

RE-ISSUED WITH CORRECTION

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE

And

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, NATIONAL JOINT COUNCIL OF  
FOOD INSPECTORS, COUNCIL 45

Case No. 21 FSIP 002

**ARBITRATOR'S OPINION AND DECISION**

The U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (Agency or FSIS) located in Washington, D.C. filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerning a dispute from negotiations over a successor collective bargaining agreement (CBA). The Agency's mission is to protect the public's health by ensuring the safety of meat, poultry, and processed egg products. The American Federation of Government Employees, National Joint Council of Food Inspectors, Council 45 (Union) represents a bargaining unit consisting of approximately 6,300 food and consumer safety inspectors located throughout the country. The parties are covered by a CBA that became effective on June 13, 2008, and was signed for a three-year duration. The agreement has continued to roll over in one-year increments and remains in effect until a successor CBA is reached.

**BACKGROUND AND PROCEDURAL HISTORY**

In June 2019, the parties initiated ground rules negotiations, executing a ground rules agreement on August 9, 2019. Thereafter, the parties engaged in successor CBA negotiations on the following dates: September 17 to 20 and September 23 to 26, 2019; October 8 to 10 and October 16, 2019; November 5 to 7, 2019; December 3 to 6 and December 9 to 12, 2019; January 14 to 16, 2020;

and February 4 to 7 and February 10 to 13, 2020. During the negotiations, the parties reached some agreements over provisions within different articles, but could not reach full agreements on any of the 43 articles that were in dispute. As a result, the parties enlisted the services of the Federal Mediation and Conciliation Service (FMCS) in June 2020.

The parties engaged in mediation assistance with FMCS on the following dates: June 23 to 25, 2020; June 30 to July 1, 2020; July 21 to 23, 2020; July 28 to 30, 2020; August 11 to 13, 2020; August 24 to 27, 2020; September 1 to 2, 2020; September 10, 2020; and September 22 to 24, 2020. During the parties' mediation sessions, they reached agreement over three articles, but prior to receiving a release from the FMCS mediator, the Agency filed a request for assistance with the Panel on October 9, 2020.

On November 11, 2020, the Union argued that the parties were not at an impasse due to three unfair labor practice (ULP) charges it filed against the Agency, a grievance, a negotiability dispute, and because the parties did not fully bargain over the 16 articles during negotiations. On December 15, 2020, the Panel considered the Union's arguments and rejected them. Accordingly, the Panel asserted jurisdiction over the 40 articles in dispute, finding that the parties sufficiently bargained to impasse in accordance with its Regulations.<sup>1</sup> On December 28, the Panel ordered that the parties resolve the dispute by a Mediation-Arbitration procedure with the undersigned. The parties participated in three days of Mediation-Arbitration on January 15, 19, and 21, 2021. Based upon the Mediation-Arbitration proceeding, the parties are directed to follow the language ordered below.

### **POSITIONS OF THE PARTIES AND ORDERS**

#### **1. Article: Assignments and Rotations of Assignments**

##### **General arguments**

The Agency generally asserted the Union's proposals for this article implicated the Agency's right to assign work under § 7106 of the Federal Service Labor-Management Relations Statute ("the Statute"), but did not explain specifically what language in the Union's proposals infringed on its rights or how it did so. Conversely, the Union disputed the Agency's view, contending without elaboration that its proposals did not violate § 7106.

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<sup>1</sup> 5 C.F.R. § 2470.2(e).

## Section 1: Policy

- a. Summary of proposals:** The Union wishes to ensure that "[c]urrent rotation patterns, and durations, remain in effect" and to require that employees [receive] sufficient training to perform the duties assigned" before being assigned to a position. By contrast, the Agency wants rotations to "be determined by supervision at the local level in conjunction with the BUE's and the appropriate Union representative."
- b. Agency argument:** The Agency explained that it wants the flexibility to start over without inherited rotation patterns and determine new patterns going forward at the local/plant level. The Agency does not want to have to bargain every change in rotation patterns, which occur frequently.
- c. Union argument:** The Union contended that, if past rotation patterns are discontinued, there should be a mechanism for re-determining the rotation patterns to avoid overly disrupting conditions of employment.
- d. Order:** **The parties shall adopt the Agency's proposal in full.** The parties did not exhibit a clear understanding of current rotation patterns. Re-determining such patterns at the local level, as the Agency seeks to do, will permit a reevaluation and help ensure rotation patterns align with the Agency's interest in fulfilling its mission.

## Section 2: Definitions

- a. Summary of proposals:** The Agency wishes to define "rotation" as "a series of assignments *within an establishment*" (emphasis added). The Union disagrees with this modifier and seeks to define/establish a "rotation pattern" under which employees rotate through assignments at plants "within a defined geographical area" and "on a regularly scheduled basis."
- b. Agency argument:** Rotations occurring within a geographic area may cross circuit boundaries, which can cause administrative problems like placing employees under different supervisors, creating additional paperwork and requiring the movement of agency equipment.

- c. **Union argument:** Cross circuit rotations do not occur often and are not a problem. Rotating inspectors among multiple plants can prevent inspectors from becoming overly familiar with plant employees and bring fresh eyes/perspectives to bear in each plant which, in turn, helps ensure food safety.
- d. **Order:** The Agency's ability to manage its workforce and accomplish its mission are better served by its proposal, which the parties shall adopt in full.

### **Section 3: Assignments**

- a. **Summary of proposals:** Both parties seek to permit employees to trade assignments "if mutually agreed to by the involved inspectors, and subject to approval of the immediate supervisor(s)." The Agency seeks to require employees desiring to trade assignments to request to do so "at least two (2) weeks prior to the effective rotation date." The Union would only require employees to submit their requests "as soon as [the] practical/need/desire for the trade [is] known." Additionally, the Union would require supervisors to respond to requests to trade assignments in writing and, if the request is denied, to inform the Union of the denial in writing with "an explanation of why it was denied."
- b. **Order:** During the Mediation-Arbitration, the Union indicated it might be able to agree with the Agency's proposal, but ultimately declined to do so without explanation. The Agency's proposal permits it to better manage its workforce by requiring employees to request to trade shifts two weeks in advance. Further, the Union's proposal would unnecessarily burden the Agency by requiring supervisors to provide written explanations for the denial of any trade shift requests. **Accordingly, the parties shall adopt the Agency's proposal in full.**

### **Section 4: Modifications to assignments**

- a. **Summary of proposals:** The Union seeks to require the Agency to notify it at least 30 days prior to modifying, adding or eliminating any assignment(s). Such notice would include "all decision-making documents, and correspondence, used in the decision-making process as

they relate to the proposed change." The Union would also require the Agency to "meet to discuss the proposed change" with the Union and provide employees with at least 10 days' notice before changing any assignment(s). The Agency provides no counter.

- b. Agency argument:** The Union proposal would negatively affect the Agency's ability to fulfill its mission. It would be onerous to discuss every change in assignments. Management retains the right to assign work and needs flexibility.
- c. Union argument:** The Agency has a known and thorough process for changing assignments. It has the ability to inform the Union of its decision-making in advance. The Union might be open to the Agency providing less than the 30 days' notice in its proposal.
- d. Order: The Union shall withdraw its proposal.** The Union failed to adequately justify the need for its proposal in light of the impositions it would place on Agency time and resources.

#### **Section 6: Volunteers for Relief and Night Assignments**

- a. Summary of proposals:** The Agency's proposal specifies that it would rely on volunteers to fill relief and night assignments "[t]o the extent possible," provided the immediate supervisor approves and it results in no additional cost to the Agency. The Union seeks to retain "current volunteer policies and practices," but also would establish such policies if they don't exist. The Union's proposal would provide a more detailed process for soliciting and selection of volunteers and require the Agency to provide the Union with notices of volunteer opportunities, interest, and selection.
- b. Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached agreement on this article. **Accordingly, the parties shall adopt the following agreed-upon language for this section:**

To the extent possible, volunteers shall be used on relief and night assignments, if acceptable to the immediate supervisor and at no additional expense to the Agency. Volunteer policies and practices

effective at the time of implementation of this Agreement will remain in effect.

### **Section 7: Data requests**

- a. Summary of proposals:** The Union seeks to provide a contractual right to request and receive "all information related to [rotation] trade[s]," including "the number of denials and any all [sic] reasons for the denial" "as often as it deems necessary." The Agency provides no counter.
- b. Order:** During the course of Panel proceedings, the parties informed the undersigned they had agreed to not adopt the Union's proposal. **Accordingly, the undersigned orders the Union to withdraw its proposal for this section.**

## **2. Article: Detail and Pull Pattern**

### **General arguments**

The Agency generally asserted the Union's proposals for this article implicated the Agency's right to assign work under § 7106 of the Statute, but did not explain specifically what language in the Union's proposals infringed on its rights or how it did so. Conversely, the Union stated it was not intending to interfere with the Agency's right to assign work. The Union noted that the Agency may have an obligation to bargain over actions which sufficiently effect conditions of employment.

### **Section 1: Policy**

- a. Summary of proposals:** The Union proposes a specific list of information that the Agency must provide to an employee regarding an assignment. The Union also seeks to provide that "[f]ull time Inspectors will have the first opportunity to accept a detail." In contrast, the Agency's proposal would only require that it provide "sufficient information" to an employee regarding a detail.
- b. Agency argument:** The Agency believes it already generally provides the information included in the Union's proposal and that there is not a need to list that in the CBA. The Union's overly specific proposal may create the potential for grievances if the Agency

does not provide any of the listed information for some reason.

- c. Union argument:** Each district handles travel orders differently; a standardized version including all important information would be an improvement.
- d. Order:** The parties acknowledge the significance of the information being provided to employees, and the Agency could not provide a compelling reason for not listing the information in the CBA. However, the issue is also addressed in the "Official Travel" article, which is a more appropriate location for determining the content of travel instructions. The Union failed to adequately justify the need for granting full time inspectors the first opportunity to accept a detail, which may also implicate the Agency's right to assign work under § 7106 of the Statute. **Accordingly, the parties shall adopt the Agency's proposal in full.**

#### **Sections 2 and 3: Definition, Out of Duty Station Details**

- a. Summary of proposals:** The primary differences in this section involve whether employees on detail will be guaranteed a return to their duty station once every two weeks, as the Union proposes, or once every three weeks, as the Agency proposes. Additionally, while the Agency would permit supervisors to consider volunteers for details, the Union would require the use of volunteers "[a]bsent a particularized need for specific skills or qualifications." The Union also seeks to require the Agency to "brief the Union when there is a need to make a variation from the Agency maintained detail roster."
- b. Agency arguments:** The Agency would like to rely primarily on volunteers for out-of-duty station details, but also wants to protect its right to assign work. The Agency could agree to stronger language regarding a preference given to volunteers.
- c. Union arguments:** The Union would prefer that employees be permitted to return to their duty station every two weeks instead of three, which is the current practice, but does not have any particular objections to the current practice and could live with it.

- d. Order:** During the course of the Panel proceedings, the Union informed the undersigned it had decided to accept the Agency's proposals for Sections 2(a) and 3.

**The parties shall adopt the Agency's proposal for Section 2 in full, and the Agency's proposal for Section 3 modified as follows:**

"Supervisors ~~may consider~~ will endeavor to find qualified volunteers before directing employees.

BUEs will be permitted a return trip to their duty station every third (3<sup>rd</sup>) weekend in cases where details out of the duty station are for extended periods of time.

The Agency will notify the Union when there is a need to make a variation from the Agency maintained detail roster."

#### **Section 4: Pull Patterns**

- a. Summary of proposals:** The Union seeks to retain current pull procedures and require the Agency to bargain over any changes implemented mid-term. The Agency seeks to give supervisors authority to determine pulled employees provided "pull patterns are done in an equitable manner."
- b. Agency argument:** Modernization has reduced the need for pull patterns. Existing pull patterns are old/reached by mutual agreement in different ways around the country and should be uniform. The Agency wants to retain its right to assign work and does not want to have to bargain over changes to pull patterns.
- c. Union argument:** Employees need consistency and stability. The Agency has not shown that existing pull patterns are not working.
- d. Order:** **The parties shall adopt the Agency's proposal in full.** The parties should be permitted to reevaluate and reestablish pull patterns to create a uniform system and confirm that it is administered in a way that does not hinder the Agency's ability to fulfill its mission.



### Section 5: Vacant Assignment

- a. **Summary of proposals:** The Agency proposes that "Supervisors shall determine the position to be covered," while the Union counters that "Detailed employees shall fill the vacant assignment."
- b. **Agency argument:** The Agency acknowledges that detailed employees should fill vacant positions but wanted to emphasize its right to assign work.
- c. **Union argument:** If an employee is detailed, they should fill the vacant position that is the subject of the detail.
- d. **Order:** As the parties agreed during the Mediation-Arbitration to blend the two proposals, they shall adopt the following language for this section:

"Unless otherwise directed by their supervisor, detailed employees shall fill the vacant assignment."

### Section 6: Details to Higher Graded Positions

- a. **Summary of proposals:** The parties agree that "Details to higher-graded positions shall be consistent with current Agency rules, regulations and policies." However, the Union seeks to enshrine these rules into the CBA, while the Agency prefers to simply reference them.
- b. **Argument summary:** The parties agree that there is no substantive difference between the proposals. The dispute revolves around whether to simply reference applicable authorities for a shorter CBA, as the Agency seeks to do, or spell out the requirements of the applicable authorities for a longer CBA, as the Union proposes.
- c. **Order:** During the course of Panel proceedings, the Union agreed to accept the Agency's proposal for this section. **Accordingly, the undersigned orders the parties to adopt the Agency's proposal in full.**

### **Section 8: Reprisal**

- a. Summary of proposals:** The Agency seeks to strike this section from the CBA. The Union seeks to retain this section, which directs that the Agency "not use details as a form of reprisal for Union activity, the current holding of a Union office, the past holding of a Union office, Whistleblowers, EEOC complaints, grievances, or any other right granted by the law or the contract."
- b. Order:** During the course of Panel proceedings, the Union agreed to the Agency's proposal to strike this section. **Accordingly, the parties are directed to strike this section.**

### **3. Article: Drug Free Workplace**

#### **Section 1: Policy**

- a. Summary of proposals:** The parties proposals share many similarities. However, the Union's proposal would provide that employees working in states that have legalized the use of drugs like cannabis would not be found to be in violation of Agency policy by the use of such drugs.
- b. Order:** During the course of Panel proceedings, the Union agreed to accept the Agency's proposal. **Accordingly, the parties shall adopt the Agency's proposal in full.**

### **4. Article: Health and Safety**

#### **Section 1: Policy**

- a. Summary of proposals:** The parties' proposals are substantively similar, except that the Union's proposal would obligate the Agency to maintain a workplace free from both "recognized" and "emerging" hazards.

#### **Section 2: Agency responsibilities**

- a. Summary of proposals:** The parties agree on much of this section, but the Union's proposal goes into more detail than the Agency's. Specifically, the Union would require the Agency to post various notices, at least some of which it is required to post by other authorities. The Union's proposal also allows employees "to decline to

perform an assigned task" if they possess a "reasonable belief" that it would pose "an imminent danger of serious bodily harm or death. Further, the Union would require the Agency to provide "adequate welfare facilities, space, light, ventilation, cooling and heat in both the office and the plant," as well as hearing protection to "employees exposed to excessive noise levels." Finally, the Union would require the Agency to notify "industry officials" and the Union safety committee of "unsafe and unhealthy conditions" at industry facilities and to "take such action as is necessary... to ensure compliance with established health and safety laws and regulations."

#### **Section 4: Employee responsibilities**

- a. Summary of proposals:** The Agency seeks language stating that employees have "a primary responsibility and obligation to know and comply with safety rules and practices." The Union disagrees with inclusion of this language. The Agency seeks to provide that employees have a responsibility to "promptly report unsafe working conditions/practices" to their supervisors and comply with Agency policies regarding the use of personal protective equipment, and that failure to do so "may result in disciplinary action." The Union objects to the inclusion of this language.

#### **Section 5: Safety committees**

- a. Summary of proposals:** While both parties agree to establish circuit-level safety committees, the Agency believes they should meet at least semi-annually, while the Union would like them to meet at least quarterly. The Agency seeks to require that the two Union members of each committee be from the applicable circuit; the Union opposes this requirement. Further, the Union proposes regular training for safety committee members on duty time with paid travel and per diem. Finally, the Agency seeks to require the committees to follow Agency policy regarding safety committees, while the Union objects to the inclusion of this requirement.

#### **Section 6: Investigations**

- a. Summary of proposals:** The parties' proposals are identical except that the Agency wishes to provide

travel and per diem expenses only for "a Union representative *from within the circuit* to accompany the OSHA inspector(s) conducting inspections *within that circuit*." The Union objects to this limitation.

#### **Section 8: Reports**

- a. Summary of proposals:** The parties agree that the Agency shall provide the Union with accident reports, safety inspection reports and industrial hygiene reports upon request. However, the Union proposes to strike language in the Agency's proposal requiring the Agency to provide such reports to "the appropriate *circuit health and safety committee*" (emphasis added), seeking instead that the Agency provide the reports "to the appropriate safety committee."

#### **Section 10: Plant Reviews by Environmental Health and Safety Specialists**

- a. Summary of proposals:** The Agency proposes to "provide for an exit interview with the In-Plant Union representative" at the close of plant safety reviews. However, the Union seeks advance notice from the Agency of such reviews and the "ability to attend and be actively involved in the review" on duty time.

#### **Section 11: Introduction of new chemicals**

- a. Summary of proposals:** The Union seeks to add a requirement for the Agency to conduct "an air quality study" before "the introduction of new chemicals into any facility where unit employees work or have the possibility of working" and after such introduction. The Union also seeks to obligate the Agency to "ensure proper ventilation prior to the introduction of any chemical use in facilities where unit employees work or have the possibility of working." Finally, the Union would require the Agency arrange for a review of "[e]xisting plants that use chemicals" in which "employees work or have the possibility of working."

#### **Section 12: Use of firearms by establishments**

- a. Summary of proposals:** The Union seeks to enshrine in the contract existing Agency policy regarding the use of

firearms "to render an animal unconscious prior to slaughter."

**Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached agreement on this article. **Accordingly, the parties shall follow the agreed upon language.**

## 5. Article: Hours of Work

### Section 1: Policy

**a. Summary of proposals:** The parties agree that work schedules will be "in accordance with... Government-wide regulations and Agency policy and directives." However, the Union seeks to include a lengthier statement of what applicable regulations require than the Agency's more streamlined approach.

The parties also agree that employees may not "perform on-line post-mortem inspection duties" more than 10 hours per workday and may not perform "off-line inspection duties" for more than 12 hours in a workday. However, the Agency's proposal includes an exception to these hourly limits in cases when an employee's supervisor determines extra time is necessary "to accomplish the Agency's mission." In such cases, the Agency will "normally" seek to use volunteers before requiring employees to work the extra hours. The Union opposes this exception. The Union also proposes to specify that employees will have at least 10 hours between work shifts.

**b. Agency argument:** Its proposal is effectively current practice. While employees may sometimes need to work beyond the daily hourly work limits, it's not the norm. Unforeseen circumstances may necessitate fewer than 10 hours between shifts. The Agency experiences high turnover and needs to retain its right to assign work to make sure it can accomplish its mission.

**c. Union argument:** It is unsafe to have employees working as many as 18 hours a day and then have little time between shifts. However, the Union acknowledges that the matter is one of management rights.

- d. Order:** The parties generally agree that the Agency has the right to set hourly work limits and schedules, and to create exceptions to them if necessary to fulfill its mission. However, the Union's safety concerns are not to be taken lightly. **Accordingly, the parties shall adopt paragraph A of the Agency's proposal in full, and shall adopt paragraph B of the Agency's proposal modified as follows:**

"The maximum cumulative time a BUE may perform on-line post-mortem inspection duties is ten (10) hours per work day. The maximum time a BUE may be assigned to perform off-line inspection duties (e.g., in a pay status) is twelve (12) hours per work day. Employees will have 10 full hours between shifts.

~~Maximum cumulative times for Inspectors are subject to the following exception:~~

~~When determined by~~ These limits may be suspended on a case-by-case basis if the immediate supervisor, based upon the Agency's staffing needs, ~~BUEs may be utilized beyond the ten (10) and/or twelve (12) hours~~ determines suspension is appropriate to accomplish the Agency's mission. Volunteers normally will be used before non-volunteers are required to work ~~longer than the maximums~~ beyond these limits.

## **Section 2: Lunch period**

- a. Summary of proposals:** Though the Union's proposal is lengthier, the parties agree that an employee's lunch period is unpaid, may last from 30 minutes to one hour, and agree on the applicable regulations governing lunch periods.

The Union proposes that on-line inspectors' lunch periods "shall be scheduled to coincide with the plant's scheduled lunch break" and that lunch periods shall remain "relatively consistent" once established. The Union's proposal also restates applicable regulations and specifies in detail the range of time during the workday that off-line inspectors may take their lunch break.

- b. Agency argument:** The Agency did not express substantive concerns with most of the Union's proposal, but would prefer to simply reference applicable regulations and policies governing lunch breaks instead of explaining them in detail, as the Union proposes to do. The Agency doesn't disagree with the Union's goal of syncing employees' lunch breaks with those of the plant/establishment, but does not want to do so if it would violate applicable regulations.
- c. Union argument:** The Union acknowledges that its proposal largely tracks the regulations cited by the Agency, but wants to ensure lunch breaks for online inspectors coincide with those of the plant they are assigned to.
- d. Order:** The Union did not make a compelling argument for spelling out applicable regulations governing lunch breaks in detail within the CBA. Further, the parties agreed with the goal of syncing lunch breaks for on-line inspectors with those of the plant they are assigned, provided doing so did not violate applicable regulations. **Accordingly, the parties shall adopt the Agency's proposal in full, with the following addition:**

"Unless doing so would conflict with the above-referenced regulations, on-line slaughter inspectors' lunch periods shall be scheduled to coincide with the plant's scheduled lunch break."

### **Section 3: Agency relief breaks**

- a. Summary of proposals:** The parties agree that employees performing certain tasks shall receive 30 minutes of total break time during each eight-hour workday and generally agree on the parameters governing how break times are scheduled. The parties also agree that the Union shall be notified if staffing shortages prevent employees from taking break time. The current CBA provides for a mandatory, 10-minute break for every two hours of overtime. The Agency's proposal would change this by allowing supervisors to decide whether to authorize a 10-minute break for every two hours of overtime worked. The Union's proposal would mandate a 10-minute break for every 1.5 hours of overtime worked. Finally, the Union seeks to require that break times be regularly scheduled and be in addition to any plant breaks.

- b. Order:** During the Mediation-Arbitration, the parties agreed to language for this section, however, the last two paragraphs need to be edited for clarity. **Accordingly, the parties shall adopt the following agreed-upon language, modified as follows:**

"The parties recognize that relief breaks to BUEs from performing inspection duties are desirable. A total of thirty (30) minutes of break time in an eight (8) hour day shall be given. The immediate supervisor shall determine the scheduling of the break time. The break time authorized under this section cannot be scheduled as a thirty (30) minute block, extend the lunch period, arrive after the scheduled start, or shorten the work day. If overtime is scheduled for a two-hour period, an additional ten (10) minute break may be authorized by the immediate supervisor.

Where staffing or the Agency's mission would prevent providing the relief breaks, e.g., where it is not feasible to provide the break time due to a temporary staffing shortage, ~~the~~ the supervisor shall advise the local Union representative of the reasons an exception exists."

**Section 4: When Plants Do Not Operate for All or Part of the Day**

- a. Summary of proposals:** In cases in which a plant does not operate "for all or part of a day," the Agency simply proposes that "the supervisor will assign work as appropriate or grant leave requests." The Union, on the other hand, proposes a lengthier and more detailed list of options available to supervisors, but all appear to be encompassed by the Agency's more streamlined language.
- b. Order:** During the course of Panel proceedings, the parties agreed to strike this section. **Accordingly, the parties shall withdraw their respective proposals and strike this section from the CBA.**



**Section 5: Flexible and Compressed Work Schedules**

- a. Summary of proposals:** The Union's proposal, to which the Agency provided no counter, references various applicable laws and regulations governing compressed work schedules (CWS). The Union's proposal would require that the Agency implement CWS by "work unit," defined as "all unit employees assigned to an official establishment or rotation pattern." To establish a CWS, a majority of employees in a work unit would need to vote in favor of establishing one in a Union-administered vote and then receive Agency approval for the CWS.
- b. Agency argument:** The Agency desires to retain existing CBA language governing CWS.
- c. Union argument:** The Union explained that it desired to maintain current practices governing CWS and believed its proposal aligned with existing CBA language.
- d. Order:** During the discussion in the Mediation-Arbitration, the parties expressed a desire to keep current practices in place and agreed to keep the language from the previous CBA governing CWS. **Accordingly, the parties shall adopt the following agreed-upon language:**

"The parties agree that employees may use flexible and compressed work schedules to principally improve productivity, provide greater Agency service to the public, enhance employees' lives, and conserve energy, based on governing regulations and policy, in accordance with the following conditions:

- a. The work unit for purposes of this Section will include all unit employees assigned to an official establishment or rotation pattern, where appropriate.
- b. A majority of unit employees in the work unit must vote to adopt the compressed workweek and be approved by the Administrator before it will be implemented.

c. The employees in the work unit involved shall hold an election by simple majority. The vote will be by secret ballot and conducted by a Union representative who will certify the results in writing to the appropriate Front Line Supervisor/Regional Import Supervisor, as applicable. An Agency representative may explain the type of compressed work schedule and answer related questions prior to the vote.

d. Upon written request, and if the District Manager, OFO/Director, IID or their designees, as applicable, determines that participation by an employee in a compressed work schedule would impose a personal hardship adverse impact on such employee, the District Manager, OFO/Director, IID or their designees, as applicable, shall make every effort to reassign such employee to a non-compressed work schedule assignment within his/her commuting area for which the employee is qualified.

e. Employees participating in a compressed work schedule shall have an eighty (80) hour biweekly basic work requirement and a daily and weekly basic work requirement consistent with governing regulations and the type of compressed work schedule established.

f. Employees participating in a compressed work schedule will be entitled to all existing holiday and premium pay benefits including overtime pay for hours in excess of the basic work requirement.

g. Employees participating in compressed work schedules who are required to work on a holiday, Sunday, or nights, as part of the compressed work schedule, will be entitled to holiday, Sunday, or night differential pay, as appropriate, under the provisions of Title 5, United States Code, as presently applied.

In accordance with governing regulations, the Administrator may terminate a compressed work

schedule if it has caused an adverse impact on Agency operations. Except for a hardship exemption, an individual unit employee or group of employees within a work unit will not be excluded from the compressed schedule once the employees in the work unit have voted to participate in the program.

The contents of this Section shall constitute the total agreement between the parties with respect to a compressed work schedule for unit employees."

#### **Section 6: Preparatory or Concluding Activity**

- a. Summary of proposals:** The Union proposed to strike this section from the CBA, and the Agency provided no counter. The parties failed to provide the disputed language in question.
- b. Order:** During the Mediation-Arbitration, the parties agreed there was no need for this section and agreed to strike it. **Accordingly, the parties shall strike this section from the CBA.**

### **6. Article: Merit Promotions**

#### **Section 1: Policy**

- a. Summary of proposals:** The parties agree on the general principles governing the merit promotion plan, and that it will be administered consistently and without discrimination. However, the Union's proposal would prevent discrimination on the basis of sexual orientation, this language is missing from the Agency's proposal. While the Agency proposes that "[p]romotions to positions within the bargaining unit for which unit employees are eligible to compete" be governed by DR 4030-335-002, the Union counters that they be governed by "the Agency's Merit Promotion Plan, including the Online Promotion System, and this Agreement." The Union's proposal would provide for paid relocation for "[a]ll employees selected from a merit promotion application/certificate." It would also require the Agency to contact every employee on a merit promotion application/certificate if it "chooses to contact one person as a form of interview for a job or position" and

to provide employees with 48 hours' notice before an interview.

