to be followed. In this situation, the employee and his or her representative can choose any arbitrator that is available. Once the arbitrator is selected, he or she shall control the scheduling of the case.

Those arbitrators who are assigned cases from unit employees will be jointly chosen by the union and management. The parties will choose five arbitrators at the outset of this agreement and they will serve on assigned cases in a rotation established by alphabetical order of their last names. If the parties are unable to agree on the selection of arbitrators, the American Arbitration Association (AAA) shall have the authority within sixty (60) days after the effective date of this agreement to select the arbitrators. In order to exercise its authority, it will suffice if either party or both submit an arbitration panel in accordance with the criteria described herein. The arbitrators shall be chosen based upon demonstrated competence in EEO matters and arbitrations, i.e., they teach civil rights courses in law school, they are former EEOC administrative judges, they have a track record of dealing with EEO matters in arbitration, etc. Cases will normally be assigned on a rotating basis among them.

All issues related to the right, if any, to appeal the final and binding arbitration decision, shall be controlled by applicable federal rules and regulations, and not by this agreement.

- F.** For the first 20 cases that are presented to arbitration under this process, the union shall pay the sum of \$750.00 toward payment of arbitration expenses, per case; and management shall be obligated to pay and assume the remainder of the arbitration expenses, per case. The arbitration expenses shall include but not be limited to the arbitrator's fees and travel and per-diem expenses, charges for court reporter fees and transcripts of the proceeding, and the cost of any non-governmental hearing rooms or facilities that may be used. In the event the union prevails on any of the issues in dispute, management shall reimburse the union for the \$750.00 payment or assume the obligation of paying all the arbitration expenses in the case at hand.

Concurrently, during the 20-case period of time, the parties jointly or separately may conduct whatever cost-benefit analysis they may deem necessary. After the completion of the 20 cases, customs shall have the right to reopen this agreement to address costs. If management reopens this agreement at that time, the union shall be free to reopen any matter in this agreement. If the union reopens on matters beyond costs, management may do so as well. Otherwise, this agreement shall stay in place for the term of the parties' term agreement, and may be reopened with the term agreement.

- G.** In the event the EEO grievance alleges discrimination and a non-EEO based claim, the Arbitrator will hear and rule on both issues.
- H.** During the hearing and in his/her decision, the Arbitrator will follow and be bound by applicable laws, rules, regulations and case law precedent.
- I.** In addition to the involved parties, a copy of the arbitrator's award will be served to the Executive Director, DCR (or his/her designee).

**Section 7.** Nothing in this Article precludes the settlement or resolution of an EEO grievance or an EEO complaint at any time in the process.

**Section 8.A.** At any stage in the processing of an EEO grievance or complaint, the employee shall have the right to be accompanied, represented and advised by a Union representative.

- B.** The employee shall also have the right to present the EEO grievance or complaint without representation.

**Section 9.** If at any stage of the EEO grievance or statutory complaint process, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification and an opportunity to negotiate the matter prior to implementation of such changes in accordance with 5 U.S.C. Chapter 71 and Article 26: Bargaining.

**Section 10.** Following adjudication under the EEO grievance or statutory complaint procedure, the decision will generally affect the complainant alone. However, when a formal discussion is held by the Employer with the complainant and/or the complainant's representative for the purpose of implementing a decision which impacts on employees in the bargaining unit, the Union will be given an opportunity to be represented at the meeting.

**Section 11.** The names and contact information for DCR Officers, as well as an EEO staffing chart (chain of command) will continue to be maintained on CBPnet.

**Section 12. A.** In accordance with 29 CFR 1614.704, employees who have disabilities may be eligible for reasonable accommodation, as long as the accommodation does not constitute an undue hardship to the Employer. Employees who believe they may be eligible for reasonable accommodation should contact a DCR Officer and/or the Union.

**B.** Reasonable accommodation may include, but will not be limited to:

- (1) making facilities readily accessible to and usable by disabled persons, and
- (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

## **ARTICLE 48: DURATION**

**Section 1.A.** This Agreement will be considered executed when no further action is necessary to finalize the agreement, e.g., the date last chief negotiator signs the signature page or initials the last Article in dispute, or when a decision from the Federal Service Impasses Panel is considered final and binding, whichever is sooner.

- B.** The Agreement will then be submitted for Agency Head approval the day after NTEU notifies the Agency's chief negotiator of ratification by the NTEU membership.
- C.** If the Union fails to ratify the Agreement or the Agency Head disapproves any provision of the Agreement, the parties will return to the bargaining table and use the same ground rules practices used to negotiate this Agreement.
- D.** However, if the Agreement is disapproved and challenged through the Federal Labor Relations Authority (FLRA) negotiability appeal process, the Agreement will not go into effect until the date the FLRA decision is final and binding so long as the FLRA has upheld the validity of the negotiated language and ordered the Agency Head to rescind its disapproval. By mutual agreement, the parties may explore severing disapproved provisions and proceeding with effecting the Agreement.
- E.** This Agreement will become effective ninety (90) days after obtaining agency head approval pursuant to 5 U.S.C. §7114 (c).