- b. Agency argument:** The Agency does not object to acknowledging that the merit promotion plan shall not be administered in a way that discriminates on the basis of sexual orientation. The Agency does not want to cut and paste all applicable laws, rules, and regulations governing merit promotion into the CBA, and prefers to simply cite them as appropriate. The Agency already provides paid moves for promotions and should not have to provide paid relocation for lateral moves; doing so is against Department regulations. HR has a process for ranking applicants and highlighting people to interview. Often, the Agency does not interview anyone but, if it did, it would interview everyone. Requiring 48 hours' notice of an interview could create an administrative headache for the Agency and is not necessary; supervisors are used to arranging time for inspectors to interview and can do so if needed.
- c. Union argument:** The Agency should not discriminate on the basis of sexual orientation in administering the merit promotion plan. The Union doesn't necessarily object to just citing the applicable Department regulation governing merit promotion. Requiring the Agency to interview all candidates if it interviews one might implicate management rights, but not interviewing all candidates would not be a fair merit promotion process. On-line inspectors need advanced notice of an interview to schedule time off.
- d. Order:** The parties agree the Agency should not discriminate on the basis of sexual orientation in administration of merit promotions. The Agency's stated interest in a streamlined CBA which simply references the applicable department regulation, instead of restating its requirements, was reasonable, and the Union did not furnish a compelling reason to adopt its lengthier, but not substantively different, proposal. Further, the Union did not provide a justification for requiring the Agency to pay for employees' lateral relocations. Instead, the Union was primarily concerned about employees' ability to apply for a lateral move through USAjobs.gov, an issue not directly reflected in the parties' proposals. The Union also did not adequately justify requiring an all-or-nothing interview

process, which it acknowledged may implicate the Agency's rights under § 7106 of the Statute, or requiring 48-hours' advanced notice of an interview. **Accordingly, the parties shall adopt the Agency's proposal, modified as follows:**

"The parties agree that Merit Promotion Principles shall be applied in a consistent manner without discrimination in regards to political affiliation, race, color, national origin, sex, sexual orientation, marital status, politics, membership or non-membership in an employee organization, age, or disability."

### **Section 2: The Online Promotion System**

- a. Proposal summary:** The Union's proposal, to which the Agency offered no counter, would require and regulate the use of the Online Promotion System for "permanent fulltime Inspector positions that are filled on a periodic basis," including consumer safety inspector, egg product inspector, and import/export inspector.
- b. Agency argument:** The Agency does not utilize its own "online promotion system," instead relying on USAJobs.gov. The positions listed in the Union's proposal are no longer accurate.
- c. Union argument:** The Union acknowledged its proposal was intended to refer to USAjobs.gov and was there for informational purposes.
- d. Order:** The Union stated its proposal was merely intended to provide information, but the Agency persuasively countered that the Union proposal was vague and possibly inaccurate. **The Union shall withdraw its proposal for this section.**

### **Section 3: Application Procedure**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, describes the merit promotion application process, including the use of USAjobs.gov. It would also give employees up to four hours of duty time to complete job applications and require the Agency announce certain bargaining unit jobs for at least 21 days.

- b. Agency argument:** The Agency opposes having to grant employees four hours of duty time to apply for a merit promotion. The current practice is to post bargaining unit jobs for 14 days. The Agency states that Departmental regulations and presidential guidance direct the Agency to streamline the hiring process.<sup>2</sup>
- c. Union argument:** The Union acknowledged that the description of the merit promotion application process in its proposal was there for informational purposes and not intended to be a substantive provision.
- d. Order:** The Union failed to justify why a description of how to apply for a merit promotion through USAjobs.gov was a necessary component of a contractual agreement between two parties that have no authority over the website. Further, requiring the Agency to permit employees to use half-a-workday to apply for a merit promotion could inhibit the Agency's ability to fulfill its mission and is contrary to the Statute's goal of "an effective and efficient Government."<sup>3</sup> Finally, the Agency is already struggling to implement directives to streamline the hiring process and should not be required to lengthen the job posting period. **The Union shall withdraw its proposal for this section.**

#### **Section 4: Timeframes for Filing Applications**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, provides that merit promotion applications be submitted by the deadline posted in the vacancy announcement and requires that jobs will be announced "for a minimum of 21 calendar days."
- b. Order:** During the course of Panel proceedings, the Union agreed to, and shall, withdraw this section.

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<sup>2</sup> See DR 4030-335-002, which provides that jobs shall be posted a minimum of five days. See also, *Presidential Memorandum, Improving the Federal Recruitment and Hiring Process*, May 11, 2010, which directs Agencies to "reduc[e] substantially the time it takes to hire mission-critical and commonly filled positions."

<sup>3</sup> 5 U.S.C. § 7101(b).

## Section 5: Evaluating and Ranking Employees

- a. **Summary of proposals:** The Union's proposal, to which the Agency offered no counter, would require the Agency to utilize "[a]utomated systems for evaluating and ranking candidates," provide employees with "guidance" and "technical support" on the use of the automated promotion application system, and allow employees or the Union to request "records used as a basis for ranking and selecting employees" in promotion action "being grieved by the Union."
- b. **Agency argument:** The Agency already provides information to the Union regarding its ranking and selection of employees and does not see the need for the Union's proposal.
- c. **Union argument:** Employees should have access to technical support when applying for jobs.
- d. **Order:** The Union acknowledged that its proposal regarding "automated systems" referred to USAjobs.gov and that, as the Agency does not administer this website, it cannot meaningfully assist with technical support. The parties also acknowledged that § 7114(b)(4) of the Statute may provide a means for the Union of accessing the records described in its proposal. **As the Union has not adequately justified the need for its proposal, the Union shall withdraw its proposal for this section.**

## Section 6: Referral of Candidates for Promotion

- a. **Summary of proposals:** The Union's proposal, to which the Agency offered no counter, would provide that: (1) "Up to ten (10) candidates with the highest ranked scores" be "referred as 'best qualified' for each vacancy filled"; (2) "When more than one (1) vacancy can be filled from the promotion certificate, up to three (3) additional candidates [be] certified for each additional vacancy"; and, (3) "The promotion certificate list[] the best qualified candidates alphabetically."
- b. **Order:** During the Mediation-Arbitration, the Union indicated it might be willing to withdraw its proposal, but ultimately declined to do so without explanation. **Absent a compelling reason for inclusion of the provision, the Union shall withdraw its proposal.**

## Section 7: Notification of Selection

- a. Summary of proposals:** The Union's proposal, to which the Agency provides no counter, requires the Agency to provide employees with the ability to electronically track their application and determine: (1) "If they were considered for a specific promotion"; (2) "If they were found eligible"; (3) "Who was selected"; and (4) "The reason for non-selection." Lastly, it requires the selecting official to notify employees considered for a vacancy and allows the employee to "ask the supervisor to provide suggestions for improvement that may enhance the employee's chances for career advancement."
- b. Order:** During the Mediation-Arbitration, the Union acknowledged that USAjobs.gov, which the Agency does not manage, already provides the application tracking functionality the Union seeks. The Union also agreed to strike paragraph (b) of the section regarding employee notification by selecting officials. **There is, therefore, no remaining justification for the proposal, and it shall be withdrawn by the Union.**

## Section 8: Complaints

- a. Summary of proposal:** The Union's proposal, to which the Agency offers no counter, would specify that complaints involving merit promotion be resolved via the negotiated grievance procedure "or a complaint of discrimination."
- b. Order:** During the Mediation-Arbitration, the Union acknowledged this section is informational only and of no substantive effect. Grievances are addressed in a separate article. **In the interest of efficiency, the Union shall withdraw its proposal for this section.**

## Section 9: Exceptions to Merit Promotion

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, enumerates five circumstances in which "[c]ompetitive merit promotion procedures do not apply."
- b. Order:** During the Mediation-Arbitration, the parties acknowledged this section is merely a restatement of existing regulations and of no substantive effect. The



dispute turns on a philosophical difference of opinion between the parties regarding the purpose of a CBA. The Agency views the document primarily in substantive, legal, and technical terms. While the Union shares this view, it believes the agreement should also serve as an informational guide for employees, which leads the Union to propose non-substantive language restating external authorities that also have a bearing on the workplace. The undersigned views CBAs as one of many authorities governing federal employment. Fundamentally, their purpose is to supplement these authorities with additional arrangements regarding conditions of employment in specific workplaces, not to serve as a compilation or restatement of all applicable laws, regulations, and policies. Indeed, attempting to memorialize such authorities in federal CBAs in any systematic way would render the agreements confusing, unwieldy and often out-of-date. Consequently, the Panel has often imposed streamlined contract language that avoids unnecessary restatements of external legal authorities and the undersigned will continue to do so here.<sup>4</sup> **To prevent an unnecessarily lengthy and cumbersome CBA, the Union shall withdraw its proposal.**

## **7. Article: Overtime**

### **General arguments**

The Agency asserted that its ability to manage overtime is protected by § 7106 of the Statute as a management right. As the undersigned has elected to impose the Agency's proposals for this article, except where it expressed a willingness to modify them, it is not necessary to analyze the Agency's legal arguments. The Union pointed out that it has a pending ULP against the Agency for changes it made to overtime practices. However, the Panel already considered and rejected this argument.

### **Section 1(a): Responsibility for Overtime**

- a. Summary of proposals:** The Agency seeks to reserve the right to assign overtime, citing management's right to assign work under § 7106 of the Statute, and would allow supervisors to "combine overtime assignments during

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<sup>4</sup> See, e.g., *NLRB*, 20 FSIP 072 (2020); *HHS, NIH*, 20 FSIP 038 (2020); and *DOC, NOAA, NWS*, 20 FSIP 021 (2020).

periods of reduced inspection coverage requirements when they deem it operationally necessary."

The Union's proposal, however, would provide that any overtime required "is the responsibility of the [employee] covering the position," except in certain situations. It also states that employees shall receive overtime for work done on a Sunday if they "are assigned to a position on Monday."

- b. Agency argument:** The Agency does not want to make substantive changes to overtime practices, but does want to reserve authority to handle overtime to the district managers as a matter of management rights and being able to fulfill the Agency's mission.
- c. Union argument:** The Union points out that FSIS work differs from other jobs in that employees do not work in a centralized setting, and instead work primarily in the field at plants/establishments. Inspectors have standardized tours of duty and are assigned to particular plants, but because they must work whenever the plant is operating, they may need to work overtime to fulfill their responsibilities. The decision to work overtime should be theirs. The Union also contends that its proposal more closely aligns with current practice, which it believes does not need to be changed.
- d. Order:** In order to fulfill its mission, the Agency needs to be able to manage and assign overtime. Employees do not have the right to determine when/whether working overtime is appropriate. If the Agency wants to provide discretion to employees to work overtime if the demands of their assignment make it necessary, the Agency may choose to do so. But it would not be appropriate to preemptively and universally delegate such authority to individual employees via the CBA. **Accordingly, the parties shall adopt the Agency's Section 1(a) in full.**

#### **Section 1(b): Responsibility for Overtime**

- a. Summary of proposals:** The parties agree that the Agency will "make a concerted effort to provide sufficient relief from... overtime work" if employees are required to work six days per week for three consecutive weeks, and may excuse an employee from an overtime assignment upon request if there is another qualified employee

available. However, the Union seeks to add language establishing that an employee "in an 8-hour leave status" on a Friday "will not normally be assigned to overtime work on Saturday." Additionally, the Union proposal adds a new requirement that supervisors "post irregular overtime notices in the USDA offices in conspicuous locations before the end of the shift" and provides that failure to do so would free employees of any obligation to work the overtime.

- b. Agency argument:** Being able to assign work is a core management right, even if it means an employee must work overtime on a Saturday. The Agency is not opposed to notifying employees of irregular overtime, but does not want to agree to mandatory posting requirements and does not want to lose the ability to schedule overtime if the posting does not occur as prescribed by the Union.
- c. Union argument:** The Union does not want an employee who has taken leave on a Friday with the intent to have a three-day weekend to be called in to work on a Saturday. Employees should be notified of irregular overtime.
- d. Order:** The Agency deserves the ability to assign work as necessary to fulfill its mission. While the Agency should not be prevented from assigning overtime due to failure to follow a particular posting protocol, it should ensure employees are notified of irregular overtime. **The parties shall adopt the Agency's Section 1(b) in full, with the following addition:**

"Agency supervisors stationed at slaughter facilities will ensure employees are notified in advance of irregular overtime."

**Union Section 1(e)<sup>5</sup>: Responsibility for Overtime**

- a. Summary of proposals:** The Union's proposal, which has no counterpart in the Agency's proposal, provides, "The equalization of overtime procedure applies to the above provisions."
- b. Order:** During the Mediation-Arbitration, the Union agreed to strike Section 1(e). **Accordingly, the Union shall withdraw this proposal.**

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<sup>5</sup> Identified here as 1(e) pursuant to the side-by-side document provided to the Panel by the parties. If listed sequentially, it would be 1(c).

**Union Section 1(f)<sup>6</sup>: Responsibility for Overtime**

- a. Summary of proposals:** The Union's proposal for Section 1(f), which has no equivalent in the Agency's proposal for Section 1, states that, "[m]eal periods are the only periods of non-pay status during an BUE's assignment to overtime work."
- b. Agency argument:** The Agency does not object to this provision on substantive grounds but believes it to be unnecessary as it is reflective of current practice.
- c. Union argument:** This is reflective of current practice.
- d. Order:** In the interest of a streamlined CBA, the Union shall withdraw this non-substantive, informational proposal.

**Union Section 1(g)<sup>7</sup>: Responsibility for Overtime**

- a. Summary of proposals:** The Union's proposed Section 1(g), which the Agency opposes without offering a counter, would require that any employees "contacted" by the Agency during an emergency while on leave will be paid at least two hours of overtime.
- b. Agency argument:** The Agency already compensates employees for a minimum of two hours' overtime if they are called back into work, but objects to providing an automatic two hours' overtime for something that could be as simple as answering a phone call. However, the Agency is willing to pay overtime for the actual amount of time spent by employees responding to Agency communications while on leave.
- c. Union argument:** Requiring employees to respond to an Agency communication while they are on leave is work for which employees deserve to be compensated.
- d. Order:** It would be contrary to the interests of an "efficient and effective government"<sup>8</sup> to require the

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<sup>6</sup> Identified here as 1(f) pursuant to the side-by-side document provided to the Panel by the parties. If listed sequentially, it would be 1(d).

<sup>7</sup> Identified here as it is in the side-by-side document provided to the Panel by the parties. If listed sequentially, it would be 1(e).

<sup>8</sup> 5 U.S.C. § 7101(b).

Agency to automatically pay two hours' overtime to employees contacted while on leave due to an emergency situation. However, as the Agency acknowledges, it is not unreasonable to compensate employees for the actual time spent responding to the Agency's communication. **Accordingly, the parties shall adopt the Union's proposal, modified as follows:**

"In the event that an emergency arises and the Agency contacts a BUE that is in an approved leave status (annual, sick, etc.) or while in a non-pay status, the BUE will be compensated at a ~~minimum of two (2) hours of~~ overtime rates for the actual time spent responding to the Agency communication, measured in 15-minute increments."

### **Section 2: Voluntary Overtime Replacement:**

- a. Summary of proposals:** Both parties agree that employees wishing to volunteer to work overtime may place their names on a roster of such employees. While the Agency's proposal would allow supervisors to "utilize the roster to obtain a qualified replacement," the Union would allow employees to find their own replacements using the roster in the event the employee "elects to not work overtime associated with their position/assignment."
- b. Order:** The Union's proposal presumes adoption of its proposal for Section 1(a), which would grant employees responsibility for managing their own overtime, a necessary precondition to its proposal here to allow employees to find their own replacements if they "elect[] to not work overtime." However, because I have ordered adoption of the Agency's proposal for Section 1(a) of this Article, it would be incongruous to order the Union's proposal here. **The Parties shall adopt the Agency's proposal for this section.**

### **Section 3: Equalization of Overtime**

- a. Summary of proposals:** The parties agree that "Distribution of overtime shall be fairly and equitably assigned by the supervisor among eligible and qualified BUEs." The Union's proposal would retain current policies and practices regarding overtime distribution, though it also includes a contingency proposal if current processes are "no longer practicable or a change

is required" which largely mirrors the Agency's proposal.

- b. Agency argument:** Overtime distribution policies have evolved over a long period of time, with differences spread across various locations. People may no longer even know what the overtime distribution policies are. It is time to standardize these practices and avoid having a patchwork of various policies around the country.
- c. Union argument:** There's nothing wrong with current practices.
- d. Order:** The parties' proposals are quite similar. The only real difference is the Union's desire to maintain the current unknown patchwork of overtime distribution practices. However, the procedure for distributing overtime outlined in the Union's contingency proposal, in the event current practices are changed, is substantively the same as the Agency's proposal. **Absent a compelling reason to maintain current practices, which the Union did not provide, the parties shall adopt the Agency's proposal in full.**

**Section 4 (Agency and Union): Overtime and premium pay; Section 5 (Union): Call Back; Section 6 (Union): Time Spent on Standby Duty or in an On-Call Status**

- a. Summary of proposals:** The entirety of the Agency's proposal for Sections 4-6 provides, "[I]n assigning standby duty or on-call status, the Agency shall comply with 5 CFR 551." The Union's proposals for these sections are much lengthier explanations of the Agency-cited regulations.
- b. Agency arguments:** The Agency disfavors general language and prefers to cite specific authorities for greater precision. However, the Agency doesn't object to the inclusion of the Union's language for Section 4.
- c. Union arguments:** The Union acknowledged that its proposals were merely restatements of applicable regulations, there for informational purposes.
- d. Order:** The parties have no substantive dispute over these proposals, merely philosophical differences about

how much detail about outside legal authorities to include in the CBA. Both acknowledged the Agency's legal obligations would remain unchanged even if none or either parties' proposals were adopted. However, it would not unduly complicate the CBA to include some acknowledgement of the applicable laws governing overtime, and the parties have expressed openness to more condensed language incorporating aspects of both of their proposals. **Accordingly, the parties shall adopt the Agency's proposal for Sections 4-6 with the following addition:**

"Employees shall be compensated for overtime – including appropriate premium pay and differentials for Sunday, holiday, and nights – at those rates permissible under appropriate laws, rules, and regulations."

#### **Section 7: Appeals**

- a. Summary of proposals:** The Union's proposal is to maintain language from the current CBA providing that violations of the overtime article are "both grievable and arbitrable" under the negotiated grievance procedure. The Agency proposes to strike this section.
- b. Order:** Federal court precedent holds that the party advocating a limited scope grievance procedure, as the Agency seeks to do here, "must establish convincingly that, in the particular setting, its position is the more reasonable one."<sup>9</sup> **In this case, the Agency did not justify the need to limit the scope of the negotiated grievance procedure with its proposed new exclusion.**

### **8. Article: Performance Management**

#### **Section 1: Overview**

- a. Summary of proposals:** The Agency proposes streamlined language specifying that it will "administer the Performance Management program in accordance with 5 USC Chapter 43, 5 CFR. Part 430, and DR 4040-430." The Union's lengthier proposal notes that performance evaluations will be "administered in accordance with applicable laws, regulations, and internal guidelines"

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<sup>9</sup> *AFGE v. FLRA*, 712 F.2d 640, 649 (D.C. Cir. 1983).

and establishes other general criteria for the administration of performance evaluations.

- b. Agency argument:** All of the components of the Union's proposal are encompassed by the statutes, government-wide regulations and Department regulations cited in the Agency's proposal.
- c. Union argument:** The Union can accept the Agency's proposal if it can verify that the authorities it cites do, indeed, encompass the requirements listed in the Union's proposal.
- d. Order:** As this dispute concerns whether to cite or restate applicable laws and regulations, and would not materially affect the parties or employees, the parties shall adopt the Agency's more streamlined proposal, consistent with my reasoning above.

## **Section 2: Critical Elements and Performance Standards**

- a. Summary of proposals:** The Agency proposes a short section acknowledging it will follow 5 CFR Part 430 when determining "the number of levels of performance for each critical element, and when determining whether a rating level will have a written performance standard." The Union's proposal is far more detailed, requiring, among other things, that:
  - employees receive "a copy of the performance elements and standards for their position" and an opportunity to discuss them with management each appraisal cycle;
  - the agency will provide employees with "all the tools necessary to perform their job based on the requirements set in the standards;"
  - ratings be "communicated in writing;"
  - ratings and progress reviews be of "adequate length" and occur "in a conducive, related environment, ensuring privacy and without interruption," including phone calls, with an opportunity for employees to ask questions;
  - the agency will consider whether an employee has been "assigned additional duties" or "work[ed] out of their normal job classifications."



- b. Order:** As with much of the contract, this dispute concerns, in part, whether to cite or restate applicable laws and regulations. Further, the Union's proposal is both overly prescriptive and vague, such that even a supervisor's phone ringing during a progress review could be trigger a grievance. **Accordingly, the parties shall adopt the Agency's more streamlined proposal, consistent with my reasoning above.**

### **Section 3: Communications**

- a. Summary of proposals:** Under the Agency's proposal, supervisors are "normally" to "discuss and issue the performance plan with each employee" within 30 days of hire, rating period, and reassignment and, thereafter, inform employees of any changes in the performance plan. Further, informal progress reviews/discussions are to occur at the close of the appraisal period and throughout the appraisal period. Employees may not receive a performance rating until after working at least 90 days under a performance plan.

Under the Union's proposal, performance discussions would take place "at appropriate times," with at least one progress review during the appraisal period. The Union would also require the Agency to provide "appropriate assistance" if an employee is rated below "fully successful." Further, employees would receive at least 72 hours' notice before a progress review/rating, and such reviews would be required to be of "adequate" length and occur "in a conducive environment" and "without interruption." The Union's proposal also includes various aspirational language about the tone and tenor of discussions between employees and supervisors.

- b. Agency argument:** The Agency's proposal simply reflects the requirements of the statutes, government-wide regulations and departmental regulations referenced in its Section 1 proposal. Forcing the Agency to provide a specific amount of advanced notice of progress reviews would be overly burdensome, but the Agency is open to providing some advanced notice.
- c. Union argument:** Current CBA language provides that employees shall receive 24 hours' notice of progress reviews. The Union would like to expand this to 72 hours'

notice because it can take time to prepare the necessary information for a progress review.

- d. Order:** The main point of contention for this section involved the amount of advanced notice employees will receive for progress reviews and performance ratings. The Agency indicated a willingness to accept language obligating it to provide as much advanced notice as possible, and the Union indicated this could be acceptable. **Accordingly, the parties shall adopt the Agency's proposal in full, with the following addition:**

"f. The Agency will provide employees as much advanced notice of a progress review and/or rating as is practicable."

#### **Section 4: Rating of record**

- a. Summary of proposal:** The Union's proposal, to which the Agency offered no counter, states that employees must work for at least 90 days before receiving a performance rating and be provided with at least 72 hours' notice of a yearly performance rating. The Union would also require the Agency to provide a written explanation to an employee if their rating was lowered from the prior year.
- b. Agency argument:** Supervisors and employees already have multiple informal performance discussions and employees receive written performance ratings and written notices before being placed on a performance improvement plan. It would be unnecessarily burdensome to provide written explanations every time an employee's rating was lowered. Such explanations make even less sense under the current system in which ratings are conducted pass/fail.
- c. Union argument:** Employees deserve some form of formal, written explanation as to what caused their performance rating to be lowered. The pass/fail rating system may be rescinded in the future in favor of the previous, five-tiered ranking system.
- d. Order:** The portion of the Union's proposal requiring that employees work for 90 days before a performance rating was already included in the Agency's proposal for Section 3. The question of advanced notice of

performance reviews/ratings was also already resolved under Section 3. It makes little sense to require the Agency to provide a written explanation for reducing an employee's performance rating from "pass" to "fail" when a failing rating is likely to trigger written notice of the employees' placement into a performance improvement plan anyway. The Union offered only speculation that the five-tier rating system may return in the future and, even if it does, the Agency argued persuasively that providing written explanations of every change in performance ratings would be unnecessarily burdensome. **Accordingly, the Union shall withdraw its proposal.**

### **Section 5: Addressing Unacceptable Performance**

- a. Summary of proposals:** Under the Agency's proposal, supervisors "may" issue employees a "Demonstration Opportunity Plan" (DOP) if an employee's performance is unacceptable. The DOP must warn the employee that reassignment, demotion, or termination may result unless their performance rises to "an acceptable level," typically within 30 days. Supervisors must offer assistance to help employees improve their performance during a DOP period, and provide employees with a written evaluation of the employee's performance at the end of the period. No grade reduction or removal action can occur prior to completion of the DOP period.

The Union's proposal would require that the Agency meet with and counsel employees about performance issues before "initiating a Performance Improvement Plan (PIP)." If the employee's performance does not improve after counseling, the Agency may place them on a PIP and must warn them of the consequences of a failure to improve. Employees would be provided an opportunity to resign in place of termination and, if reassigned or reduced in grade, must be given "a list of vacant positions within the district" and "nearby districts to choose from."

- b. Agency argument:** Pre-improvement plan counseling is not necessary because performance discussions occur regularly throughout the year. Employees should not be surprised to be placed on an improvement plan. The Agency is open to ensuring a discussion takes place about performance before an employee is placed on an improvement plan but does not want to create a new step

in the process. Employees can resign at any time and do not need to be provided a special opportunity to do so.

- c. Union argument:** The Union is not set on pre-improvement plan "counseling." Its main concern is that employees have an opportunity to meet and discuss their performance issues with their supervisor before being placed on an improvement plan.
- d. Order:** The Union's desire to ensure that employees have a chance to discuss their performance with their supervisor prior to placement on an improvement plan and the Agency's reluctance to add a new meeting to the existing performance review/rating schedule can be balanced by simply requiring that a supervisor have a discussion about an employee's unacceptable performance prior to placing the employee on an improvement plan. There is no reason this discussion can't take place at a regular performance review. **Accordingly, the parties shall adopt the Agency's proposal in full, with the following modification:**

"At any time during the rating period, if the supervisor identifies that an employee's performance in one or more Critical Elements is at the Unacceptable level, the supervisor will discuss the matter with the employee. The discussion may occur during or in addition to a regular performance review. Thereafter, the Supervisor may officially notify the employee of the Critical Elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Demonstration Opportunity Plan (DOP)."

#### **Section 6: Performance Improvement Plan**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, outlines the content of PIPs in greater detail and provides that employees will typically have 90 days under a PIP to demonstrate acceptable performance. The Agency would be obligated to "make sure the PIP is successful" by providing the employee with things like "training, coaching, and mentoring."

- b. Agency argument:** The current CBA specifies that employees on a PIP will have 60-90 days to demonstrate acceptable performance. The Agency would prefer a 30-day period consistent with Executive Order 13839.<sup>10</sup>
- c. Union argument:** The Union wants to include extra details in the CBA so employees understand what a PIP is and how it works, but acknowledges this is for informational purposes only and not a substantive dispute. The Union did not explain why it wanted to change the PIP period from 60-90 days to a minimum of 90 days.
- d. Order:** The parties acknowledged that most of the Union's proposal would not meaningfully change the Agency's practice regarding DOPs/PIPs. Further, neither party adequately justified its position regarding the length of employee improvement plans. **Accordingly, the Union shall withdraw its proposal and the parties shall adopt the following language for this section:**

"Employees on a demonstration opportunity plan/performance improvement plan will be afforded 60 days to demonstrate acceptable performance in the critical element(s) in which they are considered to be performing at an unacceptable level."

## **Section 7: Grievances**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, provides that "violations of the performance management system may be grieved under the negotiated grievance procedure."
- b. Order:** Federal court precedent holds that the party advocating a limited scope grievance procedure, as the Agency seeks to do here, "must establish convincingly that, in the particular setting, its position is the more reasonable one."<sup>11</sup> In this case, the Agency did not justify the need to limit the scope of the negotiated grievance procedure with its proposed exclusion. **The parties shall adopt the Union's proposal.**

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<sup>10</sup> Executive Order 13839 was rescinded on January 22, 2021 pursuant to Executive Order 14003: Protecting the Federal Workforce.

<sup>11</sup> *AFGE v. FLRA*, 712 F.2d 640, 649 (D.C. Cir. 1983).

## Section 8: Performance Based Actions

- a. **Summary of proposals:** The Union's proposal, to which the Agency offered no counter, acknowledges that employees who have failed to adequately improve at the conclusion of a PIP may be "reassigned, placed in a lower-graded position, or removed." Demoted employees must be provided with a new performance plan within 14 days. Employees facing demotion or termination must receive 30 days' advanced notice and 10 days to respond to/contest the notice in writing or at an "oral conference." The Agency would be required to provide the employee with a final written decision.
- b. **Agency argument:** The provisions of the Union's proposal are covered by the authorities included in the Agency's Section 1.
- c. **Union argument:** The Union could not say whether its proposal would be covered by the Agency's language.
- d. **Order:** Since the Agency's proposal for Section 1 was adopted to help condense the contract, it would make little sense to impose the Union's lengthy proposal here instead of simply allowing the cited authorities to govern. **The Union shall withdraw its proposal for this section.**

## Section 9: IPPS Reviews

- a. **Summary of proposals:** The Union's proposal, to which the Agency offered no counter, provides that employees be provided with five days' notice, in writing, of "all questions and Topics" that will be discussed by the Inspector(s) at an in-plant performance system (IPPS) review. Employees participating in an IPPS review shall have the right to Union representation if more than one Agency representative will be in attendance. Finally, "IPPS reviews will not be given more weight than a progress review when an employee is rated."
- b. **Order:** During the course of Panel proceedings, the parties agreed to, and shall adopt, the following language:

"Employees will be provided with all questions and Topics, in writing, that will be asked/discussed of

the Inspector(s) at least 5 working days prior to the IPPS review session.