**Section 2.A.** This Agreement will remain in effect for three (3) years, unless modified in accordance with this Article.

- B.** Upon expiration, this Agreement will remain in effect for yearly periods thereafter unless either party serves the other party with a written notice of the desire to renegotiate the Agreement during a window period beginning four months (4) months prior to the expiration date and ending two (2) months prior thereto.

**Section 3.** Nothing prohibits the parties from modifying or extending this Agreement by written mutual agreement.

**APPENDIX A-1**

**GENERAL NOTICE**

I am investigating the alleged \_\_\_\_\_ (theft, misuse, loss, etc.).  
You, \_\_\_(employee's name)\_\_\_\_\_, are the subject of the investigation  
concerning this matter.

One of the following must be checked.

\_\_\_\_\_ The general nature of this matter is criminal.

\_\_\_\_\_ The general nature of this matter is administrative.

One of the following must be checked.

\_\_\_\_\_ This interview is related to possible criminal misconduct by you.

\_\_\_\_\_ This interview is not related to possible criminal misconduct by you.

\_\_\_\_\_  
Employee's initials

\_\_\_\_\_  
Date

**APPENDIX A-2**

**WEINGARTEN RIGHTS**

EMPLOYEE NOTIFICATION REGARDING UNION REPRESENTATION

Pursuant to 5 USC §7114(a)(2)(B) you have the right to be represented during the interview about to take place by a person designated by the exclusively recognized labor organization for the unit in which you work, if,

- (a) you reasonably believe that the results of this interview may result in disciplinary action against you; and
- (b) you request representation.

I acknowledge receipt of the aforementioned notification of my right to representation.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

**APPENDIX A-3**

**THIRD PARTY WITNESS INTERVIEW NOTIFICATION**

You are not currently the subject of this investigation. However, you may be held responsible for any false statements you make or for any violation of the CBP Code of Conduct that you admit. Therefore, if at any time during the interview you reasonably believe that you may be subjected to discipline as a result of your statements, you may request representation by the exclusively recognized labor organization for the unit in which you work.

I acknowledge receipt of the aforementioned notification of my rights.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

**APPENDIX A-4**

**MIRANDA RIGHTS**

WAIVER OF RIGHT TO REMAIN SILENT AND OF RIGHT TO ADVICE OF COUNSEL

**STATEMENT OF RIGHTS**

- Before we ask you any questions, it is my duty to advise you of your rights.
- You have the right to remain silent.
- Anything you say can be used against you in court, or other proceedings.
- You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning.
- You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one.
- If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However, you may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire.

**WAIVER**

I have had the above statements of my rights read and explained to me and fully understanding these rights I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity. I was taken into custody at \_\_\_\_\_(time), on \_\_\_\_\_(date), and have signed this document at \_\_\_\_\_(time), on \_\_\_\_\_(date).

\_\_\_\_\_  
(name)

WITNESSES:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(name)



**APPENDIX A-5**

**BECKWITH RIGHTS**

You have the right to remain silent if your answers may tend to incriminate you.

Anything you say may be used as evidence later in an administrative proceeding or any future criminal proceeding involving you.

If you refuse to answer the questions posed to you on the grounds that the answers may tend to incriminate you, you cannot be discharged solely for remaining silent. However, your silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case.

I have been given the above warning at the beginning of the interview held on

\_\_\_\_\_.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

**APPENDIX A-6**

**KALKINES RIGHTS**

STATEMENT OF RIGHTS AND OBLIGATIONS

Before we ask you any questions, it is my obligation to inform you of the following:

You are here to be asked questions pertaining to your employment with CBP and the duties that you perform for CBP. You have the option to remain silent, although you may be subject to removal from your employment by the Service 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 propounded 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.

\*\*\*\*\*

Receipt by Employee

I have been given the above Statement of Rights and Obligations at the beginning of the interview held on \_\_\_\_\_.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

## **APPENDIX B: DUES WITHHOLDING CODES**

Information Codes used on the NTEU biweekly dues withholding data provided by the Employer.

<u>Code</u>	<u>Description/Explanation</u>
D	Continuing  Explanation: Dues withholding is continuing.
E	Insufficient Pay  Explanation: No union dues were deducted because the employee either did not receive any pay or there were insufficient funds remaining for union dues after higher precedence deductions were taken.
F	New Allotment  Explanation: New allotment represents the first pay period that a new allotment is effective. If there are insufficient funds for dues withholding during the first pay period, Code F will be used as the Information Code for that pay period and Code E will not be used in those instances.
G	Revocation  Explanation: Code G will appear on the magnetic tape only during the pay period in which dues withholding is revoked (terminated), and represents allotments that have been permanently terminated.
H	Separation (Other than Retirement)  Explanation: Identifies all employees separated during the pay period, except for those who retire.