IPPS reviews will be conducted in accordance with FSIS Directive 4430.3.

IPPS reviews will not take the place of progress reviews, nor will they be held simultaneously with a progress review.

In the event that more than one management personnel will be conducting/Attending the review the employee shall have the right to Union Representation.

IPPS reviews will not be given more weight than a progress review when an employee is rated, (direct supervision observation, indirect supervision observation) etc."

#### **Section 10: Security Level Changes**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, would provide employees who no longer qualify for the security level required of their position an opportunity to downgrade "to the nearest job to the employee" that matches their security level. Such employees "will be given the opportunity to retrain for another job at agency time and expense."
- b. Order:** During the course of Panel proceedings, the Union agreed to, and shall, withdraw its proposal.

#### **9. Article: Reassignments**

##### **Section 2: Voluntary Internal Placement of Bargaining Unit Employees**

- a. Summary of proposals:** The Agency proposes that employees seeking reassignment must have first completed their probationary period and served in their present capacity for at least one-year (the Union agrees), and then request to be included on a "Voluntary Internal Placement" (VIP) list. Though the parties agree on some aspects of the application process, the Agency's proposal would require that employees' applications include a "one (1) page statement which demonstrates the

employees' knowledge, skills and abilities." The Agency's proposal would also require that employees with continued interest in reassignment annually resubmit application packages for inclusion on the list. The parties agree that employees will have three days to accept or decline a reassignment offer, and that declination shall result in removal from the list, though the employee may reapply. The parties also agree that, if the employee accepts the reassignment, they must serve in the new position for at least one year before submitting another reassignment package. Finally, the Agency proposes, and the Union appears to generally agree, that "[s]elections from the Voluntary Internal Placement list are at the discretion of the selecting official based on qualifications and are not made on a first come, first serve basis."

In some respects, the Union's proposal takes a different approach to regulating what it refers to as the "voluntary placement program" under which, subject to certain eligibility requirements, employees could seek "voluntary reassignments, voluntary demotion, and noncompetitive re-promotion." Among other things, the Union's language would allow for employees to "job swap" with the approval of the district manager and prohibit bargaining unit employees from being placed on the same voluntary internal placement lists with non-bargaining unit employees. The Union also lists in detail duties of the Human Resources Field Office. The Union's proposal also allows employees to "request hardship consideration for voluntary placement."

- b. Order:** During the course of Panel proceedings, the parties agreed to language for this section, though it contained several errors. **The parties shall adopt the following agreed-upon language, with the following corrections:**

"a. Full-time inspection positions are permanent jobs in the locations to which employees are assigned. The Voluntary Placement Program applies to all employees in the collective bargaining unit, and allows for:

1. Voluntary placement of bargaining unit employees to a position for which they are qualified and trained under the provisions



of this Article. This includes voluntary reassignments, voluntary demotion, and non-competitive re-promotion.

2. Consideration for employees who incur unexpected hardships in their personal lives.

3. Non-bargaining unit employees will not be placed on a voluntary placement list(s) with Unit employees.

b. Definitions

1. Job Swap. Employees in similar or identical jobs in different locations may arrange to exchange jobs. The District Manager must approve a job swap.

c. Exceptions

1. Involuntary reassignments in localized work reductions.

2. Voluntary placements within the same duty station. (EXAMPLE: Moving from one (1) plant to another within the duty station.)

EXCEPTION: If a local practice does not exist, the Voluntary Placement Program is used.

3. Job swaps where employees in similar or identical jobs in different locations arrange to change jobs. Job swaps are subject to local practices within the district.

d. Eligibility

1. All bargaining unit inspectors, unless prohibited by restrictions in ~~item (e), of this section below~~ this agreement, are eligible to apply for voluntary movement to any other inspection position at the same grade that they currently hold or have previously held, including voluntary demotions.

2. Noncompetitive re-promotion applicants must have previously held higher grade positions on a permanent basis. Applicants

may be considered for re-promotion to the highest grade previously held.

e. Submitting Requests for Voluntary Placement

1. ~~The eEligible employees:~~ (a) ~~Cshall~~ completes FSIS Form 4335-3, Employee Request for Reassignment Within Field Operations. Employees interested in any location within a state may show the state or cities or counties. Employees may indicate availability for up to five 5 locations. If the agency elects to develop lists below the state level the agency will notify the bargaining unit of these changes. The agency will ensure that employees will be placed on all appropriate lists. BUE's shall recertify annually by resubmitting the Reassignment Package prior to the anniversary of the initial enrollment date. Employees that have access to an agency issued computer must ~~may~~ submit the Reassignment Package electronically via the approved agency system. Employees ~~with or~~ without access to an agency issued computer may submit the Reassignment Package via fax to 1-833-840-9220, or via mail the Reassignment Package directly to:

~~(b) Submits the completed form to:~~  
 USDA, FSIS, HROD, HUMAN RESOURCES  
~~USDA, FSIS~~  
 920 2nd Avenue South  
 Suite 1300  
 Minneapolis, MN 55402"

**Section 3: Reassignment of BUEs in Work Reduction Situations**

**a. Summary of proposals:** The Union and Agency proposals differ in some respects regarding how reassignments will be handled during a reduction-in-force. The parties differ in how the "competitive area" will be defined for purposes of measuring distance from the affected plant to others in the same area; the Agency prefers to measure distance as the crow flies, while the Union prefers using driving distance, with a Union official on official time accompanying the Agency staff measuring the distance.

Further, the Union seeks to include language permitting employees to "select available locations within the commuting area based on their standing on the retention roster" and would require the Agency to provide to the Union hard copies "of all retention rosters sent to each district." Otherwise, the proposals appear quite similar, though the Agency's language is more concise.

- b. Order: During the course of Panel proceedings, the Union agreed to accept, and the Parties shall adopt, the first paragraph, subsection (a), and subsections (b)(2)-(4) of the Agency's proposal. The parties also agreed to, and shall adopt, the following language for subsection (b)(5):**

"The agency will provide, to the Council President, all retention rosters sent to each district."

**Further, the parties agreed to, and shall adopt, the following language for subsection (c):**

"An employee who has been involuntarily reassigned as a result of a work reduction shall be given the first opportunity to return to his/her original position or a similar position, at the employee's expense, if such position is reestablished in the commuting area from which he/she was reassigned. At the time of the work reduction, employees shall be provided with instructions for applying for return rights. A request for return rights must be submitted on FSIS form 4335-3 within sixty (60) days of the effective date of the reassignment. Entitlement to return rights remains in effect provided the employee maintains an active request on file (updated annually) and does not turn down an offer of the same or a similar position in the commuting area from which he/she was reassigned. A BUE who has been involuntarily reassigned as the result of a work reduction and who follows the return rights procedures shall be given first opportunity to return to his/her original position or a similar position at the BUE's expense, if such position becomes available in the commuting area from which he/she was reassigned."

Finally, during the Mediation-Arbitration, the Union could not provide a compelling reason to oppose, and

expressed a willingness to consider, the Agency's proposal for subsection (b)(1). **Accordingly, the parties shall adopt the Agency's proposal for subsection (b)(1).**

## 10. Article: Workplace Bullying/Harassment

### Section 1: Objective

- a. **Summary of proposals:** The parties' proposals lay out aspirational language that is similar in tone and goals about the desired workplace environment, but varied in the precise terms used. While the Agency notes that it will abide by Departmental Regulation (DR) 4200-001, Workplace Violence Prevention and Response Program, the Union's proposals does not reference the regulation. Finally, while the Agency agrees that "violent behavior of any kind or threats of violence, either implied or direct, against persons or property will not be tolerated," the Union seeks language providing that the "Agency will not *in any instance* tolerate bullying behavior" (emphasis added).
- b. **Agency argument:** The article should be renamed "Workplace Harassment," which is broader and more encompassing than the existing title, "Workplace Bullying."
- c. **Union argument:** There should be some reference to "bullying" in the section. The Union expressed an openness to accepting the rest of the Agency's language.
- d. **Order:** During the Mediation-Arbitration, the parties agreed to rename the article "Workplace Harassment" instead of "Workplace Bullying." **During the course of Panel proceedings, the parties agreed to, and shall adopt, the following language for this section:**

"The Parties agree to mutually establish and maintain a work environment that is safe, positive, respectful, and productive, and free of conduct or language that may contribute to harassment and/or workplace violence.

In accordance with Departmental Regulation (DR) 4200-001, "Workplace Violence Prevention and Response Program," bullying, violent behavior of any kind or threats of violence, either implied or

direct, against persons or property will not be tolerated."

## **Section 2: Definition**

- a. Summary of proposal:** The Union proposes to define "bullying" as "repeated, health-harming mistreatment of one or more people" and includes "[t]hreatening, humiliating or intimidating behaviors," "[w]ork interference/sabotage that prevents work from getting done," and "[v]erbal abuse." The Agency objects to this definition, preferring to be guided by the Departmental Regulation cited in Section 1, and offers no language for Section 2.
- b. Order:** During the Mediation-Arbitration, the Agency agreed to accept, and the parties shall adopt, the Union's proposal for this section.

## **Section 3: Reporting incidents**

- a. Summary of proposals:** The Agency proposes language directing employees to "immediately report" incidents of "harassment and/or workplace violence" "in accordance with FSIS Directive 4735.4, Preventing Harassment and Workplace Violence."

For its part, the Union's proposal provides that employees should report bullying to their supervisor "before the conduct becomes severe or pervasive" and are "encouraged" to report bullying "as soon as possible." The Union proposes that an employee should be able to have a report of bullying filed on their behalf. Further, the Union's proposal would require the Agency to respond to reported bullying by "initiat[ing] an inquiry, address[ing] any inappropriate conduct, assist[ing] the affected employee, and act[ing] to prevent any retaliation by the bully or bullies." Lastly, the Agency is prohibited from retaliat[ing] against any employee for reporting workplace bullying."

- b. Agency argument:** The Agency believes that the actions required of management by the Union's proposal upon receipt of a complaint are covered by the Agency's reference to FSIS Directive 4735.4 and that this portion of the Union's proposal is therefore unnecessary. During the Mediation-Arbitration, the Agency agreed to include

the portion of the Union's proposal allowing for third-party filing of reports of bullying.

**c. Order: During the course of Panel proceedings, the parties agreed to, and shall adopt, the following language:**

"Employees who believe that they have been subjected to harassment and/or workplace violence incidents instigated by other FSIS employees or outside entities should immediately report it in accordance with FSIS Directive 4735.4, 'Preventing Harassment and Workplace Violence.'

If an employee is reluctant to report the bullying a report can be filed on their behalf. All employees have the right to file FSIS Form 4735.4."

**11. Article: Communications**

**General arguments**

The Agency contended that it has a right to determine its budget which could be implicated by having to bear the expense of printing copies of the CBA for employees. The Agency also argued its right to assign work could be implicated and contended it has the right to manage line employees and their ability to access a computer off-the-line to view the CBA. As the undersigned has directed adoption of the Agency's proposal for other reasons, it is not necessary to address these arguments.

**Section 3: Distribution of agreement**

- a. Summary of proposals:** In the event the Union submits a tentative agreement to a membership ratification vote, the Agency proposes requiring the Union to take responsibility for the distribution of the tentative agreement to the members. After the agreement is ratified, the Agency agrees to distribute an electronic version to those employees with Agency computers, and a hard copy to employees without.

The Union's proposal would require the Agency to print and distribute hard copies of the CBA "in quantities necessary for ratification purposes." Thereafter, the Agency would be required to send copies of the CBA to

all slaughter establishments, to create and distribute an electronic version of the CBA, and to reprint and redistribute the CBA if any error is discovered.<sup>12</sup>

- b. Agency argument:** The Agency has been modernizing and increasing access to electronic devices, which limits the need for a printed CBA. The Agency prints very little of anything and maintaining the CBA in electronic form will save money. Printing hard copies would cost between \$11,000 to \$15,000. Even if there are three employees per electronic workstation, only one employee can be off-the-line at a time anyway, and supervisors are capable of managing operations to provide employees with necessary access.
- c. Union argument:** Merely having access to the CBA via the Agency's intranet is insufficient and would require employees to take time off-the-line to view the CBA on an Agency computer. Not all employees have an Agency computer and, in other cases, as many as three employees may have to share the same computer/electronic workstation. Generally, accessing a computer in slaughter facilities can be a challenge. The Agency's intranet is difficult to access from personal devices.
- d. Order:** The Agency has agreed to provide all employees with access to the CBA, either by accessing the Agency intranet via an electronic workstation, or by providing a hard copy to employees without a computer. Printing thousands of copies of the CBA would be an unnecessary expense and would not further the Statute's goal of "effective and efficient Government."<sup>13</sup> However, to increase employees' ability to access the CBA digitally, on and off the clock, the Agency should also post an electronic version of the Agreement on its publicly accessible website. **Accordingly, the parties shall adopt the Agency's proposal in full, with the following modifications:**

"Upon ratification, an electronic/digital version of the Agreement will be made available for all BUEs with agency-issued computers via the Agency's intranet. The Agency will distribute a hard copy to

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<sup>12</sup> In the submissions to the Panel, most of the Union's proposed language was struck. However, the Union confirmed that it only intended to strike the first paragraph of subsection (b) of its proposal.

<sup>13</sup> 5 U.S.C. § 7101(b).

those without computers. Subsequently the Agreement will be available in electronic/digital version (i.e. .pdf) on the Agency's website."

## 12. Article: Disciplinary and Adverse Actions

### Section 1: Purpose and policy

- a. Summary of proposals:** The parties' submissions to the Panel did not include proposals for Section 1 of Article 12. However, during the course of Panel proceedings, the parties informed the undersigned they reached agreement on the following language:

"The parties agree that the objective is to correct and improve employee conduct and/or performance so as to promote the efficiency of the Agency. Where appropriate, the parties agree to the concept of progressive discipline designed primarily to correct and improve employee behavior. Bargaining unit employees shall be the subject of disciplinary and/or adverse action only for just cause. Performance actions will be labeled and acted upon as performance, not misconduct.

When there is a proposal for action sent to LERD for review, the affected employee(s) will be notified in writing the day the proposals ~~is~~ are sent to LERD. The employee will be notified in writing of the allegations.

Nothing shall be placed in the evidence file that does not relate to a specification.

Previous allegations that have not been proven shall not be considered or mentioned in any proposal.

Stale discipline shall not be considered or mentioned in a proposal.

#### Definitions

- a. Disciplinary Action - a written reprimand, or a suspension from duty for fourteen (14) calendar days or less.



b. Adverse Action - a suspension for more than fourteen (14) calendar days, furlough without pay for thirty (30) calendar days or less, removal, or involuntary demotion in grade or pay.

c. Informal Actions - includes oral warnings, oral admonishments, and written letters of caution as opposed to letters of instruction or similar issuances that are considered guidance to employees, the purpose of which are to inform or clearly convey practices, procedures, or instructions.

d. Formal Action - includes letters of reprimand, suspensions without pay, involuntary reduction in grade or pay, removals, or furloughs of thirty (30) days or less."

## **Section 2: Formal actions**

- a. Summary of proposals:** The parties agree that letters of reprimand cannot be retained in an employee's personnel file for more than two years. While the rest of the Agency's proposal is quite short, simply noting that employees will be advised of their rights when provided with a "notice of proposed disciplinary or adverse action," the Union's language is far more detailed.

Under the Union's proposal, employees facing a disciplinary action must be notified in advance of the proposed suspension and evidence relied upon by the Agency, provided with 10 days to request an in-person oral conference, and provided with a copy of the final, written decision. Employees facing an adverse action must receive 30 days' advanced notice of the proposed action and evidence relied upon by the Agency, provided with 10 days to require an oral conference. The requirements for advanced notice may be "curtailed" when there is reason to believe an employee has committed a crime. Finally, employees operating under a last chance agreement shall not be terminated "automatically" without observation of their "rights under the law."

- b. Agency argument:** The Agency would prefer to streamline the CBA by referencing applicable regulations instead of reciting them at length. It would also like the option to conduct oral conferences virtually to reduce the cost associated with in-person oral conferences, which cost the Agency \$18,400 in 2018 and \$16,000 in 2019. The

Agency already notifies employees of their rights in the disciplinary action letter; not all employees have the same rights, as it varies based on the circumstances.

- c. Union argument:** All of the Union's proposal is current language, except the last provision about automatic termination. Employees are not well-versed in adverse/disciplinary actions and need to have easy access to information about their rights.
- d. Order:** The Agency's proposal allows for a more streamlined CBA, acknowledges the Agency's obligation to provide employees with information about their rights when issuing a notice of proposed disciplinary or adverse action, and will help save money and advance the statutory goal of an "effective and efficient Government."<sup>14</sup> **Accordingly, the parties shall adopt the Agency's proposal in full.**

### **Section 3: Representation**

- a. Summary of proposals:** The parties agree that an employee will be provided with two copies of any proposed formal action and accompanying evidence file, but the Union seeks to be able to demand an electronic copy of the evidence file as well. Both parties agree that an employee may choose to be represented by the Union or other representative but, while the Agency's proposal requires the employee's designation of representative to be made in writing and signed, the Union's proposal would allow the designation to be made without a signature, if in writing, or orally. Further, the parties disagree about how oral conferences will be conducted; the Agency seeks virtual conferences while the Union wishes the employee to be able to choose between virtual and in-person conferences. Once a representative has been selected, the Agency seeks to provide that the scheduling of disciplinary proceedings "shall not be delayed," while the Union objects to this provision. Finally, the Union seeks to receive "sufficient notice" of and an opportunity to be present at any disciplinary action, with travel expenses and official time provided by the Agency; the Agency objects to this provision.

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<sup>14</sup> 5 U.S.C. § 7101(b).

- b. Agency argument:** The Agency already provides two copies of proposed formal actions so the employee can share with the Union and provides electronic versions upon request. The Agency doesn't require a signature for designation of representative, but believes it is important for there to be a written designation to confirm and memorialize the employee's choice. Virtual oral conferences would reduce travel costs, which can approach \$20,000 per year, and COVID-19 has shown that remote conferences can be conducted effectively. The "shall not be delayed" language is important to remind all parties to keep the process moving. The Agency did not object to the Union's language requiring official time in "all cases where known discipline is delivered."
- c. Union argument:** Prior to installation of electronic devices, current practice has been for the BUE to orally designate their representative to their supervisor. Current practice is that disciplinary action oral conferences are done telephonically while adverse actions are handled face-to-face. Virtual oral conferences in plant settings are not very private (the Agency counters that employees can go elsewhere, while the Union points out that work devices cannot be removed from the plant). Union reps don't generally have a track record of delaying the process. The Union stated that it has the statutory right to be present when discipline is administered to an employee.
- d. Order:** Overall, the Agency's proposal is the more reasonable and best advances the goals of an "effective and efficient government,"<sup>15</sup> but the parties also agree with various aspects of each other's proposals. The Agency's proposal also provides employees the ability to obtain a Union representative. **Accordingly, the parties will adopt the following modified version of the Agency's proposal:**

"a. An employee shall be provided with a second copy of any proposed formal action, including the evidence file, for the purpose of informing his or her Union representative, if the employee so chooses to be represented by the Union. Upon request, the Agency will provide the designated

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<sup>15</sup> *Id.*

representative an electronic copy of the evidence file.

b. An employee may be represented by the Union or other representative of his or her choice. Designations will be in writing ~~and signed by the employee.~~ Designations received electronically from the employee will suffice as proper designation. Once the designation has been made, all contacts and correspondence will be through the representative.

c. In the event of a proposed adverse action, the oral conference will be held via teleconference or video conference.

d. In instances where an employee designates a union representative, the scheduling of an oral conference or the proceedings of the disciplinary action case shall not be delayed.

e. Official time will be paid by the Agency for all cases where known discipline is delivered."

#### **Section 5: Evidence file**

- a. Summary of proposals:** The Union's proposal, which the Agency opposes but does not counter, would require that all allegations against an employee be "supported by evidence" and that all evidence relied on to take or propose action "be contained in the evidence package provided to the employee and the representative."
- b. Order:** The parties agree that the Union's proposal is informational only and not substantive. **Consistent with the interests of a streamlined CBA, the Union shall withdraw its proposal.**

#### **Section 6: Outside activities**

- a. Summary of proposals:** The Union's proposal provides that "[a]ctivities that are not directly related to the job of the employee shall not be considered in a disciplinary action or adverse action."
- b. Arguments:** The parties did not provide much substantive argument on this section, though there was some

confusion about whether this provision was included elsewhere in the CBA.

- c. Order:** The language does not appear elsewhere in the CBA. **Accordingly, the parties shall adopt the following modified version of the Union's proposal which balances employees' right to their private lives with the Agency's need to manage its workplace and accomplish its mission:**

"Activities that are not directlyreasonably related to the job of the employee shall not be considered in a disciplinary action or adverse action."

### **Section 7: Splitting suspension**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike from the existing agreement, provides that, "[w]henever possible, the agency will split discipline of more than one week between pay periods."
- b. Order:** During the Mediation-Arbitration, the parties agreed to, and shall, adopt only the first sentence of the Union's proposal, which reads, "Whenever possible, the agency will split discipline of more than one week between pay periods."

## **13. Article: Dues Withholding**

### **General arguments**

The Agency contended that it cannot stop and automatically restart deductions as employees enter and exit the bargaining unit; employees must reauthorize the deductions upon re-entering the unit. Overall, the Agency wishes to streamline this article and ensure it follows applicable law.

### **Section 1: General**

- a. Summary of proposals:** The parties agree that employees have the right to voluntary payroll deduction of union dues and that such deductions will be governed by § 7115 of the Statute and the LMA. However, the Agency's proposal obligates the Union to inform employees "of the voluntary nature of dues withholding and the conditions governing a BUE revocation of dues withholding." In

contrast, the Union's proposal limits an employees' ability to revoke authorization for dues withholding to the 30-day period prior to the anniversary of the employee joining the Union.

- b. Order:** The Agency's proposal is both more streamlined and better recognizes and protects the voluntary nature of employees' decision to authorize payroll deduction of Union dues. Further, the Union's proposal includes a restriction on employees' ability to revoke such authorization that has been rendered illegal by a government regulation recently adopted by the Federal Labor Relations Authority.<sup>16</sup> **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"In implementing the dues deduction program, the Employer and Union will be governed by the provisions of 5 USC 7115, 5 CFR § 2429.19, and this Article."

## **Section 2: Supply of forms**

- a. Summary of proposals:** The parties agree that the Union shall be responsible for distributing SFs 1187 to employees to authorize dues deductions, but disagree about whether to include the process of obtaining an SF 1188 to cancel dues deductions in the LMA; the Agency favors inclusion while the Union opposes it.
- b. Order:** While the Agency's proposal is slightly longer than the Union's, this is due to the Agency continuing its practice of linking to outside resources and authorities, in this case, the SF 1188 employees can use to revoke authorization for dues deductions. However, if the SF 1188 is to be hyperlinked in the CBA, the SF 1187 should be as well. **Accordingly, the parties shall adopt the following modified version of the Agency's proposal:**

"The Union will be responsible for the distribution of Standard Form (SF) 1187, available online at [https://www.opm.gov/forms/pdf\\_fill/sf1187.pdf](https://www.opm.gov/forms/pdf_fill/sf1187.pdf), for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues.

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<sup>16</sup> 5 C.F.R. § 2429.19.

Standard Form 1188 will also be available through the Union, the appropriate Human Resources Office, or online at [www.opm.gov/forms/pdf\\_fill/sf1188.pdf](http://www.opm.gov/forms/pdf_fill/sf1188.pdf) for employees who wish to revoke the allotment as described in Section 4."

### **Section 3: Requesting dues withholding**

- a. Summary of proposals:** The Agency proposal requires employees to submit SFs 1187 on their own, while the Union's proposal would permit anyone to submit an SF 1187 on employees' behalf and would require the Agency to furnish the contact information for appropriate submission of SFs 1187. The parties agree deductions will begin "no later than two pay periods following receipt of Standard Form 1187."
- b. Order:** The Agency's proposal best protects employees' right to make their own decisions about authorizing Union dues withholdings by prohibiting third parties from submitting an SF 1187 on an employee's behalf. However, the Union's proposal to require the Agency to furnish the contact information for SF 1187 submission is reasonable and appropriate. **Accordingly, the parties shall adopt the Agency's proposal, modified as follows:**

"In order to initiate dues withholding, a BUE must complete and sign an SF- 1187. BUEs must themselves submit the completed, signed, and certified SF-1187 forms to the appropriate Human Resources Office for concurrence, at no expense to the Agency. The Agency will provide contact information to where/who the SF-1187 can be mailed, faxed or emailed in the Human Resource Office. The Union, its representatives, or another individual may not submit the forms on the BUE's behalf. Dues will be withheld beginning no later than two pay periods following receipt of Standard Form 1187.

### **Section 4: Termination of dues withholding**

- a. Summary of proposals:** The parties agree that dues deductions shall terminate automatically in the event of the Union's loss of exclusive recognition and if an employee separates or transfers from the bargaining unit. The Agency proposes that deductions shall also

terminate automatically if an employee temporarily transfers to a position outside the bargaining unit and will only resume if the employee submits another SF 1187 upon return to the bargaining unit; the Union disagrees, countering that deductions shall cease "[w]hen an employee ceases to be eligible for inclusion in the Union." Finally, the Agency proposes to cease deductions if an employee is no longer a Union member in good standing; the Union opposes inclusion of this provision.

- b. Order:** The Union agreed to subsections 1(a) and 1(c) of the Agency's proposal. The Union opposes the Agency's subsection 1(b), but the Panel noted in a previous decision that an Agency proposal similar to this, "provides employees with the fullest control over the authorization of dues withholdings, best protects employees' statutory right to 'freely' choose to 'join' or 'refrain from' joining a union and will therefore be adopted."<sup>17</sup> The Union's opposition to subsection 1(d) of the Agency's proposal is also unavailing, as the Statute requires that dues withholdings "shall terminate" if "the employee is suspended or expelled from membership in the exclusive representative."<sup>18</sup> **Accordingly, the parties shall adopt the Agency's proposal in full.**

#### **Section 5: Correction of errors**

- a. Summary of proposal:** The parties agree that errors in dues withholdings are to be adjusted after the error is discovered. However, while the Agency's proposal states the correction will occur "as soon as practicable," the Union seeks to require that corrective action occur after no more than two pay periods. Further, the Union's proposal would allow the Union's designee to inform the Agency of errors while, under the Agency's proposal, only notice by the Union would trigger the Agency's obligation to correct the error. Lastly, the Union's language requires the automatic resumption of withholdings when employees return to the bargaining unit from non-pay status, when an employee is reinstated into the bargaining unit after an improper separation.
- b. Order:** The Agency's proposal remains consistent with the practice of requiring an employee to affirmatively authorize dues deductions when re-entering the

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<sup>17</sup> NLRB, 20 FSIP 072 (2020).

<sup>18</sup> 5 U.S.C. § 7115(b)(2).



bargaining unit. This is both easier to administer administratively than attempting to automatically restart previously authorized withholdings and better protects employees' statutory rights to authorize such withholdings voluntarily. However, the Union's proposal to allow its "designee" to alert the Agency of errors in dues withholding is reasonable. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as practicable after the Employer has discovered the error or has received written notification of the error from the Union or the Union's designee ~~of the error.~~"

#### **Section 6: Disputes**

- a. Summary of proposals:** The parties' submissions to the Panel indicate this section is at impasse, but fail to provide language for the respective proposals. During the course of Panel proceedings, the Agency indicated that it had moved to strike this section, which involves disputes over dues withholding.
- b. Agency argument:** Resolving disputes over dues withholding is the sole function of the Federal Labor Relations Authority (FLRA).
- c. Order:** In the absence of proposed language from the Union, the parties will adopt the Agency's proposal to strike this section from the CBA.

#### **14. Article: Employee Rights and Responsibilities**

**Section 1: Accountability; Section 2: Access to union and management officials; Section 6: Use of agency equipment and resources; Section 7: Personnel files and records**

- a. Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached agreement on these four sections. **Accordingly, the parties shall follow the agreed upon language.**

**Section 5: Industrial disputes and civil disorders**

- a. Summary of proposals:** The Union proposes detailed procedures, communications, and behavioral requirements for inspectors and supervisors to follow in the event of a "strike or civil disorder" at a regulated plant. The Agency counters with a more minimalist proposal simply directing employees to "communicate with their supervisor and await further instructions" and obligating the Agency to "notify the NJC Chairman or designee of the establishment and procedures for reporting."
- b. Agency argument:** Employee safety is paramount. The Agency does not disagree with the Union on substance and just wants to streamline the CBA.
- c. Union argument:** The Agency's proposal recognizes strikes or labor unrest at regulated plants, but does not contemplate broader civil unrest inspectors may face when traveling between plants. Substantive procedures are needed to protect employees.
- d. Order:** The Agency did not offer any material objection to any of the Union's proposal and indicated a willingness to try and reach agreement with the Union. The Agency provided a counterproposal to the Union incorporating much of the substance of the Union's language and omitting some of its overly prescriptive aspects, but the Union declined to accept it. Nonetheless, the Agency's counterproposal is a reasonable compromise that establishes clear, appropriate procedures without becoming too detailed to account for varying circumstances. **Accordingly, the parties shall adopt the Agency's counterproposal in full, which provides:**

"In the event of a strike or civil disorder at a regulatory establishment, employees will communicate with their supervisor and await further instructions. As soon as practicable, the Agency will notify the appropriate Council President and NJC Chairman or designee of the establishment and procedures for reporting.

Employees are responsible during the plant strike periods for reporting to work as scheduled and performing assigned inspection duties unless otherwise directed by their supervisor. In the

event the direct supervisor is not available, employees are to contact their District Manager or designee for further instruction.

If a plant strike date is announced in advance, agency officials shall meet with plant management and officials of the striking union to make definite arrangements to assure the safety of the inspection workforce.

If the plant strike is affected without prior notice and an employee(s) is confronted with a picket line in reporting for work, he/she shall approach the line, produce proper identification, state his/her responsibility for reporting for work, and request that he/she be allowed access. If access is refused, employee(s) shall leave the picket line area and promptly report the facts to the supervisor by phone."

#### **Section 9: Parking**

- a. Summary of proposals:** The parties agree that the Agency will "make a reasonable effort to obtain parking spaces for inspectors at official establishments." However, the Union's language goes further, requiring the parking space be properly marked to prevent use by non-Agency employees and that, "wherever possible," employees with duties at multiple locations or with a "permanent physical disability" be provided parking at their worksites. Lastly, the Union's proposal permits employees to seek guidance from the Agency if they suspect their safety may be at risk in an assignment area and, in cases of "documented" unsafe conditions, requires the Agency to "take appropriate action... to address the safety and well-being of Agency personnel."
- b. Agency argument:** Districts, supervisors and plant operators presently work out parking arrangements. Plants are privately owned, meaning there is no way for the Agency to control or secure parking. The Agency does not oppose the second or third paragraphs of the Union proposal, however.
- c. Union argument:** Inspectors' parking spaces get taken if not marked, which causes strife at the plant. Plants can be located in areas with high crime, and cars have been

vandalized. No designated parking is available at some plants.

- d. Order:** The Agency correctly pointed out that it cannot ensure or regulate parking at private facilities. **However, the Agency did not oppose, and the parties shall adopt, the following modified version of the Union's proposal:**

~~"The Agency shall make a reasonable effort to obtain parking spaces for inspectors at offices and official establishments. This shall include proper marking to preclude use by other than Agency employees. Employees having inspection duties at more than one location or those having a permanent physical disability will be provided parking spaces at such locations, whenever possible."~~

An employee who believes his/her personal safety or property may be in jeopardy because of the area of his/her assignment shall may contact the supervisor for advice and guidance.

Where there are documented instances, whether written or verbal, of unsafe conditions involving FSIS personnel in parking areas owned and provided to FSIS employees by establishments, the Agency shall take appropriate action, as necessary, within existing authorities to address the safety and well-being of Agency personnel."

#### **Section 10: Personal rights**

- a. Summary of proposals:** The Agency proposes to strike this section, which the Union proposes to retain. The Union's proposal obligates the Agency to inform new employees of their right under the Statute to Union representation at any formal discussion with management regarding employment conditions and at any examination of the employee, pursuant to an investigation, which the employee reasonably believes may lead to discipline. The Union's proposal also reiterates that employees "shall have the protection of rights afforded all Federal employees" and specifies such rights and other aspirational goals at length.

- b. Agency argument:** The Agency believes the Union's proposal is covered by existing law and would unnecessarily lengthen the CBA.
- c. Union argument:** The Union acknowledges that the Agency already distributes an annual notice to employees of their right to Union representation, as required by law.<sup>19</sup> The Union points out its proposal is included in the previous CBA.
- d. Order:** The Agency is already statutorily obligated to notify employees of the representational rights and the Union agrees that it does not. The remainder of the Union's proposal consists generally of vague, aspirational goals for the nature of the workplace or statements of the Agency's obligation to follow "applicable law" in various respects. Overall, the Union could not show how inclusion of its lengthy proposal was of material benefit. **Accordingly, the Union shall withdraw its proposal for this section.**

#### **Section 11: Freedom from reprisal**

- a. Summary of proposal:** The Union proposes to list the employee rights protected by § 7102 of the Statute, while the Agency objects that reciting these rights in the CBA are unnecessary.
- b. Agency argument:** The Agency indicated that it was open to including a condensed version of the Union's proposal that references 7102 of the Statute with a short explanation.
- c. Order:** The parties acknowledge that the Union's proposal creates no new protections for employees beyond what they are already afforded by the Statute. However, the Agency indicated it was open to including a condensed version of the Union's proposal that references § 7102 with a short explanation. **The Union subsequently condensed its proposal, a modified version of which the parties shall adopt as follows:**

"Each employee, without exception, has the right under 5 U.S.C. § 7102 to, freely and without penalty of reprisal, ~~to~~ form, join and assist a labor

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<sup>19</sup> 5 U.S.C. § 7114(a)(3).

organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. The Agency shall take the action required to assure that employees are apprised of their rights and that no interference, restraint, coercion, or discrimination is practiced to encourage or discourage membership in the Union.  
~~5 U.S.C 7102"~~

## **Section 12: Employee pay**

- a. Summary of proposals:** The Union's proposal, to which the Agency objects on the grounds that it is "covered by governing laws and regulations," states that "[e]mployees are entitled to timely payment of salary and travel expenses" and a "[r]easonable amount of time" to handle payroll paperwork, directs the Agency to provide certain information and notices to employees regarding their compensation, and observes that payroll procedures must "be in accordance with governing regulations" and that the Agency "will bargain to the extent required by law."
- b. Agency argument:** The Agency doesn't control pay, but could accept parts of the Union's proposal, specifically subsections (a) (as long as "travel expenses" is struck) and (e).
- c. Union argument:** Pay and time off are very important subjects to employees.
- d. Order: During the Mediation-Arbitration, the parties agreed to, and shall adopt, the following modified version of the Union's proposal:**
- "a. Employees are entitled to timely payment of salary. Agency officials will assist employees in expediting payment where processing is delayed.
- b. Reasonable amount of time will be given to bargaining unit employees to prepare, complete, submit and validate the time & attendance per pay period, while in a pay status."

**Section 13: Retirement and resignation**

- a. Summary of proposals:** The Union's proposal, to which the Agency objects on the grounds that it is "covered by governing laws and regulations," acknowledges employees' right to retire or resign, including prior to termination, "in accordance with prevailing regulations" and obligates the Agency to furnish employees with retirement planning information upon request.
- b. Order:** During the course of the Mediation-Arbitration, the Agency accepted the Union's proposal, which the parties are directed to adopt.

**Section 15: Mass fare subsidy**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike from the CBA, would permit employees apply for a transit benefit/fare subsidy and would obligate the Agency to reimburse employees for "all fees and transponders or any other method used by any governing entity where a BUE will be traveling on any chargeable roadways, bridges, etc. as part of their duties."
- b. Order:** During the course of Panel proceedings, the Union agreed to, and shall, withdraw its proposal for this section.

**Section 17: Tort/indemnification**

- a. Summary of proposals:** The Union's proposal, which the Agency opposes on the grounds that it is already covered by the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, states that employees are protected by the Act while performing their official duties and make request indemnification pursuant thereto "in accordance with applicable guidelines."
- b. Order:** During the Mediation-Arbitration, the parties agreed to, and shall, adopt the first paragraph of the Union's proposal, which reads:

"In the performance of his/her duties, or when acting within the scope of his/her employment, the employee is entitled to protection under the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, (P.L. 100-

694).

**Section 18: Agency meetings**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike from the CBA, entitles employees to duty time and paid travel for "[a]ny meetings away from the facility, scheduled by the Agency, which employees are required to attend."
- b. Order:** During the course of Panel proceedings, the Union agreed to, and shall, withdraw its proposal for this section.

**Section 19: Use of telephones**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike from the CBA, permits employees to use phones in "establishments in government occupied space" on a "limited use basis" if "allowed by the establishments, and where the use is at no cost."
- b. Order:** During the mediation-arbitration, the Agency agreed to, and the parties shall, adopt the Union's proposal, in full.

**Section 20: Nursing mothers**

- a. Summary of proposals:** The Union's proposal, which the Agency contends is covered by existing federal law, provides a process for nursing mothers to "request accommodations for the purpose of expressing and saving milk in private while at the workplace."
- b. Order:** The parties' dispute was not substantive; they agreed the goal was simply to recognize the Agency's obligation to follow the law, but differed about how much detail to include. During the mediation-arbitration, neither party was sure of the appropriate legal citation. **Accordingly, the parties shall adopt the following language for this section:**

"As required by 29 U.S.C. § 207(r) and in accordance with any other applicable law or rule, the Agency will provide employees who are nursing mothers with breaks and accommodations for the purpose of expressing and saving milk in private while at the workplace."



## 15. Article: Equal Employment Opportunity

### Section 2: EEO complaints

- a. **Summary of proposals:** The parties agree that, "[i]n the matter of EEO complaints, the Agency shall follow 29 CFR 1614" but, while the Agency's proposal includes a commitment to follow 5 U.S.C. §7114(a)(2)(A) as well, the Union's proposal strikes the statutory reference in favor of an extended explanation of the Weingarten rights provided by the Statute.
- b. **Order:** During the course of Panel proceedings, the Union agreed to, and the parties shall adopt, the Agency's proposal in full.

### Section 3: Affirmative Employment Program Plan

- a. **Summary of proposals:** The Union's proposal, which the Agency proposes to strike from the CBA, would require the Agency to maintain an affirmative action plan as "required by EEOC regulations." Further, the Union's proposal obligates the Agency to allow the Union to review, and possibly bargain over, the plan before it is submitted to the EEOC. Further, the Union would be provided the right to "submit its views with respect to the Affirmative Action Program Plan for individuals with disabilities and disabled veterans."
- b. **Agency argument:** The Union's proposal is generally required by existing law. The Agency states, however that it is not provided to the Union for comment.
- c. **Union argument:** The Union states that it has been provided with the plan to review.
- d. **Order:** During the mediation-arbitration, the parties indicated they could agree to (a) of the Union's proposal and require the Agency to provide a copy of the Affirmative Employment Program Plan to the Union after its submission to the EEOC. When the Agency subsequently provided the Union language to this effect, however, the Union stated it could not agree. **Nonetheless, the Agency's compromise proposal is reasonable, shall be adopted by the parties, and reads:**

"Establishment and implementation of the Affirmative Employment Program Plan is required by EEOC regulations. The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives throughout the Activity, as outlined in Title 29 CFR 1614.102.

The Agency shall provide a copy of the final plan to the Union."

#### **Section 5: Information and data**

**a. Summary of proposals:** The Union's proposal, which the Agency proposes to strike from the CBA, would require the Agency to furnish employees with "information describing the Affirmative Employment Program Plan and the EEO complaint procedure." Further, the proposal obligates the Agency to annually furnish the Union with certain statistical data about the workforce and filed discrimination complaints.

**b. Order:** During the Mediation-Arbitration, the parties indicated they could likely agree to adopt subsection (a) of the Union's proposal in exchange for striking (b). However, the Agency subsequently provided a compromise proposal to the Union proposing to strike (a) of the Union's proposal – as it wants to avoid having to distribute printed copies of the plan to employees – and agreeing to a narrower version of (b). **The parties shall adopt the following compromise proposal:**

"a. The Agency shall make available to employees information describing the Affirmative Employment Program Plan and the EEO complaint procedure.

b. The Agency agrees to annually furnish the Union with statistical data concerning discrimination complaints filed by bargaining unit employees."

#### **Section 6: Mediation/alternative dispute resolution**

**a. Summary of proposals:** The Union's proposal, which the Agency proposes to strike from the CBA, grants/acknowledges the Union's right to be present "on official time and expenses" at any mediation of EEOC complaints filed by employees, "in accordance with 5 U.S.C. §7114(a)(2)(A)."

- b. Agency argument:** The Union's proposal is unnecessary as it is required by statute. The Agency would prefer a shorter contract.
- c. Union argument:** The Union states that it is important to highlight that this process exists.
- d. Order:** The parties agree that the Agency would be obligated to provide official time for EEOC complaint mediation regardless of whether this proposal is included in the CBA. Further, the Agency's proposal for Section 2 of this article already acknowledges that it will abide by 5 U.S.C. §7114(a)(2)(A). **Accordingly, the Union shall withdraw its proposal for this section.**

#### **Section 7: EEOC committees**

- a. Summary of proposals:** The Union's proposal, which the Agency proposes to strike from the CBA, states that, "Any EEOC committees where unit members are present will be appointed by the Union."
- b. Agency argument:** Any employee should be able to participate on these volunteer committees, not just those selected by the Union.
- c. Union argument:** The Union should get to select employees to participate on these committees.
- d. Order:** During the course of Panel proceedings, the Union suggested it would agree to withdraw its proposal for this Section.<sup>20</sup> However, the Union subsequently rejected a counterproposal offered by the Agency. **As the Union provided no compelling reason to limit employee participation on EEOC committees to those selected by the Union, it shall withdraw its proposal for this section.**

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<sup>20</sup> During the Mediation-Arbitration, the Union did not indicate it was willing to consider withdrawing its proposal for Section 7, but subsequently informed the undersigned that it would do so. However, the Union did not follow up with the undersigned to confirm. It is possible that the Union intended to inform the undersigned that it was willing to withdraw its proposal for Section 8 (per below) and indicated Section 7 by mistake. However, the undersigned would have resolved these two sections the same way regardless.

## Section 8: Settlement agreements

- a. **Summary of proposals:** The Union's proposal, which the Agency seeks to strike from the CBA, directs the Agency to bargain with the Union as required by the Statute when an EEOC settlement changes conditions of employment, but also provides that such settlements may not conflict with the CBA. Lastly, the Union's proposal grants it the right to be present "on official time and expenses" for settlement discussions and to review any agreement before it is executed.
- b. **Agency argument:** EEOC settlement agreements are already covered by Title 29 CFR 1614. The Agency does not want to contradict or add to these regulations.
- c. **Union argument:** The Union agrees that at least parts of its proposal are covered by existing law. The Union wants the ability to review EEOC settlements.
- d. **Order:** The first paragraph of the Union's proposal is unnecessary as it merely recognizes the Agency's statutory obligation to bargain over changes to conditions of employment. The second paragraph is similarly unnecessary. The third paragraph, providing the Union access to EEOC settlement proceedings on official time, is arguably addressed at least in part by 5 U.S.C. §7114(a)(2)(A). **The Union indicated that it would be willing to consider withdrawing its proposal and, absent a compelling reason to keep it, the Union shall withdraw its proposal for this section.**

## 16. Article: Furlough

### Section 1: Policy

- a. **Summary of proposals:** The parties agree that, "[i]n the event of a furlough, the Agency shall comply with... applicable government-wide laws and regulations." The Agency's proposal lists such authorities more specifically than the Union, however. Also, the Union's proposal would require the Agency to "provide hard copies of relevant information" to employees in the event of a furlough.
- b. **Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached

agreement on this Section. **Accordingly, the parties shall follow the agreed upon language.**

## **Section 2: General information**

- a. Summary of proposals:** The parties agree that employees "may be required to work in the event of a government-wide shutdown" and would be "retroactively paid" to the extent permitted by law. Both parties also concur that the Agency will "put forth a concerted effort to expedite processing requests for outside employment" in the event of a furlough. The parties also agree that the Agency will provide certain information to employees in the event of a furlough, though the Union seeks to require the Agency to provide the same type of information to employees for a shutdown furlough that it would provide in the event of administrative furlough, such as the reason for the shutdown, the employees excepted and not excepted, and the expected date of the shutdown. This information may be harder to provide in the event of a shutdown furlough, however, and the Agency's proposal would only require it to provide "the excepted time frames, if known" in the event of a shutdown furlough. The Union's proposal goes to great lengths to describe procedures that would govern in the event of a furlough, as indicated in the attached side-by-side document.
- b. Order:** During the Mediation-Arbitration, the Union indicated that it might be able to accept the Agency's proposal. However, the Union subsequently informed the undersigned without elaboration that, after further review, it was unable to accept the Agency's language. Aspects of the Union's proposal are covered by existing laws and regulations. Further, the Union's proposal, particularly regarding shutdown furloughs, is overly prescriptive given the difficulty of putting in place procedures for inherently unpredictable circumstances. The Agency persuasively argued that it needs the flexibility to respond to these challenging circumstances and the directives of agencies like the Office of Personnel Management. **Absent a compelling reason to impose any particular part of the Union's lengthy proposal, the undersigned directs the parties to adopt the Agency's proposal in full.**

## 17. Article: Labor-Management Meetings

### Section 1: Purpose

- a. Summary of proposals:** While the parties agree to conduct regular labor-management relations (LMR) meetings, they disagree about a number of details regarding how the meetings will be conducted. The Union proposes that, when the parties fail to finish the discussion of agenda items at a scheduled LMR "a common interest meeting will be scheduled within 30 days, with the meeting taking place no later than 45 day of the completion of the LMR meeting in order to complete the remaining LMR agenda items." The Agency proposal contains no similar language.

While the Agency proposal would require the parties to "submit up to 5 topics at least 20 calendar days before the meeting" to prepare an agenda, the Union's proposal only requires the exchange of topics occur five days in advance and contains no limit on the number of topics that can be considered.

- b. Agency argument:** The Agency may not have many/any topics to raise and doesn't want that to be considered a violation of the advanced notice requirement. Even if the Agency doesn't have topics to raise, it still wants to be able to engage with the Union via LMRs.
- c. Union argument:** The Union doesn't necessarily oppose the Agency's language, but doesn't think the Agency can abide by its own terms. The Agency has failed to provide topics for discussion at LMRs in the past.
- d. Order:** The advanced notice requirement and topic limitation for LMR meetings was the main point of contention, though the parties appeared to generally agree on the intent behind providing advanced notice. **The parties shall adopt the Agency's proposal in full, modified as follows:**

"Each party shall submit up to 5 topics at least 20 calendar days before the meeting to prepare. If a party has topics it would like placed on a meeting agenda, it shall submit them to the other party at least 20 calendar days before the meeting. No party may add more than 5 topics to a meeting agenda."

Topics are to be specific for the office, i.e., management will address HQ-related topics at the HQ meeting and District related topics at each District LM meeting. Topics will be addressed as an overarching presentation to share policy and operational matters that are applicable to FSIS employees."

## **Section 2: Common interest meetings**

- a. Summary of proposals:** The Agency proposes to strike this section from the current LMA, while the Union's language appears duplicative of that provided for Section 1.
- b. Order:** The Union's proposal for Section 2 is very similar, if not identical, to its proposal for Section 1. **Accordingly, the Union shall withdraw its proposal for this section.**

## **Section 3: Headquarters LM meetings**

- a. Summary of proposals:** The Agency proposes that Agency and up to eight Union officials will meet face-to-face in Washington, D.C. one to two times per fiscal year for a period of three days. The Union's proposal seeks two guaranteed D.C. meetings each fiscal year for three days and attended by eight Union officials. The Union also proposes that the meetings be transcribed at the Agency's expense and that, if the agenda items are not fully discussed in the time allotted, a follow-up meeting will be scheduled within 30 days. Union officials would attend on official time and have their travel costs paid by the Agency, which would again pay for the meeting to be transcribed.
- b. Agency argument:** The Agency is seeking to minimize travel costs and, consequently, does not want to agree to more than one in-person meeting per year. The Agency would be open to guaranteeing an additional virtual meeting each year, however.
- c. Union argument:** The Union would prefer multiple in-person meetings but did not offer material objections to the Agency's proposal.

- d. Order:** The parties' main dispute involves the frequency of the headquarters LMR meetings and whether they will occur in-person or virtually. The Agency's desire to minimize travel costs advances the goals of an "effective and efficient Government"<sup>21</sup> and the Union did not provide compelling justification for multiple, in-person meetings. Still, the parties should have the flexibility to conduct additional meetings virtually upon mutual agreement. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"Agency officials shall meet with the National Joint Council (NJC) (or Union) at least twice per fiscal year, once face to face at the Agency's Washington, DC office, ~~one (1) time per fiscal year~~ and once virtually. The meetings shall be scheduled Tuesday, Wednesday, and Thursday beginning at 8:00 a.m. and concluding at 4:30 p.m. each day. Up to a total of eight (8) Council President or his/her designee, may attend the face to face meeting. If appropriate, upon mutual agreement, ~~one (1)~~ additional meetings may be held ~~per fiscal year~~ via face to face or video conference."

#### **Section 4: District labor management meetings**

- a. Summary of proposals:** The Agency proposes that each district will meet with up to nine Union representatives from councils and locals 1-2 times per fiscal year. The Agency shall determine the location and duration of the meetings "based upon effective use of tax-payer money."

Under the Union's proposal, district meetings would occur three times each fiscal year with the "location, date, time, and duration... determined by mutual agreement" and the nine participating Union officials on official time and participating "at the Agency's expense."

- b. Agency argument:** The Agency would like to minimize travel costs by reducing the number of meetings. The Agency is open to guaranteeing a second, virtual meeting, with more upon mutual agreement.

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<sup>21</sup> 5 U.S.C. § 7101(b).



- c. Union argument:** Real progress is made at the meetings. More than just one per year is needed.
- d. Order:** The parties' dispute, proposals, and positions are very similar to those of Section 3 above, and a similar resolution is justified here. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"Each District shall meet ~~face to face~~ with at least one (1) representative per corresponding Council(s), ~~one (1) time~~ twice per fiscal year, once face to face and once virtually. ~~with~~ The location and duration of the face to face meeting shall be determined by the Agency, based upon effective use of tax-payer money. Union representation will reflect a maximum of up to nine (9) representatives, which may be a combination of corresponding council presidents and local presidents (or designees) in order to provide appropriate representation of the bargaining unit. If appropriate, upon mutual agreement, ~~one (1) additional meetings shall~~ may be held ~~per fiscal year~~ via face to face and/or video conference."

#### **Section 5: Joint contract training**

- a. Summary of proposals:** The Union's proposal, which the Agency proposes to strike from the LMA, would require an in-person "joint contract training face-to-face session between the OFO Head Quarter Management and District Managers along with the 8 Council Presidents within 60 days of the signing of the agreement." Further, the Union would require that "joint District face-to-face training sessions... take place with the Deputy District Managers, Front Line Supervisors along with Council Presidents and Local Presidents within the District jurisdiction at the first LM meeting after the signing of the agreement or within 90 days." The proposal also calls for in plant "work Unit meetings" with "supervisory personnel and Union Representatives to provide training of applicable articles to that level for discussion within 90 days of signing the agreement." Travel expenses related to the above trainings would be borne by the Agency.
- b. Agency argument:** Joint training might be beneficial in theory, but can be problematic because the parties may

not agree on interpretation of the contract. This was a problem with the last contract. It may also be logistically difficult and costly to arrange. Each party should train their own side on the new CBA.

- c. **Union argument:** Part of the reason for joint training is to help get the parties on the same page about what the contract means and hopefully avoid grievances down the road.
- d. **Order:** The Agency argued persuasively that joint training could pose practical challenges and contended it has not worked well in the past. If the parties have disagreements about what the CBA means, they can resolve them informally or via the negotiated grievance procedure. During the course of Panel proceedings, the Union indicated it could agree to withdraw its proposal. **Accordingly, the Union will withdraw its proposal for this section.**

## 18. Article: Leave

**General arguments:** The parties' approaches to this article differ more in style than in substance. The Agency prefers a condensed article which relies primarily on referencing applicable laws, rules, and regulations governing various types of leave. For its part, the Union would prefer a more extended explanation of the kinds of leave available to employees. Where the differences between the parties' proposals are not substantive, the undersigned will impose the Agency's more concise language.

### Section 1: Policy

- a. **Summary of proposals:** The Agency's proposal recognizes that it will "follow all applicable laws, rules, Departmental Regulations, and Agency Directives pertaining to leave." It also links to the applicable authorities governing leave. The Union's proposal also recognizes the Agency's obligation to follow applicable leave, but does not cite specific authorities and contains an assortment of provisions governing leave generally.
- b. **Order:** Overall, the Agency's more concise proposal is preferable. However, the Agency's proposal lacks several references to applicable authorities that the parties

agreed should be included. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"The Agency shall follow all applicable laws, rules, Departmental Regulations, and Agency Directives pertaining to leave.

Additional guidance may be found at the following links:

FSIS Directive 4630.2 Rev 2 - Leave

DR 4060-630-01 - Creditable Service for Annual Leave Accrual

DR 4060-630-02 - Leave Administration, Excused Absence and Administrative Leave

OPM Fact Sheets - Leave

5 CFR 603.403, Medical Documentation Supporting Evidence

Investigative and Notice Leave 5 USC § 6329b(b)(1)

5 CFR Part 550 - Pay administration

5 CFR Part 630 - Absence and leave

29 U.S.C. Chapter 28 - Family and Medical Leave

29 CFR Part 825 - Family and Medical Leave

5 CFR 630.1206(b) - Substitution of paid leave"

## **Section 2: Annual leave**

- a. Summary of proposals:** The Union's proposal requires Agency supervisors to "make reasonable efforts to satisfy the leave requests of employees." The Agency's proposal states that employees are responsible for scheduling annual leave in writing "as necessary to prevent any unintended loss at the end of the leave year;" the Union's proposal says this is the responsibility of the employee *and* supervisors. The Agency's proposal allows for leave to be cancelled for operational needs; the Union's proposal only allows cancellations in "emergencies." Both proposals

acknowledge that "[b]oth the needs of the employee and the Agency will be considered prior to any cancellation" of leave and that employees shall generally submit notice of leave cancellation at least 72 hours' in advance. However, the Agency's proposal provides that leave cancellation requests submitted less than 48 hours' in advance "may be approved at the option of the supervisor," while the Union's proposal only provides the supervisor this discretion if the cancellation is requested less than 72 hours in advance.

The parties agree that "extended" leave requests should be "requested as far in advance as possible," but the Union would require supervisors to provide "a definitive written response as to whether the leave is granted or denied." The Agency's proposal would require that employees on leave familiarize themselves with "location and reporting requirements for the upcoming administrative workweek" before returning to work. The Union's proposal would: give employees with scheduled leave for a full work week the day before their leave and the two days after their leave off; ensure that employees' scheduled leave shall carry over if they transfer to another duty station; would allow employees to preemptively use leave they would earn during the year; gives full-time employees priority over part-time employees for scheduling leave; and would grant employees in a plant "not operating during a holiday" the "first opportunity to be duty free."

- b. Order:** The Agency's proposal is generally the more reasonable, but should be modified to require supervisors to confirm or deny leave requests in writing, as the Union seeks. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"c. Extended periods of annual leave should be requested as far in advance as possible so that overall consideration can be given to workload and staffing needs. Supervisors will provide a definitive written response as to whether the leave is granted or denied."

### Section 3: Tardiness

- a. Summary of proposals:** The parties agree that only the immediate supervisor may "excuse tardiness." However, the Union's proposal states that any leave the employee must take to make up for tardiness will be in 15-minute increments. The Agency's proposal would require employees who know they are going to be late to notify their supervisor "as soon as possible" and specifies that employees absent without authorization "shall have their absence recorded as absence without official leave (AWOL)." The parties agree that the Agency will distribute information to employees about how to report anticipated tardiness, though the details differ slightly.
- b. Order:** The only major difference between the two proposals is the Agency's reasonable requirement that employees who know they are going to be late notify their supervisor. **The parties shall adopt the Agency's proposal in full.**

### Section 4: Annual leave scheduling

- a. Summary of proposals:** The Agency seeks to create a standardized process for scheduling annual leave, while the Union seeks to maintain past practices. However, in the event past practices must be changed, the Union proposes a process for scheduling annual leave that shares many similarities with the Agency's proposal.
- b. Agency argument:** There are many past practices involving annual leave scheduling; each district may have multiple past practices. The Agency is not aware of them all. Due to Agency reorganization, some districts were combined, merging multiple past practices. Greater uniformity within districts would be helpful.
- c. Union argument:** Current practices are not broken. The Agency's proposed subsection 3(a) would preclude newer employees from getting leave during high demand times. The Agency's proposed subsection 3(b) would prevent employees from using leave they've accrued.
- d. Order:** The Agency's desire to reset past practices regarding leave scheduling is justified and will not prevent the parties from implementing regionally

customized practices in the future. Given that the parties are not even aware of all such past practices, starting with a clean slate will enable the parties to implement practices that make sense today. However, the Union persuasively argued against basing annual leave on seniority and preventing employees from using more leave than they could accrue in a year, which would prevent them from using leave carried over from previous year(s). **Accordingly, the parties shall adopt the Agency's proposal, except for subsections (3)(a) and (b).**

#### **Section 5: Sick leave**

- a. Summary of proposals:** The Agency seeks to strike the existing section explaining sick leave, while the Union seeks to retain it.
- b. Agency argument:** This section is covered by the regulations and authorities cited in the Agency's section 1. Reiterating these provisions at length is unnecessary; the Agency prefers a streamlined CBA.
- c. Union argument:** The Union believes the information is important to include in the CBA.
- d. Order:** In the interest of a concise CBA, the Union shall withdraw its proposal.