<u>Code</u>	<u>Description/Explanation</u>
I	<p>Pay Adjustments (Plus Amounts Only)</p> <p>Explanation: Used only for adjustments that are being PAID to the union.</p>
J	<p>Movement Out of the Recognition Area</p> <p>Explanation: Identifies employees who are permanently transferred or reassigned to a non-bargaining unit position.</p>
K	<p>Seasonal Employee, or On-Call Employee, to Non-Duty Status (Pay Period that Seasonal or On-Call Employee is placed in Non-Duty Status)</p> <p>Explanation: Seasonal or On-Call employees with work schedule codes G, H, J, Q, R, or T, who are placed in a non-duty status, will be identified by Code K in the pay period the action occurs. Thereafter, they will be identified by Code N until the pay period they return to duty.</p>
L	<p>Temporary Promotion/Temporary Reassignment to Non-Bargaining Unit Position</p> <p>Explanation: Identifies employees temporarily being promoted or reassigned to non-bargaining unit positions until they return to their bargaining unit positions.</p>
M	<p>Reactivate Union Dues Withholding after Temporary Promotion/Temporary Reassignment is Completed</p> <p>Explanation: Identifies employees returning to their bargaining unit positions from temporary promotions/temporary reassignments to non-bargaining unit positions during the pay period they return.</p>

<u>Code</u>	<u>Description/Explanation</u>
N	<p>Non-Duty Status (seasonal or on-call employee in continued non-duty status)</p> <p>Explanation: Identifies seasonal or on-call employees with work schedule codes G, H, J, Q, R, or T who continue to be in a non-duty status for more than one pay period until they return to duty. During the first pay period they are in non-duty status, they will be identified by Code K.</p>
R	<p>Retirement</p> <p>Explanation: Identifies employees who retire during the pay period the retirement is effective.</p>
S	<p>Inter-Chapter Transfer (Transfer Out of Chapter)</p> <p>Explanation: Identifies dues withholding that is terminated for the “old chapter” when an employee changes union chapters. Employees transferring out will be listed on the chapter they are leaving as an “S” in the last pay period for which dues are withheld in the chapter they are leaving.</p>
T	<p>Inter-Chapter Transfer (Transfer In to Chapter)</p> <p>Explanation: Identifies dues withholding that is commenced for the “new chapter” when an employee changes union chapters. Employees transferring to the new chapter will be listed on the chapter they are transferring to as a “T” in the first pay period for which dues are withheld for that chapter.</p>
X	<p>Deceased</p>

Code                      Description/Explanation

Z                              Pay Adjustments (Minus Amounts Only)

Explanation: Identifies amounts which have been paid to employees for reimbursement for over withholding of union dues, and charged to agency funds. These amounts will appear on the tape solely to notify the union of the over withholding. No deductions will be taken from union dues withholding for pay adjustments.

**APPENDIX C: GRIEVANCE FORM (CBP 280)**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection

National Treasury Employees Union

**GRIEVANCE FORM**

		1A. GRIEVANCE NUMBER	1B. DATE FILED
2. FILER (EMPLOYEE NAME (S) OR UNION CHAPTER)		3. EMPLOYEE POSITION AND WORK STATION	
4. EMPLOYEE'S IMMEDIATE SUPERVISOR (NAME)			
5. EMPLOYEE'S REPRESENTATIVE (CHECK ONE)		5A. NAME OF UNION REPRESENTATIVE	
<input type="checkbox"/> SELF <input type="checkbox"/> UNION (COMPLETE 5A & 5B)		5B. UNION REPRESENTATIVE TELEPHONE NUMBER	
6A. SPECIFIC ARTICLE(S) OF THE AGREEMENT ALLEGED TO HAVE BEEN VIOLATED; SECTIONS OF APPLICABLE LAW OR REGULATION ALLEGED TO HAVE BEEN VIOLATED; OR THE SPECIFIC NATURE OF THE EMPLOYMENT CONDITION IN DISPUTE.			
6B. IF ALLEGATION OF UNFAIR LABOR PRACTICE, INDICATE SPECIFIC SECTION(S) OF 5 USC 7116(A) THAT HAVE BEEN VIOLATED BY CHECKING APPLICABLE BOX(ES). IT IS AN UNFAIR LABOR PRACTICE FOR THE AGENCY TO:			
<input type="checkbox"/> (1) to interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter;			
<input type="checkbox"/> (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;			
<input type="checkbox"/> (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;			
<input type="checkbox"/> (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;			
<input type="checkbox"/> (5) to refuse to consult or negotiate in good faith a labor organization as required by this chapter;			
<input type="checkbox"/> (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;			
<input type="checkbox"/> (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or			
<input type="checkbox"/> (8) to otherwise fail or refuse with any provision of this chapter.			
6C. PROHIBITED PERSONNEL PRACTICE (SEE ARTICLE 6, SECTION 2 OF THE NATIONAL AGREEMENT)			
7. STATEMENT OF THE CIRCUMSTANCES GIVING RISE TO THE GRIEVANCE (PROVIDE NATURE OF THE INCIDENT, PERSONS INVOLVED, TIME, DATE, PLACE, ETC.)			
8. ACTION REQUESTED			
9. EMPLOYEE SIGNATURE			
10. NTEU REPRESENTATIVE SIGNATURE			