#### **Section 6: Sick leave restrictions**

- a. Summary of proposals:** The parties' proposals govern how sick leave abuse will be handled and allow for employees to be placed on restricted sick leave in certain circumstances, which would trigger medical documentation.
- b. Order:** During the course of Panel proceedings, the Union agreed to, and the parties shall adopt, the Agency's proposal.

#### **Section 7: Leave without pay**

- a. Summary of proposals:** The Agency seeks to strike the existing section, while the Union seeks to retain it.

- b. Agency argument:** The Agency acknowledged that it would include a reference to 5 CFR 630.1206(b) in its Section 1.
- c. Union argument:** The Union acknowledged that its proposal was already covered by existing laws and regulations and there for only informational purposes.
- d. Order:** Consistent with above orders and a streamlined CBA, the Union will withdraw its proposal for this section.

#### **Section 8: Family and medical leave**

- a. Summary of proposals:** The Agency seeks to strike the existing section, while the Union seeks to retain it.
- b. Agency argument:** The Agency acknowledged that it would include a reference to the Family and Medical Leave Act in its Section 1.
- c. Union argument:** The Union acknowledged that its proposal was already covered by existing laws and regulations and there for only informational purposes.
- d. Order:** Consistent with above orders and a streamlined CBA, the Union will withdraw its proposal for this section.

#### **Section 9: Maternity/paternity leave; Section 10: Excused Absence (Administrative Leave); Section 11: Military leave; Section 12: Adjustment of Work Schedules for Religious Observances; Section 13: Hazardous weather leave**

- a. Summary of proposals:** The Agency seeks to strike these existing sections, while the Union seeks to retain them.
- b. Agency argument:** The Agency would like a streamlined CBA.
- e. Union argument:** The Union acknowledged that its proposals were already covered by existing laws and regulations and there for only informational purposes. It indicated a willingness to withdraw its proposals provided they were covered by the authorities listed in the Agency's section 1.

- c. **Order:** Consistent with above orders and a streamlined CBA, the Union will withdraw its proposals for these sections.

#### **Section 14: Emergency leave**

- a. **Summary of proposals:** The Agency seeks to strike the existing section, while the Union seeks to retain it.
- b. **Order:** During the Mediation-Arbitration, the Agency agreed to, and the parties shall adopt, the Union's proposal in full.

#### **Section 15: Court leave; Section 16: Voting; Section 17: Voluntary leave transfer program; Section 18: Leave for Preventative Health Care Screenings**

- a. **Summary of proposals:** The Agency seeks to strike the existing sections, while the Union seeks to retain them.
- b. **Order:** During the course of Panel proceedings, the Union agreed to, and shall, withdraw its proposals.

#### **Section 19: Holiday leave**

- a. **Summary of proposals:** The Union's proposal, which the Agency seeks to strike, provides that, "When an Inspector's plant is not working on a holiday, or plant(s) on an assignment, the Inspector will be allowed to take the holiday leave."
- b. **Agency argument:** Supervisors may need to assign an inspector to work at a nearby plant even if their typical plant is closed for the day.
- c. **Union argument:** This is current practice in some districts.
- d. **Order:** The Agency needs to be able to manage its workforce in a way that accomplishes the Agency's mission. Though some districts may choose to give inspectors the day off when their assigned plant is closed, the Agency should not be required to do so. **The Union shall withdraw its proposal.**



## Section 20: Data request

- a. **Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would allow the Union to "request any and all information needed regarding leave."
- b. **Order:** During the mediation-arbitration, the Union acknowledged that it could probably obtain the information under § 7114 of the Statute. **The Union agreed to, and shall, withdraw its proposal.**

## 19. Article: Negotiation of Local Agreements

### Section 1

- a. **Summary of proposals:** Both parties agree that local supplemental agreements may be bargained at the local/circuit level. The parties also agree that local bargaining may only involve "matters specifically applicable to the respective Local/Council," that the Agency and Union must agree to subjects for local bargaining, and that the national CBA supersedes any locally negotiated agreements. The parties agree that, except by mutual agreement, local negotiations will take place at the local district office.

The Union's proposal includes a non-exclusive list of subjects that can be locally bargained and ties the duration of any locally negotiated agreements to the term of the CBA, unless otherwise agreed to in a memorandum of understanding (MOU). The parties also differ over the process for ensuring locally negotiated agreements align with the CBA. The Agency's proposal grants the parties seven days to resolve a conflict between a local agreement and the CBA and requires that all such conflicts be resolved before "finalization" of the CBA. The Union, however, would require the parties to notify each other "within 15 work days following execution of the supplemental agreement" if they believe it to be in conflict with the CBA. The parties would then, within another 15 days, "discuss the provisions in question following notification in an effort to resolve the dispute..."

- b. **Agency argument:** The Union's example list of subjects that local agreements can address is unnecessary, as is the Union's language tying locally negotiated contracts

to the duration of the CBA. Local agreements are subject to Agency head review and cannot be executed before being reviewed.

**c. Union argument:** The Union did not have substantive responses to the Agency's points and indicated it might be able to accept the Agency's proposal, though it subsequently declined to do so.

**d. Order:** The parties shall adopt the Agency's proposal in full.

## **20. Article: Official Time**

### **Section 1: Policy**

**a. Summary of proposals:** The Agency's proposal notes that, while "[e]ach employee's foremost responsibility is the completion of the duties of his/her Agency position of record," the Statute permits union representatives to use "limited amounts" of official time. The Union's proposal, which is current CBA language, provides far more background information about official time, its definition, and how it is to be used. Some parts of the Union's proposal, such as identifying which Union officials are eligible for official time, are addressed elsewhere in the Agency's proposals for this article.

**b. Order:** The parties shall adopt the Agency's more simplified proposal.

### **Section 2: Designation**

**a. Summary of proposals:** The Agency's proposal, to which the Union offered no counter, would require that the Union "maintain an updated list of all designated union representatives" and that only employees on the list "will be authorized to use union time."

**b. Order:** The Union raised no substantive objection to the Agency's proposal, and the parties acknowledged that they had agreed to a similar requirement in Article 40. **Accordingly, the parties shall adopt the Agency's proposal.**

**Section 3: Release from duty for representational matters**

- a. Summary of proposals:** The parties' proposals outline the process for requesting, approving, and recording official time.
- b. Agency argument:** The Agency acknowledged that requiring Union representatives to request official time seven days in advance is too much and was willing to accept two days' notice unless something prevented the Union from requesting it sooner. The Agency also agreed to strike the part of its proposal requiring Union representatives to inform their supervisor, "using the method determined by the supervisor," when they return from official time. Finally, the Agency did not wish to defend its proposal requiring the Union to reimburse the Agency for the costs of correcting inaccurate official time entries by Union representatives.
- c. Union argument:** The Union did not strongly justify its proposal to guarantee Union representatives "access to unit employees and their working conditions at any time deemed necessary by the Union." Similarly, the Union agreed to strike its proposal granting official time to "attend the AFGE Legislative conference(s)."
- d. Order:** During the course of Panel proceedings, the parties agreed to various aspects of each other's proposals and to withdraw aspects of their own. **Based on these agreements, and the judgement of the undersigned, the parties shall adopt the following modified version of the Agency's proposal:**

"a. Each Union representative will be required to complete an electronic request for official time in the Agency's Time & Attendance System two (2) workdays in advance. In the event the Union representative's position is not incorporated into the system, the Union representative is required to submit a written request to their immediate supervisor within two (2) workdays prior to the release from duty. Each Union representative will be required to submit a request for official time two (2) workdays in advance, except in circumstances where such advanced notice is not possible. Requests shall be submitted in the Agency's Time & Attendance System unless the Union

representative's position is not incorporated into the system, in which case the Union representative is required to submit a written request to their immediate supervisor.

b. The completed request shall specify:

1. In reasonable detail the tasks the representative will undertake;
2. The number of hours to be used;
3. Where and when the official time will be used;
4. How the tasks are related to Union business; and
5. A telephone number and email address where the employee can be reached.

c. Requests that do not contain sufficient information for management to assess whether the request is consistent with law, regulation, and the terms of this Agreement will be denied.

~~d. Request for Official Time must be submitted to the employee's first line supervisor (or higher-level supervisor if the first line supervisor is unavailable) at least seven (7) days in advance of when the Official Time is requested to be utilized, except in circumstances where such advanced notice is not possible (e.g. an impromptu Weingarten Interview, a Formal Discussion that is noticed one day in advance, management directed notification requiring the need for official time).~~

~~ed. Approval from an authorized supervisor/management official must be obtained by an employee prior to their engaging in union time as a representative. Any employee who uses union time without advance supervisory/management approval will be considered absent without leave and subject to appropriate disciplinary action. The employee will immediately inform the supervisor when he/she returns to work after completion of the representational activity using the method determined by the supervisor.~~

~~fe. If management is unable to approve a request for union time, the reason for denial will be~~

provided. If an operational need does not permit the employee to use the union time when requested, management will generally make a reasonable effort to allow the employee to use the requested union time within two workdays, keeping in mind the interests of the union, as well as the needs of the employer.

~~g.f. An employee serving as a Union Representative is responsible for accurately recording union time on their time and attendance for pay purposes. An employee's failure to accurately record union time on their time and attendance creates a financial burden on the agency, as the agency will incur a cost to correct the time and attendance record. In such an instance, the Union will reimburse the agency for the actual cost of processing the correction."~~

#### **Section 4: Provisions for Union Time**

- a. Summary of proposals:** The parties' proposals establish the amount of official time that shall be available to Union officials. The Agency seeks to establish an official time bank of 5,040 hours, down from 15,000 under the current CBA, while the Union seeks a bank of 22,000 hours. The Agency would like to cap the amount of time any employee can spend on official time at 25%. The Union wants unlimited official time, not charged to the bank, for several kinds of activities.
- b. Agency argument:** The Agency has not historically tracked official time use, but began researching and tracking it more in recent years and determined the Union was using more official time over the life of the prior contract, from about 11,000 hours in 2008 and 2009 to 23,000 in 2015 and 2016, and then down to about 13,000 in 2019 and 2020. The Agency believes the Union's proposal for 15,000 hours is too much, but acknowledged that its own proposal of 5,000 is "kind of low" and would have been higher but for Executive Order 13837. The size of the bargaining unit has declined slightly over the life of the prior contract, from about 6,500 to 6,300. The Agency wants all of its bargaining unit employees to work most of the time on Agency business.

- c. Union argument:** The prior CBA provided a bank of 15,000 hours. This is a necessary amount of time for representational purposes. The Agency inappropriately counts § 7131(a) and (d) time towards the bank. The Agency claims it wants bargaining and other processes to proceed faster, but limiting employees to 25% official time would slow things down. The Union asserts that the higher up employees go, the more time they might need to spend on representational activity. The Union states that the cap is arbitrary; Union officials in leadership need to be able to spend a lot of time on certain activities.
- d. Order:** Aspects of the Agency's proposal were clearly and admittedly shaped by Executive Order 13837, which the Panel has consistently recognized as an important source of public policy regarding official time use. However, the Order was rescinded by a subsequent Executive Order during the Panel proceedings in this case and can no longer be relied upon.<sup>22</sup>

Nonetheless, the Statute continues to provide a framework governing official time. Under § 7131(a), unions are entitled official time to engage in collective bargaining negotiations and, under § 7131(c), unions are entitled to official time to participate in proceedings before the Federal Labor Relations Authority. Finally, § 7131(d) allows additional official time "in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest."

By definition, the parties' presence before the Panel means they have failed to "agree" on the amount of discretionary official time that is appropriate. As it falls to the undersigned to resolve the parties' impasse over official time by, effectively, deciding what they shall "agree" on, the undersigned must also observe the statutory directive that official time beyond what is required by the Statute be "reasonable, necessary and in the public interest." Also applicable to official time impasses is the Statute's directive that it be interpreted "in a manner consistent with the requirement of an effective and efficient Government." Accordingly, unless the undersigned can be persuaded that additional

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<sup>22</sup> Executive Order 14003: Protecting the Federal Workforce.

official time meets these statutory criteria, it should refrain from imposing it.

Turning to the parties' proposals, neither side has convincingly shown that its proposal satisfies these statutory requirements.

The Union's proposal seeks a bank of 22,000 hours of discretionary official time, with automatic renegotiations for more if the bank dips below 4,000 hours. Due to apparently contradictory language in the Union's proposal, it is not clear whether official time under § 7131(a) and (c) will count towards the bank. Further, the Union's proposal would require that official time for the following activities would not count towards the hours in the bank:

- "[a]ttendance at labor management meetings;"
- "[t]ime in connection with statutory (e.g., MSPB and EEOC) appeal procedures in which the Union is designated as the representative;"
- "[a]ttendance at the recognized events to which the Union has been invited by the Agency;" and
- "[a]ttendance at the Health and Safety Committee activities".

When questioned, however, in each case the Union essentially argued that it would be unfair for the Union to have to charge its bank for time spent on these activities, but it could not articulate how unlimited official time for these purposes and in these amounts would be "reasonable, necessary, and in the public interest," much less promote "effective and efficient government." The Union could offer no justification for increasing the official time bank from 15,000 to 22,000 when the Union has managed to use less than 15,000 hours in recent years.

The Union did, however, make a reasonable argument that limiting Union officials to spending no more than 25% of their time on official time could limit their ability to interact with the Agency and perform the Union's necessary functions, and even slow or delay Union's ability to participate in negotiations or meetings with the Agency or timely complete other functions.

For its part, the Agency all but conceded that its proposal for a bank of 5,040 hours for discretionary official time was too low. However, the Agency reasonably argued in favor of the 25% cap by pointing out that employees employed by the Agency should be engaged in advancing the Agency's mission at least most of the time.

A more reasonable approach than either party's proposal would be to impose a bank of 10,000 hours from which all official time will be deducted and require that no employee spend more than 50% of their duty time on official time. The Union utilized about 11,000 hours of official time in fiscal years 2008 and 2009. Though this amount increased over the life of the CBA, it began tapering off again significantly once the Agency began to keep closer track of the amount of time being used. Further, the number of employees in the bargaining unit has decreased since 2008. A bank of 10,000 hours is halfway between the current 15,000-hour bank and the Agency's proposed 5,000-hour bank, and is comparable to the amount per bargaining unit employee the Union used in previous years. Further, preventing Union representatives from spending more than 50% of their time on union business acknowledges the Agency's goal of ensuring public employees are working for the public, while also recognizing that certain Union officials need to devote significant amounts of their time to representational work. Based on the evidence before the undersigned, this approach is the most "reasonable, necessary, and in the public interest."

Finally, the Union's proposal notes that the time Union officials spend "representing employees in statutory EEO complaints" is considered official time under EEOC regulations. However, during the Panel proceedings the EEOC rescinded this regulation, though it is unclear if the rescission has officially taken effect.<sup>23</sup> If the rescission does take effect before implementation of the CBA, the Union's proposal would be rendered out of date. If the existing regulation ultimately remains in place, it will apply whether the CBA acknowledges it or not. Either way, inclusion of the Union's language is unnecessary.

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<sup>23</sup> *Final Rule - Official Time in Federal Sector Cases before the Commission*, <https://www.eeoc.gov/final-rule-official-time-federal-sector-cases-commission>.



**Accordingly, the parties shall adopt the following modified version of the Agency's proposal:**

"A. Consistent with 5 U.S.C. 7131 and this Agreement, union representatives will be granted union time, subject to availability as described below, for only the following representational activities:

1. Term Negotiations (T&A Code 35) - to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).
2. Mid-Term Negotiations (T&A Code 36) - to negotiate over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).
3. Preparation for Term and Mid-Term Negotiations (T&A Code 35 or 36) authorized under 5 U.S.C. 7131 (d).
4. General Labor-Management Relations (T&A Code 37) - perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d), subject to availability of hours in the Union Bank as described below.
5. Dispute Resolution (T&A Code 38) - to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in a duty status, in accordance with 5 U.S.C. 7131(c).

B. Union Bank. Total of available hours of union time per fiscal year for activities covered by 5 U.S.C. 7131 (d) ~~is calculated by four fifth hour per bargaining unit employee, for a total of 5,040~~ shall be 10,000 hours as of October 1. Unused union bank hours do not carry over into the next fiscal year.

C. A union representative may request leave without pay to engage in union activities (LWOPUA) that would be permitted under 7131(d). LWOPUA does not count against the union bank. No agency employee shall be permitted to spend more than 250% of their established annual tour of duty on union time, LWOPUA, or any combination thereof. Management will consider requests for LWOPUA and determine whether

to grant the leave without pay. The denial of LWOPUA for union representational activities cannot be grieved or disputed in any forum.

D. Union reps who reach the 250% cap will be authorized union time in accordance with sections 7131(a) and 7131 (c) of Title 5, U.S.C., that do not count against the bank total. Time for these activities are charged to the union bank for that fiscal year. However, if the union bank has been exhausted, time will be charged to the union bank for the following fiscal year (or years)."

### **Section 6: Tracking of official time**

- a. Summary of proposals:** The Agency seeks to strike the existing section, while the Union's proposal would provide that official time is tracked "using the Time and Attendance System" in place when the contract is executed, but would specify that Union officials need not use the system to request official time in advance. It would also require the Agency to track official time use and provide reports to the Union.
- b. Order:** Tracking and requesting official time was previously resolved under Section 1 above. However, the Agency expressed an openness to keeping the Union apprised of its official time use, and it is reasonable for it to do so. **Accordingly, the parties shall adopt the following section of the Union's proposal:**

"The Agency will be responsible to keep a running total of official time hours used to generate a report. That report will include the hours, Union Personnel name and code used for Official Time. The Agency will share the report each pay period to the NJC Chairperson or designee."

### **Section 7: Allegation of abuse of official time**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, addresses how alleged abuses of official time will be handled.
- b. Order:** As the proper reporting of official time was already addressed and resolved via Section 3 above, the Union's proposal is unnecessary and shall be withdrawn.

## **Section 8: Training**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would obligate the parties to conduct joint training "on the interpretation and application of the terms of this Agreement" and authorize bank-exempt official time for the Union to participate.
- b. Order:** As the issues of joint training and authorized uses of official time have been resolved in Article 15, Section 5 and Section 4 of this Article, respectively, the Union's proposal is unnecessary and shall be withdrawn.

## **21. Article: Position Classification**

### **Section 1: Classification of position**

- a. Summary of proposals:** The Parties agree that bargaining unit positions will be classified according to Office of Personnel Management classification standards. The only difference is that the Agency's proposal also cites applicable laws and regulations, while the Union's does not.
- b. Order:** During the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's proposal.

### **Section 2: Position description**

- a. Summary of proposals:** The parties agree that the Agency will maintain a file of all classified position descriptions and that classified positions are established by the Agency.

The Union seeks to be provided with the file automatically on an annual basis. The Union's proposal also lists the positions. Further, the Union's proposal regulates the content of "[p]osition descriptions furnished to employees," outlines a process, consistent with "appropriate rules and regulations," for employees to contest the classification of their position, and requires the Agency to periodically review positions to ensure proper classification.

- b. Order:** During the Mediation-Arbitration, the Agency stated it was willing to provide the Union with position descriptions as long as it is not in hard copy. The Agency does not want to list the positions in the CBA, however, as they can change. The Union offered no compelling justification for its proposal. **Accordingly, the parties shall adopt the following modified version of the Agency's proposal:**

"The Agency shall maintain a comprehensive file of position descriptions of all classified positions in the bargaining unit which it shall make available to the NJC Chairman, or designee annually. Classified positions are established after review and approval by the Agency."

### **Section 3: Effective date**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, would specify that "[r]eclassification actions shall be effective on the first pay period following final approval of the personnel action."
- b. Order:** The Agency was concerned that the Union's proposal requiring a specific timeframe for processing reclassification actions could pose administrative challenges. **However, during the course of Panel proceedings, the parties agreed to accept, and shall adopt, the following modified version of the Union's proposal:**

"Reclassification actions shall be taken as soon as administratively possible."

### **Section 4: Employees Affected by a Re-classification Action**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, requires the Agency to "notify the Union in writing prior to the effective date of any reclassifications actions whether or not the actions result in an obligation to bargain in accordance with the law or the contract."
- b. Order:** During the Mediation-Arbitration, the Agency indicated that it could accept the Union's proposal as

long as grammatical errors were corrected. **Accordingly, the parties shall adopt the following modified version of the Union's proposal:**

"The Agency agrees to notify the Union in writing prior to the effective date of any reclassifications actions, whether or not the actions result in an obligation to bargain ~~in accordance with the law or the contract.~~"

#### **Section 5: Position upgrades**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, specifies that, "In the event that the agency determines that a position is to be upgraded, the employee that is holding that position currently... will receive the upgraded position without having to apply."
- b. Agency argument:** The Agency would typically allow employees to remain in reclassified positions, but is not sure that position "upgrades" are the same as reclassifications. The Agency does not want to potentially limit its right to assign work.
- c. Union argument:** During the Mediation-Arbitration, the Union indicated it might be willing to withdraw its proposal, but subsequently declined to do so.
- d. Order:** Absent a compelling reason to include the provision, which the Union did not provide, the Union shall withdraw its proposal.

### **22. Article: Recognition and Coverage**

#### **Section 2: Governing laws and regulations**

- a. Summary of proposals:** The parties both acknowledge the Agency will "be governed by existing laws and government-wide rules and regulations as defined in Title 5, U.S.C., Chapter 71 of the Statute, by published Agency policies and regulations in existence at the time the Agreement is effectuated." They also agree that the law or government-wide regulations in effect when the agreement takes effect "shall supersede any conflicting provisions of this Agreement." The parties disagree

about whether the agreement will supersede past practices.

- b. Agency argument:** The Agency asserts that it does not know how many past practices there are at FSIS. They go back as far as the 1980s. Managers and supervisors are not aware of them. The Agency would like the opportunity to start over, as many practices are out of date.
- c. Union argument:** The Union states that there are a multitude of past practices at FSIS. The Union has provided all past practices to the Agency and would like to maintain them. The Union believes it is important for the workforce to maintain cohesion and consistency, and it states that the way to do that is by continuing to honor the past practices in place.
- d. Order:** The Agency argues convincingly that the number and age of past practices justifies removing them across the board and allowing the parties to start over and develop practices that address the issues faced by the Agency and employees today. **The parties shall adopt the Agency's proposal in full.**

### **Section 3: Management rights**

- a. Summary of proposals:** The Agency's proposal, which the Union wishes to strike, notes that, "[t]he Agency retains all rights as stated in Title 5 U.S.C. Section 7106."
- b. Agency argument:** The Agency wants to be consistent in citing applicable laws, rules, and regulations in the agreement.
- c. Union argument:** The Union states that there is no need to reiterate management rights, since they exist in Statute regardless. The Union contends that excluding the Agency's proposal would help streamline the contract.
- d. Order:** The Agency's proposal, which cites applicable law without restating it at length, is consistent with its general approach to the agreement, of which the undersigned approves. The Union's opposition to the Agency's one-sentence proposal, based on the Union's purported desire to streamline the contract, is

inconsistent with its other proposals. **The parties shall adopt the Agency's proposal.**

## **23. Article: Reduction in Force and Transfer of Function**

### **Section 2: Applicable laws and regulations**

- a. Summary of proposals:** Both parties' proposals list the applicable laws and regulations governing reductions-in-force (RIFs) and transfers of function. The Union, however, would like to specify that the version of the laws and regulations in effect at the time the agreement is executed are what shall govern through the life the agreement.
- b. Union argument:** Instead of just referencing laws or regulations in the contract and allowing the contract to be changed as those authorities change, the Union wanted to lock in the language of the regulations and policies in effect at the time of agreement.
- c. Agency argument:** The Agency suggested the parties had agreed to remove the dates from the contract and index them separately, though it's not clear that the Union agreed. The Agency agreed to add a reference to 5 CFR Part 330, Subpart F to the list of authorities governing RIFs.
- d. Order:** The parties should, to the extent possible, be governed by applicable laws and regulations. **Therefore, the parties shall adopt the Agency's proposal, modified to include "5 CFR Part 330, Subpart F - Agency Career Transition Assistance Plan CTAP for Local Surplus and Displaced Employees" to the list of laws and regulations the Agency shall follow in the event of a RIF or transfer of function.**

### **Section 3: Union notification; Section 4: Definitions; Section 5: Filling of vacancies; Section 6: Waivers; Section 7: Employee notification; Section 8: Content of notices**

- a. Summary of proposals:** The Union's proposals, which the Agency proposes to strike, would restate existing regulations governing RIFs.
- b. Order:** The parties agree that the Union's proposals for these sections are not substantive; the Agency would be

required to follow these procedures whether these provisions are included in the agreement or not. **Accordingly, in the interest of a more concise agreement, the Union shall withdraw its proposals.**

**Section 9: Employee official personnel files**

- a. Summary of proposals:** The Union's proposal involves employee and Union access to employees' official personnel files.
- b. Order:** The Agency did not object to the Union's proposal *per se*, but would prefer not to include it if it is addressed by existing regulations. **As the parties were unsure of whether it was addressed elsewhere and did not disagree on substance, the parties shall adopt the Union's proposal.**

**Section 10: Records**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, requires the Agency to "maintain all lists, records, and information pertaining to actions taken under this Article for two (2) years.
- b. Order:** The Agency indicated it would follow applicable laws and regulations, but it did not want to agree to anything contradicting or adding to them. Records retention is addressed by laws and regulations.<sup>24</sup> **As the Union did not provide a compelling justification for the proposal, it shall be withdrawn.**

**Section 11: Retention registers; Section 12: Retention standing ties; Section 13: Release from competitive level; Section 14: Employee response to specific notice; Section 15: Impact of Details and Temporary Promotion**

- a. Summary of proposals:** The Union's proposals, which the Agency proposes to strike, would restate existing regulations governing RIFs.
- b. Order:** The parties agree that the Union's proposals for these sections are not substantive; the Agency would be required to follow these procedures whether these provisions are included in the agreement or not.

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<sup>24</sup> See, e.g., 44 U.S.C. Chapter 31; 44 U.S.C. Chapter 33; and 36 C.F.R. 1222.



Accordingly, in the interest of a more concise agreement, the Union shall withdraw its proposals.

#### Section 16: Transfer of function

- a. Summary of proposals:** The Union's proposal, which the Agency proposes to strike, would list the Agency's obligations towards employees and the Union "[i]n the event of a possible transfer of function."
- b. Order:** During the Mediation-Arbitration, the parties agreed to, and shall, adopt the last paragraph of the Union's proposal, which reads:

"The Agency shall meet with the Union to discuss transfer of function, either by the Agency or any other Government entity, when such transfer of function has been determined to any degree of certainty."

#### Section 17: Employee Use of Official Time and Agency Facilities

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would grant employees "who are identified as surplus or displaced under Career Transition regulations" a "reasonable amount" of duty time to look for work.
- b. Agency argument:** Employees already have these rights elsewhere in the contract. All USDA employees have the right to "limited use" of Agency facilities for job searching under Department policy.
- c. Union argument:** The Agency's article on the use of resources does not cover use of Agency computers; it is appropriate to include it here.
- d. Order:** As a general rule, employees on duty time should be working to fulfill the Agency's mission. Unless provided for by law, rule, regulation, or Agency policy, allowing employees to search for alternative employment on duty time should not generally be viewed as advancing the statutory goals of an "effective and efficient government."<sup>25</sup> **The Union shall withdraw its proposal.**

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<sup>25</sup> 5 U.S.C. § 7101(b).

**Section 18: Re-promotion Rights of Affected Employees;  
Section 19: Reemployment Priority Rights of Affected Employees**

- a. Summary of proposals:** The Union's proposals, which the Agency proposes to strike, would restate existing regulations governing RIFs.
- b. Order:** The parties agree that the Union's proposals for these sections are not substantive; the Agency would be required to follow these procedures whether these provisions are included in the agreement or not. **Accordingly, in the interest of a more concise agreement, the Union shall withdraw its proposals.**

**24. Article: Use of Official Facilities**

**Section 1: General**

- a. Summary of proposals:** The parties' proposals both state that Union use of the "Agency's communication resources shall not interfere with the mission or operation of the Agency." The Union's proposal also specifies that the use of such resources "will not violate the law, advocate violating the law, or contain items relating to partisan political matters."
- b. Order:** During the course of the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's proposal.