## **APPENDIX D: DOUGLAS FACTORS**

The purpose of this Appendix is to provide information in relation to Section 4 of **Article 45: Disciplinary Actions** and Section 4 of **Article 46: Adverse Actions**. Consistent with these Sections (as well as applicable laws, rules and regulations), Deciding Officials will give appropriate consideration to the below criteria (Douglas Factors) when deciding the appropriate penalty for employee misconduct:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's past disciplinary record;
- (4) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon 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.

In considering these factors, however, it should be noted that they do not necessarily have equal weight, may not apply to every situation, and in some instances may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in the individual case

**APPENDIX E: CBP PERSONAL APPEARANCE STANDARDS-  
QUICK REFERENCE MATRIX**

CATEGORY	MALE	FEMALE
<b>HAIR</b>	<ul style="list-style-type: none"> <li>• Will be neat, trimmed and properly groomed.</li> <li>• Will not cover more than the top half of the ear, nor extend beyond the bottom of the shirt collar.</li> <li>• Will not be worn in extreme or faddish styles.</li> <li>• Will not interfere with the proper wearing of CBP headgear.</li> <li>• Hair ornaments prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• Will be neat, trimmed and properly groomed.</li> <li>• Will be arranged so that it does not extend below the shoulder.</li> <li>• Will not interfere with the proper wearing of CBP headgear.</li> <li>• Conservative hair ornaments permitted.</li> </ul>
<b>FACIAL HAIR</b>	<ul style="list-style-type: none"> <li>• Facial hair will be no longer than 1 inch in length unless required for medical or religious reasons.</li> <li>• Facial hair will be trimmed and well groomed.</li> <li>• Facial hair will not be worn in any extreme or unconventional styles.</li> <li>• Absent the existence of facial hair, the employee must present a clean shaven face.</li> <li>• Ungroomed beard stubble, would not be considered neat, clean and professional.</li> </ul>	Not applicable.
<b>FINGERNAILS</b>	<ul style="list-style-type: none"> <li>• Shall not extend beyond the fingertips.</li> <li>• False fingernails and polish prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• Shall extend no more than ¼ inch beyond the fingertips.</li> <li>• Must be well manicured and clean at all times.</li> </ul>
<b>COSMETICS</b>	Not applicable.	<ul style="list-style-type: none"> <li>• Only cosmetics which are conservative in color and amount shall be permitted.</li> </ul>
<b>RINGS</b>	<ul style="list-style-type: none"> <li>• Officers shall wear no more than two (2) rings.</li> <li>• Must not be likely to catch on other objects.</li> <li>• Shall be no larger than standard university or college rings.</li> <li>• Engagement and wedding rings count as one (1) ring.</li> </ul>	<ul style="list-style-type: none"> <li>• Officers shall wear no more than two (2) rings.</li> <li>• Must not be likely to catch on other objects.</li> <li>• Shall be no larger than standard university or college rings.</li> <li>• Engagement and wedding rings count as one (1) ring.</li> </ul>

<b>NECKLACES</b>	<ul style="list-style-type: none"> <li>• Must be concealed (not visible) while wearing uniform.</li> </ul>	<ul style="list-style-type: none"> <li>• Must be concealed (not visible) while wearing uniform.</li> </ul>
<b>EARRINGS</b>	<ul style="list-style-type: none"> <li>• Prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• May wear plain, stud-type earrings no more than ¼ inches in diameter.</li> <li>• Wearing of more than two pairs is prohibited.</li> </ul>
<b>BRACELETS</b>	<ul style="list-style-type: none"> <li>• Prohibited except for medical alert bracelets.</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibited except for medical alert bracelets.</li> </ul>
<b>WATCHES</b>	<ul style="list-style-type: none"> <li>• May wear one (1) conservatively styled watch.</li> <li>• Band will be gold, silver, black, or dark blue in color.</li> <li>• Bracelet style prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• May wear one (1) conservatively styled watch.</li> <li>• Band will be gold, silver, black or dark blue in color.</li> <li>• Bracelet style prohibited.</li> </ul>
<b>EYEWEAR</b>	<ul style="list-style-type: none"> <li>• Will be conservative in style and color.</li> <li>• Neon or brightly colored frames or mirrored lenses are not authorized.</li> <li>• Straps may be worn if they are black in color.</li> </ul>	<ul style="list-style-type: none"> <li>• Will be conservative in style and color.</li> <li>• Neon or brightly colored frames or mirrored lenses are not authorized.</li> <li>• Straps may be worn if they are black in color.</li> </ul>
<b>BODY PIERCING</b>	<ul style="list-style-type: none"> <li>• May not be visible.</li> </ul>	<ul style="list-style-type: none"> <li>• May not be visible.</li> </ul>
<b>TATTOOS/ BRANDS</b>	<ul style="list-style-type: none"> <li>• Must be concealed if obscene, racially motivated, or gang-related.</li> </ul>	<ul style="list-style-type: none"> <li>• Must be concealed if obscene, racially motivated, or gang-related.</li> </ul>
<b>BODY ALTERATIONS</b>	<ul style="list-style-type: none"> <li>• Intentional alterations prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>• Intentional alterations prohibited.</li> </ul>

## **APPENDIX F: FOREIGN LANGUAGE AWARDS PROGRAM**

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
U. S. CUSTOMS AND BORDER PROTECTION  
AND  
NATIONAL TREASURY EMPLOYEES UNION

Background: As part of the enactment of the Customs Officer Pay Reform Act (COPRA), Congress recognized that many individuals whom Customs Officers encounter on a daily basis do not speak English proficiently. In an effort to unify its inspectional workforce, U. S. Customs and Border Protection's (CBP) Office of Field Operations will apply the provisions of the Agency's 2007 Foreign Language Awards Program (FLAP) to employees covered by COPRA and all eligible CBP bargaining-unit employees in the NTEU bargaining unit as certified by the Federal Labor Relations Authority on or about May 18, 2007.

The following provisions of this MOU between CBP and NTEU provide clarification as to how CBP will effectuate its implementation of FLAP for employees represented by NTEU.

1. Upon employee request, CBP will agree to allow former Customs Officers covered by the 1996 U.S. Customs and NTEU FLAP agreement to be retested under the guidelines of the CBP unified FLAP. If necessary, applicable time frames e.g. those contained in 5.4.5 of the policy will be waived. Those former Customs Officers who do not request to be retested will receive an award based on their prior proficiency test score under the 1996 FLAP agreement.
2. During new employee orientation CBP will provide FLAP information. Materials will be made available as referenced in 5.1.1 of the policy. CBP will also afford the union an opportunity to meet with the new bargaining unit employees during the orientation.
3. CBP will pay the cost of the initial test for any foreign language, as well as proficiency re-examinations. CBP will only pay the cost for one proficiency examination per fiscal year. Two additional proficiency examinations will be paid for by CBP in a fiscal year if they are identified as a "Language of Special Interest." Employees who do not reach the minimum proficiency rating of S2+

can apply through their chain of command for retesting the following fiscal year. An employee's request for retest will be approved if the employee's initial test score results in an S-2 proficiency determination. This retesting provision will be limited to one test. Once an employee's foreign language proficiency has been determined he/she may request to be re-examined after 5 years of the original test date at the agency's expense. This provision will be reflected in 5.2.1 of the policy.

4. Employees reserve the right to request an appeal/review of their proficiency determination within 2 weeks of receiving a score if the employee believes that the score is inaccurate. The employee will submit a written request through their chain of command stating their desire to have their proficiency determination reviewed.
5. CBP will attempt to notify the applicant of the date, place, and time of the proficiency test as far in advance as possible.
6. Payment of cash awards for each fiscal year will be made no later than 90 days after the close of the fiscal year in which the award was earned. All foreign language awards are subject to the availability of CBP funds. CBP will make reasonable efforts to ensure that there are sufficient monies available to fund FLAP awards.

<u>Proficiency rating</u>	<u>Percentage of Basic Pay</u>
S2+	1%
S3 or S3+	3%
S4 or above	5%

7. Employees who submit a written application to their supervisor for a proficiency examination within 90 days of the start of the fiscal year or within 90 days of returning from the CBP Academy and through no fault of their own, are not tested prior to the conclusion of the fiscal year will be guaranteed to receive an award, if qualified, for the fiscal year in which the application for the proficiency examination was submitted. In such instances, payment of the retroactive award will be made within 90 days of Headquarters' receipt of the qualifying test score.
8. Annually, CBP will prepare a report of FLAP testing results, showing the number of scores within each proficiency level 0 through 5 that will be broken down by Director Field Operations and provided to the union.

9. The information contained in items 2 through 7 of this MOU will be reflected in the policy.

This agreement is effective upon signature of both parties, and subject to the requirements of 5 U.S.C. § 7114(c).