**Section 3: Use of bulletin boards**

- a. Summary of proposals:** The Agency proposes to "maintain" space for a Union bulletin board "at each headquarter plant." The Union proposes that the Agency "provide" an "exclusive bulletin board" for the Union "in Agency owned or controlled facilities."
- b. Agency argument:** The Agency asserted that many plants have only 1-2 inspectors present and no supervisor. The Agency stated that supervisors should not have to drive around to small plants every time there's something to post. The Agency is not opposed to keeping existing bulletin board space or providing bulletin boards in new

locations. But in some places, there is not space for a bulletin board.

- c. Union argument:** The Union wants to make sure the Agency is obligated to "provide" – not just "maintain" space for – a bulletin board at each establishment.
- d. Order:** The Agency's proposal represents a willingness to furnish bulletin board space to the Union where reasonable. The Agency should not be required to furnish the Union with its own "exclusive" bulletin board at every location employees work, as this would not be in the interests of an "effective and efficient government" and the Union did not provide a compelling reason why it would be necessary to do so.<sup>26</sup> **The parties shall adopt the Agency's proposal.**

#### **Section 4: Distribution**

- a. Summary of proposals:** The parties' proposals govern the circumstances under which the Union may "distribute materials to employees."
- b. Order:** During the course of the mediation-arbitration, the Union accepted, and the parties shall adopt, the Agency's proposal.

#### **Section 5: Use of equipment**

- a. Summary of proposals:** The parties agree that the Union "shall be afforded access to Agency equipment so long as there is no conflict with the performance of official functions and equipment is available." However, the Union seeks to require the Agency to provide a Union filing cabinet at all district offices. The Union's proposal would also specifically permit Union officials to use Agency computers, fax machines, and copiers.
- b. Agency argument:** There's no need to be as specific as the Union's proposal. Three of the 10 districts already have provided the Union with filing cabinets, and the Agency is willing to provide filing cabinets to the Union at the other seven.

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<sup>26</sup> *Id.*

- c. Union argument:** Filing cabinets may not be covered by "Agency equipment." The Union acknowledged that its language imposes an affirmative obligation on the Agency to purchase/provide a filing cabinet if it did not have one to make available. The Union states that some districts do not presently have file cabinets for the Union. The Union did state that the references to computers, faxes, and copiers are not as critical.
- d. Order:** The Agency has already agreed to provide the Union with file cabinets, making the Union's proposal unnecessary. **Further, during the course of Panel proceedings, the Union agreed to, and the parties shall, adopt the Agency's proposal.**

#### **Section 8: Meeting space**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would permit the Union to use "government owned or leased space" to conduct "meetings held outside business hours, provided space is available and use of such space does not conflict with the performance of official functions."
- b. Agency argument:** The Agency does not control privately-owned plants/establishments and cannot force them to allow the use of space by the Union after hours. The Union is free to work out arrangements for after-hours meetings with the plants directly if it wants.
- c. Union argument:** This is current language and it does currently happen, provided it's permitted by the establishment. The Union wants to be able to use Agency space for Union-only meetings outside business hours.
- d. Order:** The Agency raised reasonable objections to the Union's proposal and pointed out that the Union may still hold meetings at plants/establishments if it can make arrangements with the owner(s). **The Union shall withdraw its proposal.**

#### **Section 9: Bargaining unit employee information**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would require the Agency to annually provide the Union with an electronic list of the bargaining unit employees.

- b. Order:** The Agency asserted, and the Union did not dispute, that the Union would have access to employee lists under § 7114 of the Statute. **Accordingly, the Union's proposal is unnecessary and shall be withdrawn.**

## **25. Article: Awards**

### **Section 1: Policy**

- a. Summary of proposals:** The Agency's proposal acknowledges the importance of an awards program and states that it will be administered with applicable – and cited – laws and regulations. The Union's proposal consists of aspirational language about the purpose of the awards program and the principles by which it shall be administered.
- b. Order:** The parties articulated no substantive disagreement on this section, and the Union expressed a potential willingness to accept the Agency's proposal. **As the Agency's proposal continues its consistent and reasonable practice of citing applicable governing authorities in a concise way, the parties shall adopt the Agency's proposal.**

### **Section 2: Awards programs**

- a. Summary of proposals:** The Agency's proposal explains the awards program in general terms, reserves its right to exercise discretion in issuing awards, obligates the Agency to administer awards without discrimination and in accordance with applicable law, and lists examples of the award types. The Union's lengthier proposal lists and defines the award types in detail, directs supervisors to inform employees of a monetary award before they are paid, allows employees to choose between monetary and time off awards, and acknowledges employees may not receive awards for representational work done in their capacity as Union officials.
- b. Order:** The parties articulated no substantive disagreement on this section, though the Agency indicated it had created a new awards program which it needed flexibility to implement. **Accordingly, the parties shall adopt the Agency's proposal.**

### Section 3: Statistics

- a. **Summary of proposals:** The parties agreed that the Agency shall annually provide the Union with "information on awards granted to bargaining unit members, including a breakdown by grade level and type of award." The only dispute involved whether the Agency should have to break down the awards by district.
- b. **Order:** During the mediation-arbitration, the Agency explained that the awards data would be furnished by the individual districts, meaning there would be no need to include a field specifying which district an award was given in. **The Union agreed to, and the parties shall, adopt the Agency's proposal.**

## 26. Article: Conflict of Interest

### Section 1: Policy

- a. **Summary of proposals:** The parties generally agree on this provision, which governs the ethical obligations of public employees. However, the Union seeks to remove a reference to "Executive Orders" from the list of authorities that may establish "principles of ethical conduct" for employees. Also, the Union seeks to strike language in the Agency's proposal noting that, "as a regulatory agency," the Agency is "governed by supplemental laws and regulations" and its employees may consequently be "held to a higher ethical standard than other employees of the Executive Branch."
- b. **Agency argument:** The Agency's proposal is current language. Executive orders must still be followed whether included in the CBA or not.
- c. **Union argument:** The only material dispute is over the reference to Executive Orders. The Union states that Executive Orders are more fluid than laws or regulations, and the Union does not want to tie to contract to external authorities that may change.
- d. **Order:** The Union provided no compelling reason to exclude the reference to executive orders as a potential source of ethical conduct requirements. **The parties shall adopt the Agency's proposal for this section.**

## Section 2: Applicable Laws, Regulations, and guidance

- a. **Summary of proposals:** The Agency's proposal, which the Union seeks to strike, would list the rules, regulations, and directives governing ethical conduct.
- b. **Agency argument:** The Agency favors streamlining the contract, but thinks it is still appropriate to cite and link to external regulations.
- c. **Union argument:** The Union believes it is unnecessary to include these references and believes omitting them would streamline the CBA.
- d. **Order:** This proposal is consistent with the Agency's approach to the rest of the contract in that it lists, without restating at length, the applicable authorities. The undersigned has endorsed the Agency's approach above and will do so again here, the Union's purported desire for a streamlined agreement notwithstanding. **The parties shall adopt the Agency's proposal.**

## 27. Article: Fitness for Duty

### Section 1: Scope

- a. **Summary of proposals:** The Agency's proposal provides that it will "administer a fitness for duty program in accordance with 5 C.F.R. Part 339." The Union's proposal is non-substantive.
- b. **Order:** The parties failed to articulate a substantive dispute regarding this section. However, the Agency noted that it would like to reference appropriate Department regulations in addition to the government-wide regulation, but could not do so because it is presently working on implementing a fitness for duty program and does not yet have the policies to cite. **Accordingly, the parties shall adopt the following modified version of the Agency's proposal:**

"The Agency shall administer a fitness for duty program in accordance with 5 C.F.R. Part 339 and applicable FSIS directives."

**Section 2: Pre-existing conditions; Section 3: Medical determination; Section 4: Procedures; Section 5: Counseling**

## Section 8: Application of requests

- a. **Summary of proposals:** The Union's proposals, which the Agency seeks to strike, addresses fitness for duty procedures.
- b. **Agency argument:** The Agency believes the Union's proposals are all covered by government-wide regulations and are not necessary to restate at length.
- c. **Union argument:** The Union acknowledges that its proposals do not establish new employee rights but believes that employees should have easy access to the information by including it in the CBA.
- d. **Order:** The parties agree that the Union's proposals are not substantive; the Agency would be required to follow these procedures whether these provisions are included in the agreement or not. **Accordingly, in the interest of a more concise agreement, the Union shall withdraw its proposals for these sections.**

## 28. Article: Government Travel Management Services

### Section 1: Use of Government Travel Management Services

- a. **Summary of proposals:** The parties agree that "[e]mployees with electronic access will use the electronic travel system (ETS) to make travel arrangements, request travel authorization, and file travel claims for reimbursement as required by federal travel regulations." However, the Union would also like to permit employees to secure lodging reservations directly, "provided the government rate is met."
- b. **Agency argument:** The Agency acknowledged that employees currently do sometimes make travel arrangements directly for various reasons. However, the Agency still wants the agreement to align with applicable regulations requiring the use of the electronic travel system. The Agency stated that employees would not be disciplined for going outside the system.
- c. **Union argument:** The Union wants to be able to book directly, outside the ETS in some cases, which happens periodically now. Sometimes the hotels that need to be booked are not in the ETS.



- d. Order:** The parties did not dispute that existing policy requires travel arrangements to be made via the ETS and that employees periodically book travel outside the system anyway. In effect, the Agency's proposal represents the status quo. **Rather than add legitimacy to a practice that the parties acknowledge may violate government regulations, the parties shall adopt the Agency's proposal and are free to continue handling departures from these regulations informally.**

## **Section 2: Government credit cards**

- a. Summary of proposals:** The parties' proposals simply list the applicable regulations and directives governing government credit cards, though there are some differences of opinion about whether certain authorities should be cited.
- b. Agency argument:** The Agency's cited references are current, though some of the older directives will probably be rewritten.
- c. Union argument:** The Union is unsure about how some of the cited authorities apply to the bargaining unit.
- d. Order:** During the Mediation-Arbitration, it was pointed out that this section lacked any introductory language placing the list of authorities in context. The Agency subsequently provided some introductory language. Though the Union did not accept the Agency's proposal, it was unable to articulate a compelling reason not to. **Accordingly, the parties shall adopt the Agency's proposal, with the addition of the following introductory paragraph:**

"Employees engaged in official travel shall be considered for issuance of a Government credit card for charging reimbursable official travel-related expenses. Employees approved for the Government credit card shall abide by the credit agreement issued with the card, including the requirement that charges be paid by the due date specified on the billing statement. Use of the Card for Personal Use is Prohibited. Travel and credit card use shall be governed by the following government-wide regulations and policies listed below:"

### Section 3: Travel advances

- a. **Summary of proposals:** The parties' proposals address the circumstances under which the Agency shall issue travel advances.
- b. **Agency argument:** The Agency wants to limit the use of travel advances and reserve its authority/discretion in this area. It would like to bring the contract into alignment with existing agency policies.
- c. **Order:** During the course of Panel proceedings, the Union agreed to, and the parties shall, adopt the Agency's proposal.

### 29. Article: Hazardous Pay

#### Section 1: Policy

- a. **Summary of proposals:** The Union's proposal, to which the Agency offers no counter, obligates the Agency to compensate employees "performing hazardous work" at the "maximum pay differential" provided for in government-wide regulations.
- b. **Order:** During the course of Panel proceedings, the Agency agreed to accept the first two sentences of the Union's proposal, a compromise the Union indicated willingness to consider. **Absent a compelling reason to do otherwise, the parties shall adopt the following two sentences of the Union's proposal, which read as follows:**

"The Agency agrees that employees performing hazardous work as defined in 5 CFR Part 550, Subpart I, shall be compensated at the maximum pay differential rate set forth in such regulations. However, hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of the position.

#### Section 2: Union responsibilities; Section 3: Agency responsibilities

- a. **Summary of proposals:** The Union's proposals, to which the Agency offered no counters, outline the process by

which the Union and Agency will determine whether a "local work situation" qualifies for hazard pay.

- b. Order:** The parties acknowledged that these provisions exist in the current CBA. The Agency provided no substantive objections to these sections and indicated it could accept them. **Accordingly, the parties shall adopt the Union's proposals for these two sections.**

#### **Section 4: Exposure**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, would provide that employees receive hazard pay when "assigned work that potentially places their health at risk." The Union lists exposure to "Brucellosis, Zika Virus, chemical exposure" as examples of such situations.
- b. Agency argument:** The Agency states that this is a new proposal not in the current contract. The Agency objects to designating exposure to these specific viruses as triggering hazard pay. The Agency has already worked out how it will handle exposure to these viruses without complaint from the Union. Thus, the Agency states that the parties should just abide by applicable regulations.
- c. Order:** **As it did not justify or explain the need for this provision, the Union shall withdraw its proposal.**

### **30. Article: Pilot programs/projects**

#### **General arguments**

The Agency initially indicated that it objected to the Union's proposals for this article, which was not included in the prior CBA, as non-negotiable on the grounds that it infringes on the Agency's right to assign work.<sup>27</sup> It noted that past discussions with the Union over pilot projects were informal. After some discussion, the parties appeared to accept that the Agency does not have to bargain with the Union over whether to implement a pilot a program, but could be required to engage in impact and implementation bargaining over the effects of the program on employees' conditions of employment.

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<sup>27</sup> 5 U.S.C. § 7106.

**Section 1:**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, provides non-substantive introductory language for the article.
- b. Order:** The parties articulated no substantive dispute over this proposal. **The Union's proposal shall be adopted.**

**Section 2 and Section 3:**

- a. Summary of proposals:** The Union's proposals, to which the Agency offered no counter, obligate the Agency to provide the Union advanced notice of and an opportunity to discuss new pilot programs.
- b. Order:** During the Mediation-Arbitration, the parties agreed in principle to incorporate the Union's proposed Section 3 into a modified version of the Union's proposed Section 2. **Accordingly, the Union shall withdraw its proposal for Section 3 and the parties shall adopt the Union's proposal for Section 2, modified as follows:**

~~"At least 45 days, p~~Prior to implementing any type of new pilot program the Agency will provide written notification to the NJC Chairperson of the Agency's intent. Written notification will include, ~~but not limited to~~ at least the:

1. Nature of the pilot program
2. Scope of the program
3. Anticipated duration
4. Grades ~~e~~affected
5. Locations ~~e~~affected
6. Desired outcome of the program
7. ~~Any documents, reference material, worksheets, computations, or similar used in the development of the pilot program.~~

~~The above list is not all inclusive, nor does it in any way waive, hinder, or restrict the rights of either party.~~

Following receipt of the Agency's notice, the parties will arrange a teleconference briefing to discuss the proposed program."

**Section 4 and Section 5:**

- a. Summary of proposals:** The Union's proposals, to which the Agency offered no counters, would acknowledge the Agency's obligation to engage in mid-term bargaining over pilot projects if appropriate.
- b. Order:** During the mediation-arbitration, the parties acknowledged that this was merely a restatement of the Agency's existing statutory obligations. **The Union agreed to, and shall, withdraw its proposals.**

**31. Article: Arbitration**

**Section 1: Invoking arbitration**

- a. Summary of proposals:** The Agency would like the parties to be required to invoke arbitration within 30 calendar days of conclusion of the grievance procedure, whereas the Union would like a window of 25 workdays. The Union would also like to permit service via fax. The Agency's proposal requires that the invocation of arbitration contain certain information.
- b. Agency argument:** The Agency wishes to keep the arbitration process moving along with shorter deadlines.
- c. Union argument:** The Union states that it does not hurt the Agency to permit more time for invoking arbitration. Also, the Union states that the information the Agency wants to have included in the invocations will be included anyway; it's not necessary to require it in the contract.
- d. Order:** 30 days is a sufficient amount of time for the parties to decide whether they want to invoke arbitration. If the Union wishes to and has the ability to provide service of invocation via fax, and the Agency has the ability to receive service using that method, there's no reason for it not to be a permissible method. Finally, the Agency's proposed content requirements for invocations of arbitration will help ensure clarity. **Accordingly, the parties shall adopt the Agency's proposal in full, with the following modification:**

"Service will be by express/overnight, electronic mail, regular mail, facsimile, or hand delivery pursuant to Article -- of this Agreement."

"The ~~written~~ notice invoking arbitration shall also state whether"

## **Section 2: Arbitrator Appointment - Traditional Arbitration Panels**

**Subsection A:** The parties agree the Agency shall maintain a panel of arbitrators for each "district office" though, in the event the Agency reorganizes in the future, the Agency would like to add the phrase "or similar organizational unit." Further, while the Union argues that the panels should consist of five arbitrators - down from 6-7 arbitrators under the present CBA - to help prevent the parties from frequently ending up with the same arbitrator, the Agency argues for panels of three arbitrators for each of its 10 districts as that would be easier to administer. However, the Union points out that, however many arbitrators are on a panel, the parties will only ever need to pay for one at a time. **The parties shall adopt the following modified version of the Union's proposal:**

"The parties shall maintain an existing panel of Arbitrators for each one of the Agency District Offices or similar organizational unit. Each Agency District Office or similar organizational unit shall be comprised of five (5) Arbitrators."

**Subsection B:** The parties' proposals for (B) are nearly identical, except that the Union's proposal omits the Agency's references to "similar organizational units" and includes a provision - to which the Agency agrees - directing the Agency to provide the tracking sheet of arbitrators to the Union upon request. **The parties shall adopt the following modified version of the Union's proposal:**

"B. On the effective date of this Agreement, the total Arbitrators for each Agency District Office or similar organizational unit will be selected and established. Placement of the Arbitrators will be determined to the extent possible based upon the states they are located within the Agency District

Office or similar organizational unit, in order to minimize litigation costs. The Arbitrators will be placed per each Agency District Office or similar organizational unit panel in alphabetical order using their last name and selected in turn for the duration of this Agreement. The Agency shall track the order of Arbitrators selected to hear cases and provide the tracking sheet to the NJC Chairperson or designee upon request."

**Subsection C:** The parties' proposals are effectively the same. **During the Mediation-Arbitration, the Agency agreed to, and the parties shall, adopt the Union's proposal for (C).**

**Subsection E:** The Agency seeks to require that an arbitrator will be selected within 45 days of the invocation of arbitration. The Union opposes this deadline but could not provide a good reason for its opposition. **The parties shall adopt the Agency's proposal.**

**Subsection G:** **The Agency agreed to, and the parties shall, adopt the Union's proposal.**

**Subsection H:** The parties agree that "If possible, the Arbitrator shall hear a case within one hundred and twenty (120) calendar days" of their appointment. If the arbitrator fails to hear the case within that time, the Agency proposes they be removed from the panel, while the Union proposes that the arbitrator will be "placed at the bottom" of the panel selection list if they can't hear the case within one year of selection. The Union could offer no good reason for leaving an arbitrator on the list who couldn't hear a case for over a year. **The parties shall adopt the Agency's proposal, modified to replace the word "council" with "district," consistent with the rest of the section.**

**Subsection I:** The parties' proposals governing the process for reviewing and replenishing the panels are similar, though the Union's is more detailed. The parties shall adopt the Union's proposal, modified as follows to reflect elements of both proposals:

"The parties shall review and replenish the panels annually, during the anniversary month of the

effective date of the Agreement. At that time, each party may request in writing to remove one Arbitrator from ~~each agency district office panel~~ the list, propose the addition of, or and jointly select replacement Arbitrator(s) to replenish the panels. ~~And establish a process to strike and select any cases previously assigned.~~ In addition, the parties may at any time mutually agree to discontinue the service of Arbitrators on the panels and select others to replace them."

**Subsection J:** The parties' proposals are nearly identical, except that the Union's proposal uses terminology the parties previously agreed to. **The parties shall adopt the Union's proposal.**

**Subsection K:** The Union proposes, and the Agency provided no reason to oppose, allowing the parties to "seek the services of the FMCS to select new Arbitrators or create a list of proposed names and a striking process to obtain replacements." **The parties shall adopt the Union's proposal.**

### **Section 3: Arbitrator Appointment - FMCS Process**

**Subsection D:** During the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's proposal specifying that the process of striking arbitrators shall begin within 30 days of FMCS furnishing the list.

**Subsection E:** During the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's language with the following modification:

"Each party shall strike one Arbitrator from the FMCS list until such time only one Arbitrator remains. The Agency shall maintain a striking log to reflect which party strikes first on each case. The list shall be shared with the Union NJC Chairperson or designee whenever the FMCS process is used to hear a case."

**Subsection G:** The parties' proposals are quite similar. During the Mediation-Arbitration, the Agency indicated it had no substantive objection to the Union's language. **The Parties shall adopt the Union's proposal.**



**Section 4: Arbitration costs**

- a. Summary of proposals:** The Agency's proposal, to which the Union offered no counter, provides that the Agency will pay travel costs associated with witnesses and union representatives "in accordance with applicable law." Travel costs for non-Agency personnel shall be borne by the respective parties. The party causing a postponement or cancellation shall bear the associated costs. All other costs associated with an arbitration hearing shall be split evenly between the parties.
- b. Order:** During the Mediation-Arbitration, the Union failed to raise substantive objections to the Agency's proposal. After the Mediation-Arbitration, the parties reached agreement on Subsections D and H of the Agency's proposal, and the parties shall adopt the remainder of the Agency's proposal as well. **Accordingly, the parties shall adopt the following language for this section:**

"D. Witness Travel Expenses: If travel is necessary for a bargaining unit employee witness approved by the Arbitrator to testify, the parties agree that travel expenses of such witnesses will be paid at Agency expense in accordance with applicable law.

E. Union Representative Travel Expenses: If travel is necessary for a designated Union Representative representing the grievant in the arbitration proceedings, the parties agree that travel expenses will be paid for by the Agency in accordance with applicable law and shall be limited to one Union Representative.

G. Non-Agency Travel Expenses: If travel is necessary for a non-Agency witness(s) approved by the Arbitrator to testify, each party will be responsible to cover such travel expenses.

H. Cancellation: If either party wishes to postpone or cancel a hearing, that party shall pay the full costs associated with the postponement/cancellation unless the parties agree otherwise."

## Section 5: Participation in Arbitration Proceedings

- a. Summary of proposals:** The Agency's proposal specifies that official time "may" be authorized for Union representatives to participate in arbitration hearings, while the Union's proposal states that such time "will" be authorized. The parties' proposals contain the same distinction regarding duty time participation by the grievant and approved witnesses. Further, the Agency wishes to limit the purposes for which duty time may be used in relation to an arbitration, while the Union proposes no such limitations. Finally, the Agency's proposal would direct the parties to "cooperate in scheduling participation in arbitration hearings" so as to "minimize disruptions to the workplace."
- b. Agency argument:** The Agency indicated that it wanted official time for participation in arbitration hearings to be discretionary due to Executive Order 13837 Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use. The Agency would like to ensure that duty time is spent properly for purposes directly related to the arbitration hearing.
- c. Union argument:** The Union contends that, because it may periodically have to represent nonmembers, that official time for arbitration hearings is appropriate.
- d. Order:** The Agency's reliance on Executive Order 13837 is misplaced, as the order was rescinded during the Panel proceedings in this case.<sup>28</sup> During the Mediation-Arbitration, the Agency agreed that employees "will" be permitted duty time for purposes of arbitration hearings. Otherwise, the Union's arguments for its proposal were unpersuasive. **The parties shall adopt the Agency's proposal in full, modified as follows:**

"A. The parties agree that official time ~~may~~will be provided for the designated Union Representative to participate in the arbitration process as set forth in Article --.

B. The parties agree that bargaining unit employees, including the Grievant and approved witnesses ~~may~~will participate in arbitration hearings in duty status."

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<sup>28</sup> Executive Order 14003: Protecting the Federal Workforce.

**Section 7: Pre-hearing procedures**

- a. Summary of proposals:** The Agency's proposal seeks to make prehearing conferences mandatory, while the Union proposal would make them optional. Also, the Union does not want discussion of witnesses to occur at prehearing conferences. The Agency seeks to require the exchange of prehearing statements, while the Union does not.
- b. Agency argument:** The Agency states that prehearing conferences facilitate settlement and save the time and resources that would otherwise be spent on a full hearing.
- c. Union argument:** The Union states that Agency lawyers just want to learn the Union's case ahead of time.
- d. Order:** The Union acknowledged that it cannot be required to turn over evidence at a pre-hearing conference and indicated it might be willing to consider adopting the Agency's proposal, though it subsequently declined to do so. **Nonetheless, the Agency's proposal is the more reasonable one, offers an opportunity for abbreviated proceedings, and shall be adopted by the parties.**

**Section 8: Arbitration procedures and hearings**

**Subsection A:** During the course of the Panel proceedings, the Union agreed to, and the parties shall, adopt the Agency's proposal, which allows the parties to raise issues of grievability at any time.

**Subsection G:** The Agency wants to require submission of post hearing briefs, while the Union would like it to be optional, pointing out that there are no post hearing briefs at least in the context of expedited arbitration hearings. **The parties shall adopt the Union's proposal.**

**Subsection H:** The Agency seeks to permit arbitrators to issues decisions based on written briefs alone, while the Union does not want the arbitrator to have this option. **Absent a compelling reason to not make the option available, the parties shall adopt the Agency's proposal.**

**Subsection I:** The Agency seeks to permit the hearings to be conducted remotely, while the Union opposes this option. **Absent a compelling reason to remove the option from consideration, the parties shall adopt the Agency's proposal.**

**Subsection J:** The parties proposals appear to be the same, except that the Union's proposal eliminates the possibility that the hearing would be conducted remotely. **As this issue has been settled above, the parties shall adopt the Agency's proposal here.**

**Subsection K:** The parties' proposals appear identical, except that the Union's proposal permits arbitrators for institutional grievances to be selected from FMCS. **The Agency provided no substantive objection to the Union's proposal, and the parties shall adopt it.**

**Subsection L:** The parties' proposals are quite similar and, during the Mediation-Arbitration, the Agency agreed to, and the parties shall adopt, the Union's proposal.

#### **Section 9: Time limits**

- a. Summary of proposals:** The parties' proposals are nearly identical, except that the Union's permits a pending case to continue without a hearing for over a year upon mutual agreement. The Agency's proposal would allow the non-moving party to seek dismissal of the case if "the moving party has failed to take reasonable steps to schedule a hearing within one year" of invoking arbitration.
- b. Order:** The Agency's proposal is the more reasonable one. If there is a good reason for waiting more than a year to schedule an arbitration hearing, the Agency's language would allow the process to continue so long as the moving party has made "reasonable" efforts to schedule it. **The Parties shall adopt the Agency's proposal.**

#### **Section 10: Expedited arbitration procedure**

- a. Summary of proposals:** The parties both provide a process for an expedited arbitration procedure, but differ on many of the same questions at issue in the normal

procedure, such as whether the hearing may be conducted virtually or decided on the basis of written briefs.

- b. Order:** As these issues have been resolved in the Agency's favor above, the parties should adopt the Agency's proposal here as well, except that the Agency shall strike the word "Applicability" from the beginning of its proposal, as agreed, and the Agency's (c)(1) shall be modified as follows:

"The Arbitrator will be appointed using the traditional Arbitrator Panel or FMCS described in this Article."

#### **Section 11: Distribution of awards**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, required the director of the Hearings and Appeals Branch to quarterly provide the Union with copies of all arbitration awards.
- b. Order:** During the Mediation-Arbitration, the Union agreed to, and shall, withdraw its proposal.

### **32. Article: Grievances**

#### **Section 1: Purpose**

- a. Summary of proposals:** The parties' proposals both allow the Union to present grievances without the employee present. The Union's proposal directs the parties to attempt to resolve grievances "at the lowest possible level," while the Agency's proposal does not. The Union's proposal seeks to secure a "reasonable" amount of official time, which shall not count against the bank of official time hours, to pursue grievances. The parties differ regarding how and to whom grievance responses will be transmitted.
- b. Agency argument:** The Agency states that the Union is engaging in representational work when it processes grievances and should be required to deduct such hours from its bank, which exists for that purpose.
- c. Union argument:** Generally, the Union states that it is the Agency violating the contract and forcing the Union to respond with grievances. It states that time

should not be taken from the Union's bank because the Agency violated the agreement.

- d. Order:** The Union failed to adequately justify why it needed official time in addition to what is provided in its bank of hours to file grievances against the Agency and did not show that unlimited official time for filing grievances is "reasonable, necessary and in the public interest."<sup>29</sup> During the Mediation-Arbitration, the Agency agreed to accept the last paragraph of the Union's proposal. **Accordingly, the parties shall adopt the Agency's proposal with the last paragraph modified to read as follows:**

"In accordance with this Article, grievance response(s) as well as the grievance and all supporting documentation, shall be sent simultaneously to the grievant and the grievant's designated representative. The Agency shall provide the Union representative with information in accordance with statutory and contractual requirements."