*(As Ordered by the Federal Service Impasses Panel on April 11, 2008)*

## **APPENDIX G: PROCEDURES FOR PROCESSING EEO GRIEVANCES**

### **Procedures for Processing EEO Grievances Pursuant to Article 47 of the May 11, 2011 Collective Bargaining Agreement between U.S. Customs and Border Protection and the National Treasury Employee Union**

#### **1. Purpose**

The following constitutes the U.S Customs and Border Protection's (CBP) procedures for processing EEO Grievances pursuant to Article 47 of the National Treasury Employees Union (NTEU) Collective Bargaining Agreement (CBA), date May 11, 2011.

In accordance with Article 47 Section 1.A of the CBA, CBP must provide equal opportunity in employment for all qualified persons and prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or reprisal for filing a claim on one of these bases, except where required by statute or pursuant to bona fide occupational qualifications. A bargaining unit member who believes that he or she has been subjected to discrimination may file either an EEO grievance or a statutory EEO complaint, but not both.

#### **2. Authority**

Pursuant to regulations issued by the Equal Employment Opportunity Commission to implement section 717(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16(b); section 15(b) of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 633a(b); section 505(a)(1) of the Rehabilitation Act of 1973, 29 U.S.C. § 794a(a)(1); the Fair Labor Standards Act, 29 U.S.C. 201 et seq.; Executive Order 12067, 43 Fed. Reg. 28,967 (1978); Executive Order 11478, 34 Fed. Reg. 12,985 (1969), as amended by Executive Order 12106 (1979) and the Collective Bargaining Agreement Between U.S. Customs and Border Protection and the National Treasury Employees Union, dated May 11, 2011.

#### **3. Eligibility**

Employees covered by the NTEU agreement may elect to file an EEO Grievance or traditional EEO complaint as set-forth under 29 C.F.R. part 1614 to prosecute claims of illegal employment discrimination, with or without a representative.

#### **4. Scope**

Pursuant to Article 47, Section 5.A, of the CBA any employee, covered by the CBA with the NTEU who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, disability, or reprisal for filing a claim on one of these bases, except where required by statute or pursuant to bona fide occupational qualifications may file **one** of the following:

- A. A grievance pursuant to the provisions of Article 47 of the CBA. (hereinafter “an EEO grievance”);
- B. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by Federal law;
- C. A statutory EEO complaint pursuant to Equal Employment Opportunity Commission (EEOC) regulation 29 C.F.R. § 1614;
- D. A grievance under the procedures contained in Article 27 of the CBA; or
- E. A Complaint of Possible Prohibited Personnel Practice with the Office of Special Counsel.

## **5. Steps in the EEO Grievance Process**

### **A. Pre-Complaint/Grievance Stage**

1. To initiate a Pre-Complaint/Grievance, a CBP employee (complainant) assigned to a position covered by the CBA with the NTEU, with or without a representative, must seek informal EEO counseling within 45 calendar days of the date of the alleged discriminatory act or the effective date of a personnel action or, the date when the employee became aware or should have become aware of the alleged incident by:
  - a. Completing an [informal counseling](http://www.cbp.gov/eoo) request contact form located at [www.cbp.gov/eoo](http://www.cbp.gov/eoo);
  - b. Sending an e-mail to [cbpeeocomplaintfiling@dhs.gov](mailto:cbpeeocomplaintfiling@dhs.gov);
  - c. Contacting the local DCR Officer; or
  - d. Calling 1-877-MY-EEOHELP(1-877-693-3643).
2. Within three business days of receiving the request for pre-complaint/grievance EEO counseling, CBP will acknowledge the request for counseling in writing (an e-mail is acceptable) and assign a DCR Specialist (EEO Counselor) to conduct informal EEO counseling.
3. Upon being assigned to process the grievance, the EEO Counselor shall contact the grievant to conduct an initial interview.
4. At the initial interview with the grievant and his or her representative, the EEO Counselor will provide the grievant with the Notice of Rights and



Responsibilities under CBP's EEO Complaint Process, the Acknowledgement of the EEO Complaint Process Notice of Rights and Responsibilities Form, the Anonymity Form and the Consent to Mediate Form

- 5** **If mediation is elected**, the grievant or his or her representative must complete and submit the Anonymity Form, Consent to Mediate Form and the Acknowledgement of Notice of Rights and Responsibilities Form to the EEO Counselor within five business days.

## **B. Scheduling and Convening the Mediation Session**

- 1.** **If mediation is elected**, the Mediation Coordinator will contact the Responsible Management Official (RMO)<sup>2</sup> no later than three business days after receipt of the Consent to Mediate Form to schedule a date, time and place for the mediation session.
- 2.** If the RMO cannot participate in the mediation session, he/she must designate another management official with settlement authority to act on his/her behalf. The management official selected to participate in the mediation session must have either the authority to enter into settlement or the ability to contact the management official with settlement authority and receive verbal approval during the mediation session.
- 3.** The initial mediation session should take place no later than 30 calendar days after the initial request for EEO counseling. Subsequent mediation sessions shall be at the discretion of the parties, however they cannot exceed 90 Calendar days after the initial request for EEO Counseling in accordance with Article 47 Section 6.B and 6.C of the CBA.
- 4.** The Mediation Coordinator will assign a Mediator to conduct the mediation session.
- 5.** Once a Mediator is selected, he or she will contact the involved parties to confirm the date, time and location of the mediation session.
- 6.** The Mediator will then send a confirmation e-mail to the parties that will include the time and date of the session, names of attendees, as well as a brief description of the mediator's role and the mediation process.

## **C. The Mediation Session and Settlement Agreements**

- 1.** At the initial mediation session, the Mediator will explain the mediation process to the parties. If the parties mutually agree to any additional mediation sessions, the

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<sup>2</sup> The RMO should be identified by the employee and assessed by the EEO Counselor and/or Mediation Coordinator to ensure that the RMO is able to respond to the employee's issue, effectuate some resolution and has settlement authority.

Mediator will schedule the sessions as necessary. Additional sessions should be scheduled as soon as possible.

2. If the mediation session produces a resolution, the Mediator will assist the parties in preparing the written settlement agreement.
  - a. The settlement agreement will be drafted using the appropriate settlement agreement template as a guide.
  - b. The Mediator will forward the draft agreement to the Mediation Coordinator.
  - c. The Mediation Coordinator will facilitate the review and signature process and shall ensure that all parties receive a copy of the signed agreement.
3. At the conclusion of the last mediation session, the Mediator will provide the parties with a Mediation Assessment Form. The purpose of the assessment is to obtain feedback from the participants on the effectiveness of the mediation session. The parties will either fill out the Mediation Assessment at the conclusion of the last mediation session or forward the completed Mediation Assessment Form to the Mediation Coordinator within three business days.
4. The Mediator will complete and submit the Mediator's Completion Form to the Mediation Coordinator, which should only reflect the time, date and location of the mediation session, the parties involved, the duration of the mediation session, and whether or not there was a settlement agreement.
5. No part of the discussions, deliberations, conclusions, offers or recommendations generated during mediation shall be binding in any way on either party once the matter in dispute has been advanced to arbitration; nor shall any of the information disclosed be used by either party as evidence in an arbitration hearing.

#### **D. Election of Process**

1. At the conclusion of the pre-complaint/grievance process, the EEO counselor will conduct a final interview at which time the employee may elect to withdraw the case, or request a Notice of Right to File a Formal Discrimination Complaint (NORTF). The employee will be required to sign for receipt of the NORTF. (E-mail transmission, with an acknowledgement of receipt, is an acceptable method of delivery).
2. Upon receipt of the NORTF, the Grievant has the option of either filing a Formal EEO complaint pursuant to 29 C.F.R part 1614 within 15 calendar days of receipt of the NORTF or filing a formal EEO grievance by submitting a grievance in accordance with Section 12.B. (Formal Submission Step) of Article 27 of the CBA within 15

calendar days of receipt of the NORTF.

## **E. Filing and processing a Formal EEO Grievance**

1. Consistent with Article 27 of the CBA, if the EEO grievance is not resolved during the pre-complaint grievance process, the Grievant may file a written formal EEO grievance, which should include EEO based and non-EEO based allegations, by submitting a completed form **CBP Form 280**, to the local Port Director or equivalent management official or their designee within fifteen (15) calendar days of receipt of the NORTF and concurrently serve the Executive Director of CBP's Office of Diversity and Civil Rights(DCR) at the following e-mail box: [cbpeecomplaintfiling@dhs.gov](mailto:cbpeecomplaintfiling@dhs.gov), or by Fax to (510)-637-3199 in accordance with Article 47 section 6.D. The CBP Form 280 must contain a formal allegation of discrimination as defined in 29 C.F.R. part 1614.106. Additionally, any contractual violations concerning the same issue should be raised within fifteen (15) calendar days of receipt of the NORTF, consistent with Article 27 of the CBA.
2. Upon receipt of the filing of the formal EEO grievance, the Executive Director, March 27, 2013DCR (or his/her designee) will provide a copy of the EEO Counselor's Report to the employee (or his/her representative) and the management official to which the grievance was filed under Section 6.D.
3. Upon receipt of the filing of the formal EEO grievance, the local Port Director or equivalent management official or their designee will meet with the employee and representative, if any, within seven (7) days of the filing and thereafter respond to all allegations raised (EEO Based and Non-EEO Based) within fourteen (14) days of the meeting in accordance with Article 27 section 12.B of the CBA concurrent with and independent of DCR's processing of the EEO Based issues.
4. If the employee is not satisfied with the Step 2 decision of the Port Director or equivalent management official (or designee) the employee may file a Step 3 grievance with the Director, Field Operations or equivalent management official (or designee) within fourteen (14) days of receipt of the Step 2 decision pursuant to the procedures of Article 27 section 12.C. of the CBP. The step 3 grievance must include the CBP form 280 and the Step 2 grievance decision.
5. The formal EEO grievance procedure will be stayed at the Step 3 until the ROI has been distributed to both parties. Within seven (7) days of the receipt of both the Step 3 grievance and the ROI and following the expiration of the Mediation period outlined in F.2.d. below, the Director, Field Operations or equivalent management

official (or designee) will, upon request, meet with the employee and representative, if any. In the event the employee does not request a meeting to discuss the grievance, the Director, Field Operations or equivalent management official (or designee) may request a meeting.