## **Section 2: Definitions**

- a. Summary of proposals:** The Agency's proposal seeks to exclude nine items from the negotiated grievance procedure; the Union's proposal strikes each of these exclusions. Both proposals define a generally similar list of terms related to grievances, while the Union's proposal provides an extended definition of "grievance" itself.
- b. Order:** During the Mediation-Arbitration, the Union agreed to accept the following Agency-proposed exclusions: (1) "Any claimed violation relating to prohibited political activities"; (2) "Any complaint concerning retirement, life insurance, or health insurance"; (3) "Any suspension or removal for national security reasons"; (4) "Any examination, certification, or appointment, including the removal of a probationary employee during his/her probationary period"; (5) "The classification of any position which does not result in the reduction in grade or pay of an employee"; (6) "Notices of proposed disciplinary and adverse actions,

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<sup>29</sup> 5 U.S.C. § 7131(d).

furloughs, or removals"; and (9) "Non-selection from a group of properly ranked and certified candidates, provided another grievable issue(s) is not also alleged, e.g. illegal discrimination." Each of these exclusions exists in the present agreement.

During the Mediation-Arbitration, the parties agreed to a modified version of the Agency's eighth exclusion, which originally covered both performance progress reviews and final ratings but, upon agreement of the parties, will cover only progress reviews.

The Union did not accept the Agency's seventh exclusion, however, of "Appealable adverse and performance-based actions." Federal court precedent holds that the party advocating a limited scope grievance procedure "must establish convincingly that, in the particular setting, its position is the more reasonable one."<sup>30</sup> In this case, while neither party argued convincingly for its position, the Agency fell short of the standard necessary to justify its proposed grievance exclusion, noting only generally that the Merit Systems Protection Board may be more uniquely qualified to handle appealable actions than an arbitrator.<sup>31</sup>

Further, during the Mediation-Arbitration, the Agency accepted with the Union's proposed definition of "grievance" and agreed to move it to the beginning of the section. Finally, the parties generally agreed on the "terminology" section, except that the Union could not explain why its definition of "remand" was necessary when the parties agreed on a definition of "return" that was nearly identical. **Accordingly, the parties shall adopt the following language for this section reflecting the various agreements reached and the judgement of the undersigned:**

"a. For the purposes of this Article, a grievance means any complaint:

1. by any unit employee concerning any matter relating to the employment of the employee;

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<sup>30</sup> *AFGE v. FLRA*, 712 F.2d 640, 649 (D.C. Cir. 1983).

<sup>31</sup> The Agency may have also commented that this proposed exclusion was related to Executive Order 13839: Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles, which was rescinded during the Panel proceedings by Executive Order 14003.

2. by the Union concerning any matter relating to the employment of the employees; or

3. by any employee, the Union, or the Agency concerning:

(a) The effect of interpretation, or claim of breach of this exclusive bargaining agreement; or

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

b. Grievance Procedure Coverage.

Except where established by law, rule, regulation, or excluded by the terms of this Agreement, this procedure shall be the exclusive procedure available to the parties to this Agreement, and the employees in the unit for resolving grievances subject to this procedure. Grievances excluded from consideration under this article include:

1. Any claimed violation relating to prohibited political activities;

2. Any complaint concerning retirement, life insurance, or health insurance;

3. Any suspension or removal for national security reasons;

4. Any examination, certification, or appointment, including the removal of a probationary employee during his/her probationary period;

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

6. Notices of proposed disciplinary and adverse actions, furloughs, or removals;



7. Performance progress reviews; and

8. Non-selection from a group of properly ranked and certified candidates, provide another grievable issue(s) is not also alleged, e.g. illegal discrimination.

c. Terminology: The party responding will use at least one of the terms below.

1. Accept: The grievance meets all contractual requirements for filing.

2. Reject: The grievance fails in one or more respects to meet the contractual requirements for filing. The reason for the rejection will be stated in the response rejecting the grievance.

3. Deny: The decision concludes that the evidence does not support the allegations put forth in the grievance in whole or in part. The reason for the denial will be stated in the grievance response.

4. Sustain: The grievance review concludes that the evidence supports the grievance in whole or in part.

5. Return: A grievance timely filed by an employee on his/her own behalf may be returned to the employee for clarification where the responding official determines further clarification is needed to respond to the grievance. Such a grievant will be granted up to three (3) business days, as determined by the responding official, to submit the requested clarification."

### **Section 3: Appeal and grievance options**

**a. Summary of proposals:** The parties' proposals discuss the means by which an employee "affected by a removal or reduction in grade, based on adverse action or unacceptable performance" may challenge the action. The Agency's proposal envisions only statutory appeals,

while the Union's proposal also acknowledges the possibility of using the negotiated grievance procedure.

- b. Order:** During the Mediation-Arbitration, the Agency agreed to, and the parties shall, adopt the Union's proposal for this section in full.

#### **Section 4: Contents of grievances**

- a. Summary of proposals:** The Agency seeks to require that certain information about the grievance is provided at every stage, while the Union wants the information provided only once.
- b. Order:** The Union did not raise a compelling argument against ensuring that relevant information about the grievance be provided at every stage of the process. During the Mediation-Arbitration, the parties agreed to strike the last sentence of their respective proposals. **Accordingly, the parties shall adopt the Agency's proposal, except for the last sentence reading, "For the purpose of this Article, grievant is defined as the aggrieved employee and not the Union."**

#### **Section 6: Grievability/arbitrability**

- a. Summary of proposals:** The Agency seeks to allow questions of grievability to be raised at any stage of the process, while the Union wants to require them to be raised at the first stage.
- b. Order:** The parties had the same debate over questions of arbitrability. As the undersigned resolved that matter by permitting arbitrability issues to be raised at any time, it will do the same here. **The parties shall adopt the Agency's proposal.**

#### **Section 7: Back Pay, Discipline/Adverse Actions, Conflict of Interest, and Hazardous Pay**

- a. Summary of proposals:** The parties' proposals address how grievances involving "back pay, discipline/adverse actions (or) disciplinary actions, and conflict of interest determinations" will be processed.
- b. Order:** During the Mediation-Arbitration, the parties reached agreement on much of the proposal. **Accordingly,**

the parties shall adopt the following language for this provision reflecting the agreement of the parties and, where agreement was not reached, the judgement of the undersigned shall be imposed:

"If a grievance involves back pay, discipline/adverse actions (or) disciplinary actions, and conflict of interest determinations, it shall be sent to the LERD Director, or designee within 30 calendar days after the date of the event or the date that the Agency or Union became aware or should have known of the action which form the basis for the grievance by emailing to LERD@usda.gov. Should the Agency email address change, the Union shall be provided timely notice.

1400 Independence Ave.,  
SW, Room 3150  
Mailstop 3730  
Washington, DC 20250

The LERD Director or designee will either respond to the grievance or refer it to the appropriate official for response. The LERD Director or designee shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. If the grievant(s) remains dissatisfied, the grievance may be pursued to arbitration in accordance with the provisions identified in the Arbitration section."

#### **Section 8: Union/Agency (Institutional) grievances**

- a. Summary of proposals:** The parties offered generally similar proposals for handling institutional grievances.
- b. Order:** During the Panel proceedings, the parties agreed to, and shall adopt, the following language for this section:

"Grievances must be filed within 30 calendar days after the date of the event or the date that the Agency or Union became aware or should have known of the actions which form the basis for the grievance. The grievance shall be filed using the attached grievance form at the end of this article, or an equivalent in writing. The Director, Labor

and Employee Relations Division, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. The Council Chairperson, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Director, Labor and Employee Relations Division, or designee."

**Section 9: Service and time limits**

- a. **Summary of proposals:** The parties' proposals address the service requirements and time limits governing the negotiated grievance procedure.
- b. **Order:** During the course of Panel proceedings, the Union agreed to, and the parties shall adopt, the Agency's proposal for this section.

**Section 10: Distribution of grievances and responses**

- a. **Summary of proposals:** The Union's proposal, which the Agency did not counter, requires the Agency to quarterly provide the Union with "copies of all grievances and responses to grievances that have been filed."
- b. **Agency argument:** The Agency asserts that the Union has all of this material already; there's no need for the Agency to send it to the Union again.
- c. **Union argument:** The Union did not dispute the Agency's point.
- d. **Order:** The Union shall withdraw its proposal for this section.

**Section 11: Numbering system**

- a. **Summary of proposals:** The Union's proposal, to which the Agency offered no counter, would obligate the "appropriate district office" to sequentially number grievances upon receipt.
- b. **Agency argument:** The Agency did not disagree with the substance of the Union's proposal, but did not necessarily want to assign the task of numbering grievances to the district offices.

- c. Order:** The parties shall adopt the Union's proposal, modified as follows to address the Agency's concern:

~~"The appropriate district office~~ The Agency will designate appropriate staff/office(s) who will apply the number and identification to the grievance upon receipt. These numbers are to be sequential and in the order the grievance is received. This will aid in the responses of the grievances. Example: FY- District-XXX eg. 20-Denver-001"

### **33. Article: Use of Agency Equipment and Resources**

#### **Section Unnumbered**

- a. Summary of proposals:** The parties' proposals list the kinds of items considered "Agency-owned or leased equipment and resources" and agree that the "Agency has a responsibility to ensure the security and protection of designated sensitive information." However, whereas the Agency's proposal obligates employees to "follow applicable laws, rules, regulations, Departmental Regulations and FSIS policies policy pertaining to security," and lists such authorities, the Union's proposal omits this language.
- b. Order:** The Union's only objection to the Agency's proposal was a purported desire to streamline the CBA. However, it is not unreasonable for the Agency to acknowledge employees' responsibility to ensure the security of Agency equipment, and having made such an acknowledgement, to provide the list of relevant legal authorities, without restating them at length. The Agency's proposal is consistent with its general approach to the agreement, which the undersigned has favored above. **Accordingly, the parties shall adopt the Agency's proposal.**

#### **Section Unnumbered**

- a. Summary of proposals:** The Union seeks to strike the Agency's proposal which would provide that "email communications to groups of employees" be "subject to approval prior to distribution."

- b. Agency argument:** This proposal reflects current agency policy.
- c. Order:** The Union raised no compelling argument against the Agency's proposal. The Agency deserves the ability to manage its email systems and ensure they are used for appropriate purposes. **The parties shall adopt the Agency's proposal.**

#### **Section 5: Digital signature**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, would obligate the Agency to furnish, at Agency expense, electronic signatures to any Union official who wants one.
- b. Agency argument:** The Agency already provides electronic signatures to bargaining unit employees with access to electronic devices and does not want to have to arrange for Union officials who are not Agency employees to have electronic signatures.
- c. Order:** Given that Union officials who are bargaining unit employees already have access to an electronic signature via the Agency, and without compelling justification for the Union's proposal, **the Union shall withdraw its proposal for this section.**

#### **34. Article: Work Performed at Prison/Correctional Facilities**

- a. Summary of proposals:** The Union's proposed article is not included in the prior agreement. It would require the Agency to provide an orientation for all employees who are to work "[i]n Official establishments where inmate labor is used" and prescribe the content of such orientations. The Union's proposals would also require the Agency to provide hazard pay and grade all employees working in such facilities as GS-10 because of the "inherent danger" of the work. Finally, the Union's proposal would require the Agency to distribute and post written guidance material regarding the "'do's and don'ts' of working in prisons/correctional facilities."
- b. Agency arguments:** Prisons and correctional facilities have their own security protocols, which the Agency follows and cannot change. The Agency does not object to the idea of orienting employees, but the Union's

proposal poses administrative challenges in terms of figuring out who would conduct the orientation and where would it happen.

- c. Order:** The Agency's objections to an orientation program are well-founded, given the Agency's lack of control over the facilities. Working in such facilities is part of inspectors' regular duties and should not automatically qualify them for hazard pay, which has been addressed elsewhere in the agreement. However, the Union's proposal that the Agency distribute written guidance to employees who work in correctional facilities is reasonable. **Accordingly, the Union will withdraw Sections 1 and 2 of its proposed article, and the parties shall adopt the Union's section 3, modified as follows:**

~~"Prior to being assigned to these types of establishments/prisons/correctional facilities, BUE's will be provided, in writing, the "do's and don'ts" of written guidance about working in prisons/correctional such facilities. Additionally, these same guidelines will be posted in the USDA office for all BUE's to review. In situations where BUEs have not been assigned to prisons/correctional facilities for a period of time, they will be provided reasonable time to review the guidance material referenced above. Upon request from a BUE reasonable time will be provided to review all reference material. Regardless of duration, working in prisons/correctional facilities will only be done by properly trained employees."~~

### **35. Article: Worker's Compensation and Employee Assistance Program**

#### **Section 1: References**

- a. Summary of proposals:** Consistent with its general approach to this agreement, the Agency seeks to establish at the outset of this article the authorities that govern the workplace compensation program. The Union's proposal is similar to the Agency's, except that it acknowledges that the parties may be required to bargain over changes to Agency policies and directives.

- b. Order:** As the parties bargaining obligations remain the same whether stated in the agreement or not, the parties shall adopt the Agency's more abbreviated proposal. However, during the course of Panel proceedings, the Agency indicated that FSIS Directive 4630.2, "Leave," should be added to the list of authorities referenced in this section. **Accordingly, the Parties shall adopt the Agency's proposal, modified to include FSIS Directive 4630.2 on the list of references.**

## **Section 2: Policy**

- a. Summary of proposals:** The parties agree that the Agency will provide employees with "the applicable forms for filing claims for compensation due to work-related injuries and illnesses and will provide guidance to claimants through the appropriate Workers' Compensation Technician." However, the Union's proposal specifies that this will be consistent with "current practices."
- b. Agency argument:** The Agency states that the parties do not even know what the past practices are in this regard.
- c. Union argument:** The Union simply states that past practices vary.
- d. Order:** **Absent a compelling reason to maintain unidentified past practices, the parties should adopt the Agency's proposal.**

## **Section 4: Employee Assistance Program services**

- a. Summary of proposals:** The Agency's proposal simply references the applicability of DR 4430-792-1, "Employee Assistance Program." The Union's proposal does this as well, but also states that the Agency can "approve administrative leave for EAP reasons," provides that employees remain "eligible for entitlements under the Family and Medical Leave Act on the same basis as for any illness when absence from work is necessary," and directs supervisors to assist employees "in working out an appropriate schedule for taking leave" for EAP reasons.
- b. Order:** During the Mediation-Arbitration, the parties agreed to strike (a) of their respective proposals, as DR 4430-792-1 is already cited in Section 1. Regarding



(b) of the Union's proposal, the Agency expressed its belief that it was covered by the authorities cited in Section 1 and indicated it did not wish to depart from those authorities. **Absent a compelling justification from the Union for including the language, the Parties shall withdraw their respective proposals for this section.**

#### **Section 5: Confidentiality**

- a. Summary of proposals:** The Union's proposal, which the Agency seeks to strike, acknowledges the confidentiality of employee records regarding counseling and treatment.
- b. Order:** The parties acknowledge the Union's proposal is informational only, and that the Agency would be obligated to maintain the confidentiality of employee records even absent inclusion of this provision in the contract. **In the interest of a concise CBA, the Union shall withdraw its proposal.**

### **36. Article: Official Travel**

#### **Section 1: Policy**

- a. Summary of proposals:** The parties' proposals acknowledge the Agency's statutory right "to make assignments involving travel." The Agency's proposal acknowledges that employees "are entitled to reimbursement for expenses incurred in official travel in accordance with applicable laws, rules, and regulations," lists the applicable regulations and directives, and provides that the Agency "will provide sufficient information to inform the employee of the position being assigned and duration of assignment."

The Union's proposal does not list the authorities governing travel, provides that employees "may be excused from assignments involving official travel" under certain circumstances, lays out in detail the information that must be included in employees' travel instructions, and provides that employees will not be required to travel on holidays absent an "emergency" situation.

- b. Agency argument:** The Agency states that the Union's language about being excused from travel assignments really is not a travel issue appropriate for this article. The Agency already provides employees with sufficient information on their travel instructions.
- c. Union argument:** The Union states that the Agency's travel instructions may provide for the information the Union is seeking, sometimes they leave employees in the dark about key information.
- d. Order:** During the Mediation-Arbitration, the parties agreed to strike the Union's proposal regarding holiday travel. While the Agency aptly pointed out that the travel article is not the best place to include a discussion of how employees can be excused from assignments, it did not point to another provision of the agreement that addressed the issue. Finally, the Union's desire to ensure that employees are provided with adequate information regarding their travel assignments is reasonable and, if the Agency is already providing the information, that should not place an unreasonable burden on the Agency. **Accordingly, the parties shall adopt the following language incorporating aspects of both proposals:**

"Pursuant to 5 U.S.C., Section 7106(a), the Agency has the management right to make assignments involving travel.

Employees are entitled to reimbursement for expenses incurred in official travel in accordance with applicable laws, rules, and regulations regarding travel and compensation while in travel status including, but not limited to:

Federal Travel Regulations (FTR)  
 DR 2300-005, Agriculture Travel Regulation  
 FSIS Directive 3800.1, Temporary Duty Travel Within CONUS  
 FSIS Directive 3800.2, Reimbursement for Use of Privately-Owned Vehicles

The Agency will provide sufficient information to inform the employee of the position being assigned and duration of assignment, including, if applicable: The reason for the travel, departure

and anticipated return dates, type and mode of travel, T&A transaction codes, starting time of the assignment(s), physical address of the facilities, travel authorization code, and the name and contact information of the reporting supervisor.

Employees may be excused from assignments involving official travel when they are medically incapacitated for duty, have a personal emergency or hardship such that leave from duty is approved, or arrange for a substitute traveler who is acceptable to the supervisor at no additional cost to the Agency."

**Section 2: Time Spent in a Travel Status for Travel Compensatory Time Off**

- a. **Summary of proposals:** The parties agree that, "Employee eligibility for compensatory time for travel is governed by the Federal Workforce Flexibility Act of 2004," but the Union proposal would require the Agency to furnish employees with a hard copy of the Act upon request.
- b. **Order:** During the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's proposal.

**Section 3: Per diem**

- a. **Summary of proposals:** The parties' proposals both recognize that "Travel and per diem entitlements will be governed by the Federal Travel Rule," but the Agency's specifically cites the rules while the Union does not.
- b. **Order:** During the Mediation-Arbitration, the Union agreed to, and the parties shall, adopt the Agency's proposal.

**Section 4: Travel expenses**

- a. **Summary of proposals:** The parties' proposals address employee completion of vouchers for travel expenses.
- b. **Agency arguments:** The Agency opposed the Union's proposal to annually ensure that "[a]ll Labor Management codes utilized by Council Presidents will be placed in the favorite code portion code of Concur." The Agency

believes this is overly specific and unnecessary, as individuals can designate their own favorite codes in Concur. The Agency did not object to (b) of the Union's proposal, however, requiring employees to complete travel vouchers on "approved, compensable time." The Agency contended that (c) of the Union's proposal was covered by existing Agency regulations/policies. Finally, the parties agreed that the Agency was consistently timely in its processing of travel vouchers, rendering (d) of the Union's proposal either unnecessary or unobjectionable.

- c. Order: During the Mediation-Arbitration, the parties reached various agreements on aspects of their respective proposals and shall adopt the following language for this section reflecting these agreements and, where no agreement was reached, the judgement of the undersigned shall be imposed:**

"A. Upon request, employees shall be provided assistance to properly complete vouchers where necessary.

B. Employees shall complete all vouchers as well as all other administrative duties only during approved, compensable time. Employees shall request time from the supervisor, if needed, to complete vouchers and other administrative duties.

C. The Agency shall timely process travel vouchers to ensure that employees are promptly reimbursed for travel-related expenses."

#### **Section 5: Telephone Calls on Official Travel**

- a. Summary of proposals:** The parties' proposals permit traveling employees to make "a brief personal call each night." The only differences are that the Union's proposal strikes the Agency's reference to "hotel telephones" and calls to "minor" children.
- b. Order:** As the Agency did not articulate a reason not to accept the Union's proposal, which appears reasonable on its face, the parties shall adopt the Union's proposal for this section.

**37. Article: Bargaining During the Term Agreement****Section 1: Management-initiated bargaining and Section 2: Union-initiated bargaining**

- a. Summary of proposals:** The Agency proposes to have two different sections governing mid-term bargaining: one regarding management-initiated bargaining; and one addressing union-initiated bargaining. The Union proposes combining these two sections into a single section establishing a single process that both the Agency and Union will follow to initiate mid-term bargaining. Further, the parties differ on the timelines for requesting, initiating and conducting mid-term bargaining, with the Agency preferring an expedited process and the Union preferring a lengthier one.
- b. Agency argument:** The Agency states that the Union always takes the maximum time allotted at each stage to navigate mid-term bargaining, even if less time is required. The Agency would like to make the process faster.
- c. Union argument:** The Union states that it takes time to evaluate and respond to Agency-initiated bargaining requests. The Agency has had plenty of time to prepare and the Union deserves a reasonable opportunity to respond. The Union contends that it is only fair that the process for initiating mid-term bargaining apply the same to both parties. The Union argues that the Agency should not have more time to respond to Union requests to bargain than the Union gets to respond to Agency requests.
- d. Order:** The Agency's proposal to address Agency and Union-initiated mid-term bargaining in separate sections is reasonable and less confusing than attempting to combine the procedures into a single section. The Agency's desire to streamline the mid-term bargaining process is also understandable, though the Union reasonably argued that it deserved more time to evaluate Agency-initiated changes before having to decide whether to request bargaining and that the Agency's timeline for responding to Union-initiated bargaining requests should be similar to the timeframe provided to the Union to respond to Agency-initiated changes. For consistency, references to "business days" in the Agency's proposals should be changed to "workdays," which the Agency

indicated was its intent. **Accordingly, the parties shall adopt the Agency's proposal for Section 1 in full, modified as follows:**

"If the Union elects to bargain over an Agency scheduled change, the Union shall submit a written request (via electronic submission or mail) to bargain to the Assistant Director, LERD within ~~five (5) business~~ ten (10) workdays of receipt of the Agency's notice."

"After the Union's request to bargain, the Union will then have five (5) additional ~~business~~ workdays to provide the Agency with proposals that are reasonably related to the proposed change and shall identify the adverse impact upon the employees which the proposal is intended to reduce or remedy."

"If the Union's proposals are not provided to the Agency within the five (5) ~~business~~ workdays as stated above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance."

"Bargaining shall commence as soon as possible, but no more than seven (7) ~~business~~ workdays after the Agency's receipt of the Union's proposals, unless the Parties mutually agree to extend the period. Parties will endeavor to reach an agreement and conclude bargaining within ten (10) ~~business~~ workdays from the start of negotiations, but that period may be extended by mutual agreement of the Parties."

**Further, the parties shall adopt the Agency's proposal for Section 2 in full, modified as follows:**

"If there is an obligation to bargain, the Parties' Chief Spokespersons will make appropriate arrangements for the bargaining session to occur normally within ~~forty-five (45) calendar~~ twenty-two (22) workdays from receipt of the Union's request to bargain."

### **Section 3: General provisions for bargaining**

- a. Summary of proposals:** While the parties' submissions to the Panel indicated this section was in dispute, no proposed language was presented to the Panel.
- b. Order:** The parties informed the undersigned during the Mediation-Arbitration that they had reached agreement on this section. **Accordingly, the parties shall follow the agreed upon language.**

### **38. Article: Duration of Agreement**

#### **Section 2: Duration of agreement**

- a. Summary of proposals:** The parties agree that the agreement shall have a duration of three years. However, the parties proposed different procedures for initiating term negotiations. The Union's original proposal provided for automatic one-year rollover periods after the initial three-year period, while the Agency's proposal would allow the contract to remain in effect until a successor is executed. The parties also differ over the number of articles that each side can reopen mid-term, with the Agency proposing a limit of three and the Union a limit of four.
- b. Order:** **During the Mediation-Arbitration, the parties reached agreement on the issues in dispute and agreed to, and shall, adopt the following compromise proposal, with a modification made to the commencement of negotiations to make it clear when that process shall begin:**

"A. This Agreement shall remain in full force and effect until three (3) years from its effective date. Following the 3rd anniversary, the parties will exchange initial written proposals on a new Agreement no later than six months prior to the 4th anniversary date.

B. If renegotiations of an agreement are in progress, but not completed upon the termination date of this Agreement, this Agreement shall be automatically extended until a new agreement is in effect.

C. Either Party may reopen three (3) articles of this contract during the thirty (30) calendar days surrounding the 18th month anniversary of this Agreement. The parties agree that a maximum of six (6) articles of this agreement may be re-opened during the 18th month anniversary of the execution of this agreement."

### **39. Article: Training and Career Development**

#### **Section 1: Policy**

**a. Summary of proposals and arguments:** The parties' proposals govern how the Agency will conduct and administer training, discuss the applicable regulations and directives, and acknowledge various types of training. Though there is considerable overlap between the parties' proposals, the Union's differs from the Agency's in that it would specify that employees "receive proper training before being assigned work." The Agency believes this is the norm already, but does not want to incorporate the language into the contract.

The Union's proposal would also require the Agency to provide the Union with a "schedule of training annually," which the Agency indicates it does already, and a list of all training attendees before the start of any training, which the Agency contends would be unduly burdensome.

Also, the Union would prevent employees from having to document any completed training. The Agency counters that supervisors should not have to independently research employees' training records and that employees should be able to easily produce documentation of training completion.

Finally, the Union's proposal specifies that inspectors "are not required to train co-workers or managers." The Agency responded that it does not require inspectors to do this, yet the Union argued that some supervisors have an "expectation" that inspectors provide training to co-workers, even if it is not formally required.

**b. Order:** The Union did not adequately justify its proposal requiring the employees receive "proper" training, which is overly vague and remains within the Agency's right to



determine. Further, the Union did not offer a compelling reason for placing the burden on the Agency of providing the Union with a list of attendees prior to every training. Similarly, it is not unreasonable for employees to be able to document completed training if necessary. Finally, the Union's proposal preventing inspectors from training their colleagues is unnecessary, as the Agency acknowledges that it does not require this of employees and the Agency's proposal recognizes that training is management's responsibility. That some supervisors may have misplaced expectations when it comes to inspectors training their colleagues is not a problem likely to be addressed through additional contract language and is speculative.

- c. During the Mediation-Arbitration, the Agency agreed to make several modifications to its proposal. **Accordingly, the parties shall adopt the Agency's proposal in full, modified as follows:**

"The Agency agrees to comply with all laws, rules, regulations, and FSIS Directive 4338.1, regarding training.

The parties agree that the primary function of training is to assure the optimum use of human resources in attaining organizational needs and, when feasible, to provide career development opportunities to employees. The parties further recognize that development of employee's knowledge, skills, and abilities through effective training and education is an important factor in maintaining efficient operations. It is the Agency's intent to utilize multiple means and methods as appropriate to facilitate training, which include, but are not limited to, in-service, on-the-job, computerized, and cross-training.

~~The Agency agrees to comply with all laws, rules, regulations, and FSIS Directive 4338.1, regarding training.~~

The Agency shall train employees in those appropriate inspection phases of the Program to the maximum extent practicable. A concerted effort will be made to provide specialized technical training through job-related courses for eligible employees.

Pursuant to 5 U.S.C. 7106 (a)(Management Rights), the Agency shall determine employee training and education needed to meet workforce needs. The Agency shall provide training and education subject to the availability of funds and shall determine the methods and means to provide the training.

Management is responsible for determining when training will be conducted and the employees to be trained. ~~Upon request, employees will be provided access to the Agency training schedule and/or a listing of available training DVDs and CDs.~~

The Agency agrees to advise the Council Chairman (or designee) of the training activities which have taken place within FSIS during the preceding year, upon request. Such information shall enumerate training received by employees by grade level and organizational unit for those employees in the recognized unit only."

## **Section 2: Employee initiative**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, recognizes that "each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value to the Agency through self-development, training, and education." The Union's proposal also grants employees "duty time, when appropriate, to participate in approved programs or courses."
- b. Order:** During the course of the Mediation-Arbitration, the Agency agreed to, and the parties shall, adopt the Union's proposal.

## **Section 3: Individual development**

- a. Summary of proposals:** The parties' initial submissions to the Panel indicated that this section was at impasse, but the submissions failed to include the language of the parties' proposals. The Agency subsequently submitted the following proposal to the undersigned:

"DR 4040-410

Individual Development Plans (IDPs) can be an effective tool for the development of USDA employees. As part of long-term career planning, employees, supervisors and training managers can use IDPs to outline training and more importantly, create activities that will lead to a more engaged, effective and skilled workforce. In developing IDPs employees are encouraged to seek AgLearn, outside training sources and seek counseling from the immediate supervisor regarding training needs and opportunities."

The Union also subsequently provided its proposal, which reads:

"The Agency shall provide employees with information on available training, education, and career development opportunities upon request."

- b. Order:** It is not clear to the undersigned that the parties bargained over the proposals each party provided during the Mediation-Arbitration proceeding and are, thus, at an impasse over this language. As a result, the undersigned will require the parties to withdraw their proposals.