The Director, Field Operations or equivalent management official (or designee) will respond to all allegations raised (EEO Based and Non-EEO Based) within seven (7) days of the meeting, or if no meeting is held, within fourteen (14) days of the appeal, (i.e. provide the Step 3 grievance response specified in Article 27 Section 12.C by DCR).

6. If the employee is not satisfied with the Step 3 decision, the Union may invoke arbitration within thirty (30) days of receipt of the decision, or if no Step 3 decision is provided within the time period set forth in Article 27 Section 12.C. (2), the Union may invoke arbitration within thirty (30) days of when a decision should have been issued, or, the Union may invoke arbitration within the time frame set forth in provision G. Arbitration below. Arbitration will be invoked using the process set forth in Article 28: Arbitration.
7. If the Union fails to invoke arbitration within the applicable time frames the grievant may appeal the final action (i.e. Step 3 final agency decision on the EEO Based allegation) to the EEOC, in accordance with 29 C.F.R. § 1614.401(d), regarding any issue of employment discrimination raised in the negotiated EEO grievance.
8. Upon failure to timely file a Step 3 grievance DCR will cease all further action to investigate EEO based allegations and the EEO grievance will be considered closed with no further right to appeal.

## **F. Processing of the Formal EEO Grievance by DCR**

1. Dismissal of Formal EEO Grievance
  - a. Upon receipt of the formal EEO Grievance, DCR will acknowledge receipt in writing to the Grievant and the designated Union Representative.
  - b. If, based on the standards articulated in 29 C.F.R part 1614, the formal EEO grievance is dismissed in whole, the grievant shall have the right of appeal available under 29 C.F.R. § 1614.110.
2. Formal EEO Grievance Accepted for Investigation

- a. If the formal EEO grievance is accepted in whole, or part, DCR must complete the investigation within 150 calendar days after the filing of the formal EEO grievance.
- b. Upon completion of the investigation, DCR will send management, the Grievant and Union Representation an electronic copy of the Report of Investigation (ROI) <sup>3</sup>.
- c. If DCR fails to provide the Grievant and the Union with the ROI within 150 calendar days from the filing of the formal EEO grievance, the Union shall have the authority, but is not required, to proceed immediately to arbitration.
- d. Within 45 calendar days of receiving the ROI, the Responsible Management Official (RMO) and Union officials may attempt to mediate the dispute with the employee. The following timeline will be followed during the 45 Day Mediation period:
  - 1. Parties to advise DCR's Mediation Coordinator of their desire to Mediate between day 1-10
  - 2. Mediation Scheduled by 15<sup>th</sup> day
  - 3. Mediation Conducted by 25<sup>th</sup> Day
  - 4. Follow-up Mediation conducted by 35<sup>th</sup> Day
  - 5. Agreement reached by 45<sup>th</sup> Day
- e. If the parties reach resolution within the 45 calendar-day time frame, the terms of the agreement will be reduced to writing using the appropriate template.

## **G. Arbitration**

- 1. If the parties are unable to produce a voluntary resolution during the 45 calendar period after receipt of the ROI, the dispute may be moved to arbitration by either party to this agreement within 15 days after the expiration of the forty-five (45) days referenced above pursuant to the procedures outline in Article 47 Section 6.E of the CBA.
- 2. In the event the EEO grievance alleges discrimination and a non-EEO based claim, the Arbitrator will hear and rule on both issues.
- 3. During the hearing and in his/her decision, the Arbitrator will follow and be bound by applicable laws, rules, regulations and case law precedent.

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<sup>3</sup> The Report of Investigation is also commonly referred to by DCR procedures and documents as the Investigative File. The terms are synonymous.

4. In addition to the involved parties, a copy of the arbitrator's award will be served on the Executive Director, DCR (or his/her designee).

#### **H. Notice of Policy or Procedural Change**

1. If, at any stage of the EEO grievance or statutory complaint process, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification and an opportunity to negotiate the matter prior to implementation of such changes in accordance with 5 U.S.C. Chapter 71 and Article 26: Bargaining.
2. Following adjudication under the EEO grievance or statutory complaint procedure, the decision will generally affect the complainant alone. However, when a formal discussion is held by the Employer with the complainant and/or the complainant's representative for the purpose of implementing a decision which impacts on employees in the bargaining unit, the Union will be given an opportunity to be represented at the meeting.