#### **Section 4: Announcements**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, obligates the Agency to provide employees with "information on training, educational, and career enhancement opportunities."
- b. Order:** During the Mediation-Arbitration, the parties acknowledged that the Union's proposal reflects existing contract language. **The Agency agreed to, and the parties shall, adopt the Union's proposal.**

#### **Section 5: Record of training**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, requires the Agency to maintain a record of employees' "satisfactorily completed training."
- b. Order:** During the Mediation-Arbitration, the parties acknowledged that the Union's proposal reflects existing

contract language. The Agency expressed ambivalence towards the proposal and did not raise any substantive objections to it. **Accordingly, the parties shall adopt the Union's proposal.**

#### **Section 6: Training costs**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, provides that the "Agency will support approved training courses that would be beneficial," but indicates that Agency funding for training will be subject to the "program benefit" and "the availability of training funds."
- b. Order:** During the Mediation-Arbitration, the parties acknowledged that the Union's proposal reflects existing contract language. The Agency suggested the proposal could be covered by existing Agency policy, but did not provide specifics or raise any substantive objections to it. **Accordingly, the parties shall adopt the Union's proposal.**

#### **Section 8: Training as a condition of employment**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, governs how training will be conducted for employees for whom training is required.
- b. Order:** During the Mediation-Arbitration, the parties acknowledged the Union's proposal was covered by existing Agency policies and directives. The Union agreed that its inclusion in the CBA would be for informational, rather than substantive, purposes. **In the interest of a concise agreement, the Union shall withdraw its proposal.**

#### **Section 9: Training materials**

- a. Summary of proposals:** The Union's proposal, to which the Agency offered no counter, requires the Agency to annually provide employees with a listing of available training materials.
- b. Order:** During the Mediation-Arbitration, the Agency agreed to accept, and the parties shall adopt, the following abbreviated version of the Union's proposal:

"The Agency, on an annual basis, will provide a listing of available training."

#### **40. Article: Union Representative, Rights, and Responsibilities**

##### **Section 1: Policy**

**a. Summary of proposals:** The parties' proposals each recognize the Union's status as exclusive bargaining representative and the application of the Statute to the parties' conduct and dealings. The only difference between the two proposals is that the Union specifically references the Union's ability to file ULP charges under the Statute, a right also reserved to the Agency and which both parties agree exists whether it is specifically mentioned in the agreement or not.

**b. Order:** The parties shall adopt the Agency's proposal.

##### **Section 2: Employee representation**

**a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, requires Union officials to contact an employee's supervisor before meeting with an employee.

**b. Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached agreement on this section. **Accordingly, parties shall follow the agreed upon language.**

##### **Section 3: Designation of Union Officials**

**a. Summary of proposals:** The parties' proposals govern how the Union will provide the Agency with information regarding Union officers and representatives.

**c. Order:** During the course of Panel proceedings, the parties informed the undersigned that they had reached agreement on this section. **Accordingly, parties shall follow the agreed upon language.**

##### **Section 4: Communications with Bargaining Unit Employees and Other**

**a. Summary of proposals:** The parties' proposals both recognize that the Agency will not deal directly with

Union represented employees in a way that violates the Statute. They also both recognize the Union's statutory right to be present at any formal discussions between employees and management. The Union's proposal goes further than the Agency's, though, in that it specifies between whom communications at the level of recognition will occur and requires the Agency to notify the Union in writing of "Agency initiated changes to conditions of employment."

- b. Order:** The Union acknowledges that the additional provisions in its proposal are there for informational purposes only and do not materially affect the parties' conduct, which is governed by the Statute. **In the interests of a compact agreement, the parties shall adopt the Agencies more truncated proposal.**

#### **Section 5: Information**

- a. Summary of proposals:** The parties' dueling proposals address the process by which the Union may request information from the Agency under section 7114(b)(4) of the Statute. The only difference between the proposals is that the Agency provides that the Union must demonstrate a "particularized need" for the information requested, while the Union omits such language.
- b. Order:** There is no substantive difference between the parties' proposals. Though the Union's language omits reference to "particularized need" and simply states it may request information under the Statute, the FLRA has recognized the "particularized need" standard as required by the Statute.<sup>32</sup> **For clarity, the parties shall adopt the Agency's proposal.**

#### **Section 6: Statutory appeals**

- a. Summary of proposals:** The Union's proposal, which the Agency wishes to strike, states that the Union "has the right to refuse to represent non-dues paying members only in matters outside this Agreement."
- b. Agency argument:** This is a matter between the Union and the employees, not the Union and Agency, and is not appropriate for inclusion in the CBA.

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<sup>32</sup> See *IRS, Wash., D.C. & IRS, Kansas City Serv. Ctr., Kansas City, Mo.*, 50 FLRA 661, 669 (1995).

- c. **Union argument:** The Union acknowledges that this proposal is informational in nature and not substantive.
- d. **Order:** The Agency's point is well-taken. The Union shall withdraw its proposal.

#### **Section 7: Surveys and questionnaires**

- a. **Summary of proposals:** The parties' proposals address the process by which the "Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires."
- d. **Order:** During the course of Panel proceedings, the parties informed the undersigned they had reached agreement on this section. **Accordingly, parties shall follow the agreed upon language.**

#### **Section 8: New Employee Orientation/Meeting**

- a. **Summary of proposals:** Both parties' proposals allow the Union to conduct a 30-minute presentation to newly-hired employees about "the Union's role in the workplace and membership benefits." However, the Union's proposal would allow Union representatives to be reimbursed for up to 100 miles of travel costs to make Union presentations. The Agency's proposal would permit reimbursement for travel within the "local commuting area," or about 50 miles. Finally, the Union proposes new language that would allow a Union representative to meet with new hires "when they report to their headquarter plant" in the event the Union was not able to meet with the employee during orientation and would reimburse the Union representative for up to 100 miles of travel.
- b. **Agency argument:** The Agency opposes the expense associated with travel reimbursements of up to 100 miles. The Agency also believes the secondary opportunity for the Union to meet with employees may prove disruptive to its mission.
- c. **Union argument:** The Agency commonly permits Union representatives to meet with new employees at the headquarter plant.

- d. Order:** The Union offered no compelling argument for doubling the amount of travel for which Union representatives may be reimbursed to conduct new employee presentations, or for requiring a second opportunity to meet with new hires, a privilege the Union acknowledges it is frequently afforded already. **The Parties shall adopt the Agency's proposal.**

**Section 9: Freedom from interference**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, recognizes the statutory prohibition against Agency interference in Union affairs.
- b. Order:** The parties acknowledge that this matter is covered by the Statute and that the Union's proposal is informational in nature, not substantive. **In the interests of a compact agreement, the Union shall withdraw its proposal.**

**Section 11: Right to communicate with other organizations**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, provides that, "[t]he Union shall not be precluded from consulting with religious, social, fraternal, professional, or any other groups/associations with respect to matters or policies which involve individual members of the association or are of specific applicability to it or its members."
- b. Order:** **As the Union could not explain the rationale for its proposal and, in any event, would not be prohibited from communicating with whomever it wishes, the Union shall withdraw its proposal for this section.**

**Section 13: Devices and supplies for Union officials**

- a. Summary of proposals:** The Union's proposal, to which the Agency offers no counter, obligates the Agency to furnish Union local and council presidents with at least a computer, email account, printer, scanner, fax machine, paper, ink, internet, and, upon request, GSA vehicles.



**b. Order:** The Union provided no explanation as to how furnishing Agency supplies – up to and including vehicles – is reasonable, necessary, in the interest of the public,<sup>33</sup> or advances the goals of an “effective and efficient government.”<sup>34</sup> **The Union shall withdraw its proposal.**

ORDER

Pursuant to the authority vested in me by the Federal Service Impasses Panel under 5 U.S.C. § 7119, I hereby order the parties to adopt the provisions as stated above.



Maxford Nelsen  
FSIP Member

January 27, 2021  
Washington, D.C.

ATTACHMENT

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<sup>33</sup> While the “reasonable, necessary, and in the public interest” standard appears in § 7131(d) of the Statute governing official time, which is statutorily authorized, it is nonetheless a useful and appropriate reference point when evaluating the appropriateness of Union uses of Agency facilities and resources to which the Union has no statutory right.

<sup>34</sup> 5 U.S.C. § 7101(b).

## ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The parties recognize merit in having a fair and equitable system rotating employees through a series of structured assignments on a regular basis where it is feasible for such a system to be used. Rotating employees within the establishment will allow for employees to gain knowledge that is needed to maintain proficiency in their jobs. To equalize the workload bargaining unit employees assigned to establishments shall rotate and spend equal time between positions on each shift. Rotations will be determined by supervision at the local level in conjunction with the BUE's and the appropriate Union representative.</p>	<p>The parties recognize merit in maintaining a fair and equitable system. This will be done by rotating employees through a series of structured assignments on a regular basis where it is feasible for such a system to be used. Current rotation patterns, and durations, remain in effect. Rotation patterns shall be designed to preclude any interruption in plant production or interference with the Agency's mission.</p> <p>The parties agree that Bargaining Unit Employees shall not be assigned to a position prior to receiving sufficient training to perform the duties assigned.</p>	<p>The Agency proposed that rotations will be determined by supervision at the local level in conjunction with the BUE's and the appropriate Union representative, and the Union proposed to maintain current rotation patterns and duration. The Union also proposed that rotation patterns shall be designed to preclude interruption to in plant production or interference with the Agency's mission. The Union also proposed that employees shall not be assigned to a position prior to receiving sufficient training.</p>
<p><b>Section 2. Definitions</b></p>	<p>a. Assignment – An assignment is a duty or grouping of duties as approved by the Agency.</p>	<p><u>Assignment</u> – An assignment is a duty or grouping of duties as approved by the Agency.</p> <p>b. <u>Rotation</u> – The utilization of employees in a</p>	<p>The Agency proposed to define rotations as being only within an establishment, while the Union proposed to define rotations both within an</p>

## ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

	<p>b. Rotation – The utilization of employees in a series of assignments within an establishment for a definitive period of time.</p>	<p>series of assignments for a definite period of time in each assignment.</p> <p>c. <u>Interplant</u> – between assignments.</p> <p>d. <u>Intraplant</u> – assignments within a plant.</p> <p>e. <u>Rotation Pattern</u> – Assignments within a defined geographical area (interplant and intraplant) through which qualified employees at the same grade level and like position (e.g., Food Inspector (Imports), Food Inspector (Egg Products), Consumer Safety Inspector) rotate on a regularly scheduled basis.</p>	<p>establishment, between assignments, and also proposed to establish a rotation pattern.</p>
<p><b>Section 3. Assignments</b></p>	<p>Trading of assignments within the establishment assignment may be accomplished, if mutually agreed to by the involved inspectors, and subject to approval of the immediate supervisor(s). The</p>	<p>Trading of assignments within the same rotation pattern may be accomplished, if mutually agreed to by the involved inspectors, and subject to approval of the immediate supervisor(s). The</p>	<p>The Agency proposed procedures and timeframes for requesting trading of assignments within an establishment, while the Union proposal does not specify any time frame to request</p>

## ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

	<p>involved inspectors shall submit their request in writing to their immediate supervisors at least two (2) weeks prior to the effective rotation date.</p>	<p>involved inspectors shall submit their request in writing (paper, email, or similar) to their immediate supervisor as soon as practical/need/desire for the trade known.</p> <p>Supervisors shall grant or deny the trade request, in writing, (paper, email or similar) prior to the effective date of the request. If the trade request is denied, the employees and the Local President will be notified, in writing, and the denial will contain an explanation of why it was denied.</p> <p>Trading of assignments shall not affect the employee's position in the rotation pattern.</p>	<p>trades. The Union proposal also asks supervisors to notify Local President in writing if a request is denied.</p>
<p><b>Section 4. Modifications to Assignments</b></p>	<p>No response from agency.</p>	<p>When an assignment, or assignments, need to be modified, changed, added, or eliminated, or similar after the effective date of the execution of this</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental</p>

**ASSIGNMENTS AND ROTATION OF ASSIGNMENTS**

		<p>Agreement, Management at the appropriate level, shall notify the Union, at least 30 calendar days, prior to such change(s) being made. Notification to the Union shall include copies (electronic or otherwise) of all decision-making documents, and correspondence, used in the decision-making process as they relate to the proposed change.</p> <p>After receipt of the information above, Management and the Union will meet to discuss the proposed change. Where possible, the meeting will be conducted in person.</p> <p>The Agency shall notify the effected employees of the change(s), no less than 10 business days prior to the implementation of the proposed change</p>	<p>Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 6. Volunteers for Relief and Night Assignments</b></p>	<p>To the extent possible, volunteers shall be used on relief and night assignments, if</p>	<p>The parties agree that current volunteer policies and practices effective at the time</p>	<p>The Agency proposed procedures for utilizing volunteers for</p>

## ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

	<p>acceptable to the immediate supervisor and at no additional expense to the Agency.</p>	<p>of implementation of this Agreement will remain in effect.</p> <p>If no policies and/or practices exist at the time of the execution of this Agreement the following procedure(s) shall apply:</p> <ul style="list-style-type: none"><li>A. The immediate supervisor may solicit volunteers from qualified, trained, personnel.</li><li>B. As determined by the nature of the assignment (slaughter, processing, Imports, exports, and any other Covered position) the Supervisor shall notify the qualified BUE's in writing via email, or a written notification by the immediate supervisor.</li></ul>	<p>relief and night assignments, while the Union proposed to continue with past practices and outlined procedures to instruct Agency supervisors on how to assign work.</p>
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**ASSIGNMENTS AND ROTATION OF ASSIGNMENTS**

		<p>The Local President will be included in the notification of request.</p> <p>C. The Local President will be provided the names of the employees that volunteered.</p> <p>D. If acceptable to the immediate supervisor and at no additional expense to the Agency, a qualified BUE will be selected from the volunteers that submitted their names.</p> <p>E. The Local President will be provided the name(s) of the volunteer(s) employee that was selected. In the event that no volunteer is selected and that a non-</p>	
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**ASSIGNMENTS AND ROTATION OF ASSIGNMENTS**

		<p>volunteer employee is assigned, the Local President will be notified of such decision and provided the reason/basis for the decision.</p>	
<p><b>Section 7. Data Requests</b></p>	<p>No response from the agency.</p>	<p>The Union, as often as it deems necessary, can request rotation trades and all information related to the trade. Also, the Union can request, as often as it deems necessary, the number of denials and any all reasons for the denial.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement,</p>



## ASSIGNMENTS AND ROTATION OF ASSIGNMENTS

			applicable CFR references, statues, and OPM guidelines.

## DETAILS & PULL PATTERNS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The Agency will provide sufficient information (i.e. travel regulations and supervisory instruction) to inform the employee of the position being assigned and duration of assignment.</p> <p>As much advance notice as possible shall be given to BUEs selected for a detail or temporary assignment.</p>	<p>The Agency will provide sufficient information to inform the employee of the position being assigned and duration of assignment. <b>This notice shall state the departure and anticipated return dates, type and mode of travel, T&amp;A transaction codes, starting time of the assignment(s), to include any anticipated overtime, the name and contact information of the supervisor where the employee will be reporting, the phone number to the plant USDA office, and the physical address to the facility. The agency will ensure any necessary equipment to perform inspection duties at the detailed location will be included in the detail notice. Full time Inspectors will have the first opportunity to accept a detail.</b></p>	<p>The Agency is providing general instruction. The travel orders contain the specific detail information. The Union is providing specific detail in the proposal.</p>
<p><b>Section 2. Definition</b></p>	<p>a. <u>Detail</u> – A temporary assignment of an employee to a different or the</p>	<p>a. <u>Pull Pattern</u> – The order in which <del>off-line</del> BUEs are detailed to perform <del>on-</del> <u>line</u></p>	<p>The Agency defines pull patterns and details based on staffing needs. The Union combines pull patterns and details with</p>

## DETAILS & PULL PATTERNS

	<p>same type of position for a specified period with the employee returning to his/her regular duties at the end of the detail. Details are intended only for meeting temporary needs of the Agency's work program when necessary services cannot be obtained by other desirable or practicable means.</p> <p>b. <u>Pull Pattern</u> – The order in which off-line BUEs are detailed to perform on-line slaughter duties.</p>	<p><del>slaughter duties.</del> inspectional duties</p> <p>b. The Agency shall make every effort to keep details within the shortest practicable time limits and shall assure that details do not compromise merit principles. Employees will be permitted a return trip to their duty station every 2nd week-<del>weekend</del> in cases where details out of the duty station.</p>	<p>specific limits on detail lengths.</p>
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## DETAILS & PULL PATTERNS

<p><b>Section 3. Out of Duty Station Details</b></p>	<p>Supervisors may consider volunteers before directing employees.</p> <p>BUEs will be permitted a return trip to their duty station every third (3<sup>rd</sup>) weekend in cases where details out of the duty station are for extended periods of time</p>	<p>Absent a particularized need for specific skills or qualifications, the Agency shall utilize volunteers. Supervisors may consider volunteers before directing employees.</p> <p><del>BUEs will be permitted a return trip to their duty station every third (3<sup>rd</sup>) weekend in cases where details out of the duty station are for extended periods of time</del></p> <p>The Agency will brief the Union when there is a need to make a variation from the Agency maintained detail roster, to include any reasons for the variation, such as but not limited to why there is a need for a specific volunteer to perform his/her regular duties. The Parties recognize that detail rosters are a condition of employment. If either party deems it necessary, they will provide notice and opportunity to bargain over such change.</p>	<p>Agency provides instruction on volunteers and return to duty station. The Union requests volunteers be utilized and that the agency to brief the union if there is a variation from the detail roster and also provide the opportunity to bargain.</p>
<p><b>Section 4. Pull Patterns</b></p>	<p>Supervisors shall determine the employee that is</p>	<p>Current pull procedures shall remain in effect with</p>	<p>The Agency maintains the right to assign</p>

## DETAILS & PULL PATTERNS

	pulled to cover the online position and shall ensure that pull patterns are done in an equitable manner.	the implementation of this Agreement. In the event the Agency proposes a change, it will be handled in accordance with Article – of this Agreement, Bargaining During the Term of the Agreement.	staffing. The Union requests current pull patterns be maintained, and changes bargained.
<b>Section 5. Vacant Assignment</b>	Supervisors shall determine the position to be covered.	<del>Supervisors shall determine the position to be covered.</del>  Detailed employees shall fill the vacant assignment	The Agency maintains the right to assign staffing. The Union requests detailed employees only fill a vacant assignment.
<b>Section 6. Details to Higher-Graded Positions</b>	Details to higher-graded positions shall be consistent with current Agency rules, regulations and policies.  <a href="#">DR 4030-335-002, Merit Promotion and Internal Placement</a>	Details to higher-graded positions shall be consistent with current Agency rules, regulations and policies. <del>If BUE is detailed to a higher graded positions, the agency will provide a hard copy of DR 4030-335-002, Merit Promotion and Internal Placement document, as well as any additional Agency rules, regulations and policies.</del>  <del><a href="#">DR 4030-335-002, Merit Promotion and Internal Placement</a></del> dated July 2 Details for more than one hundred twenty (120) days to a higher-	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA

## DETAILS & PULL PATTERNS

		<p>graded position or to a position with known promotion potential shall be handled under competitive merit promotion procedures. Prior service during the preceding twelve (12) months under non-competitive temporary promotions and non-competitive details to higher-graded positions counts toward the one hundred twenty (120) day total.</p> <p>Employees detailed temporarily to a higher-graded position will, upon request be provided an oral or written explanation of the principal duties and functions of the position. Except for brief period, not to exceed sixty (60) consecutive days, employees detailed to a higher-graded position shall be given a temporary promotion if the employee meets applicable time in grade and Office of Personnel Management qualification requirements.</p> <p>Selection for detail or temporary promotion to a higher-graded position or a position with known promotion potential for up to one hundred twenty (120)</p>	<p>Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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**DETAILS & PULL PATTERNS**

		<p>days shall be done competitively by seniority among qualified employees. The Agency shall identify: 1) the qualifications needed to perform the details; and 2) from the roster of available employees for detail, the employees identified as possessing these qualifications. Qualifications identified will be objective and job-related.</p>	
<p><b>Section 8 Reprisal</b></p>	<p>Agency will strike</p>	<p>The agency will not use details as a form of reprisal for Union activity, the current holding of a Union office, the past holding of a Union office, Whistleblowers, EEOC complaints, grievances, or any other right granted by the law or the contract.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS</p>

## DETAILS & PULL PATTERNS

			policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.



## DRUG-FREE WORKPLACE

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The Agency will manage its Drug Free Workplace in accordance with:</p> <p><a href="#">DR-4430-792-2</a>  <a href="#">Executive Order 12564</a>  <a href="#">Drug Free Federal Workplace</a>  <a href="#">Insert Hyperlink</a></p> <p>It is Agency policy to have a workplace free from illegal drugs to ensure integrity in the accomplishment of the mission, to implement a drug-free workplace plan to provide protection from illegal drug use, and to respect employee dignity and privacy in reaching the goal of a drug-free workplace. The parties recognize that illegal drug use is incompatible with the Agency's mission. Employees will not be selected for testing for reasons unrelated to the purposes of the drug-free workplace plan.</p>	<p>It is Agency policy to have a workplace free from illegal drugs to ensure integrity in the accomplishment of the mission, to implement a drug-free workplace plan to provide protection from illegal drug use, and to respect employee dignity and privacy in reaching the goal of a drug-free workplace. Drug testing will be administered in accordance with the Department of Health and Human Services (DHHS) scientific and technical guidelines, Departmental Regulation, and this Agreement. The parties recognize that illegal drug use may be incompatible with the Agency's mission. Employees will not be selected for testing for reasons unrelated to the purposes of the drug-free workplace plan.</p> <p>The Union is requesting a discussion about what is the Agency's drug-free workplace plan and policy. The applicability of DR-4430-792-2 to the Bargaining Unit Employees</p> <p>Drug addiction has been determined by the medical community to be a disease and will be considered and treated as such. States that have legalized the use of drugs, such as but not limited to Cannabis, that state law shall be honored and not considered illegal drug use. In the event that the Federal Government</p>	<p>The parties' language is largely similar with the exception of the Agency's desire to cite the applicable Departmental Regulation. The Union's proposal would result in a Federal Agency usurping Federal law will regard to cannabis use by the workforce.</p>

## DRUG-FREE WORKPLACE

		decriminalizes a controlled substance as identified in Agency Policy, the use of that drug will no longer be considered illegal. The employee will not be subject to discipline for the use of that substance.	
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## HEALTH AND SAFETY

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>It is the Agency policy to provide employees with a safe and healthy workplace free from recognized hazards and to initiate and operate a comprehensive Health and Safety program to reduce injuries and illnesses, motivate employees to work safely, ensure employees are free from reprisal and comply with all relevant occupational, safety and health regulations, policies and directives as required by FSIS Directive 4791.1 and described on the OSHA poster “Federal Agency Occupational Safety and Health Protection for Employees”</p>	<p>It is the Agency policy to provide employees with a safe and healthy workplace free from <b>emerging and</b> recognized hazards and to initiate and operate a comprehensive Health and Safety program to reduce injuries and illnesses. <del>The agency will ensure they will reduce or eliminate human and financial losses incurred from injury, illness and property damage in the workplace,</del> Motivate employees to work safely, ensure employees are free from reprisal and comply with all relevant occupational, safety and health regulations, policies and directives as required by FSIS Directive 4791.1 <b>Revision 3 October 4, 2016</b> and described on the OSHA poster “Federal Agency Occupational Safety and Health Protection for Employees”</p>	<p>The Agency is concerned with recognized hazards and the Union is concerned with emerging and recognized hazards.</p>
<p><b>Section 2. Agency Responsibilities</b></p>	<p>g. Ensure prompt response to reports of unsafe or unhealthful</p>	<p>a. <b>Ensure prompt response to reports of unsafe or unhealthful</b></p>	<p>The Agency is providing instructions with the applicable FSIS Directive as written. The Union is proposing language to</p>

**HEALTH AND SAFETY**

	<p>conditions as described in <u>FSIS Directive 4791.1, Rev 3, Basic Occupational Safety and Health Program</u></p> <p>h. Ensure that employees are not subjected to interference, discrimination, or other reprisal as required by FSIS Directive 4791.1.</p> <p align="center"><b><u>Union Agrees 10-10-19</u></b></p> <p>i. If hazardous conditions that have been identified by the Agency are not properly corrected, the responsible Agency official will remove IPP from the unsafe work area and shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.</p> <p align="center"><b><u>Union Agrees 10-10-19</u></b></p> <p>j. Take appropriate action when hazards have been identified in the workplace to ensure employees are not placed in a position of imminent-risk of death or serious bodily harm in the performance of work.</p> <p>k. Need further clarification from the Union.</p> <p>l. If such conditions are not properly corrected, the responsible Agency official shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.</p>	<p>conditions as described in FSIS Directive 4791.1, Rev 3, October 4, 2016 Basic Occupational Safety and Health Program.</p> <p>The agency agrees to post a hard copy of FSIS Directive 4791.1 Rev 3 or any future revisions in all slaughter facilities for use and review by Bargaining Unit Employees.</p> <p>b. Ensure that employees are not subjected to interference, discrimination, or other reprisal as required by FSIS Directive 4791.1.</p> <p>c. If hazardous conditions that have been identified by the an Agency employee are not properly corrected, the responsible Agency official will remove IPP from the unsafe work area and shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.</p> <p>d. Take appropriate action when hazards have been identified in the workplace to ensure employees are not placed in a position of</p>	<p>further define procedures outside of the scope of the applicable FSIS Directive.</p>
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## HEALTH AND SAFETY

		<p>imminent potential risk of death or serious bodily harm in the performance of work.</p> <p>e. The Agency will ensure that all required forms and posters will be distributed and displayed.</p> <p>f. Although not listed on the safety poster the agency recognize the rights of employees and their representatives to decline to perform a assigned task because of reasonable belief that it posses an imminent danger of serious bodily harm or death and there is not sufficient time to seek affective corrective action through normal hazard reporting and abatement procedures.</p> <p>g. The Agency shall provide employees with adequate welfare facilities, space, light, ventilation, cooling and heat in both the office and the plant. Additionally, the agency shall provide hearing protection (Type of Protection desired by employee) for employees exposed to excessive noise levels at their work sites in accordance with applicable</p>	
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## HEALTH AND SAFETY

		<p>regulations, and or upon request. When appropriate, industry officials shall be officially informed by appropriate Agency officials of unsafe and unhealthy conditions existing on its premises, which present a health and safety hazard to Agency employees. In addition the appropriate Union Safety Committee Member will be notified at the same time as Industry official are notified. If such conditions are not properly corrected, the responsible Agency official shall take such action as is necessary with appropriate authorities to ensure compliance with established health and safety laws and regulations.</p> <p>The Union needs clarification on what the agency refers to in their counter as “the Union agrees 10-10-19” under bullet b and c</p>	
<p><b>Section 4. Employee Responsibilities</b></p>	<p>It is recognized that each employee has a primary responsibility and obligation to know and comply with safety rules</p>	<p><del>It is recognized that each employee has a primary responsibility</del></p>	<p>The Agency is providing guidance on employee responsibility and instruction through the applicable FSIS Directive. The Union does not recognize the</p>

## HEALTH AND SAFETY

	<p>and practices as described in FSIS directives. The rules and practices are in place as a measure of protection for all FSIS employees.</p> <p>Employees who reasonably believe they may be exposed to imminent danger should immediately take the necessary steps to protect their personal safety and then report the matter to the appropriate level of management. Examples of imminent danger may include fire, gas explosion, natural gas leaks, and broken ammonia line.</p> <p>It is the responsibility of each employee to promptly report unsafe working conditions/practices to supervision per FSIS Directive 4791.1.</p> <p>Employees will comply with Agency policy regarding the use of Personal Protective Equipment found in Directive 4791.1.</p> <p>Failure to comply may result in disciplinary action.</p>	<p><del>and obligation to know and comply with safety rules and practices as described in FSIS directives. The rules and practices are in place as a measure of protection for all FSIS employees.</del></p> <p>Employees who reasonably believe they may be exposed to imminent danger should immediately take the necessary steps to protect their personal safety and then report the matter to the appropriate level of management. Examples of imminent danger may include fire, gas explosion, natural gas leaks, broken ammonia line and other chemicals used in the establishments.</p> <p><del>It is the responsibility of each employee to promptly report unsafe working conditions/practices to supervision per FSIS Directive 4791.1.</del></p> <p><del>Employees will comply with Agency policy regarding the use of Personal Protective Equipment found in Directive</del></p>	<p>primary employee responsibility and obligation for employees to know and comply with the instructions in the applicable FSIS Directive. The Union also do not distinguish between danger and imminent danger.</p>
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## HEALTH AND SAFETY

		<p style="color: green;">4791.1.</p> <p style="color: green;"><del>Failure to comply may result in disciplinary action.</del></p>	
<p><b>Section 5. Safety Committees</b></p>	<p>The Agency shall establish advisory, non-certified, health and safety committees at the circuit level to assure an effective health and safety program throughout the Agency. Such committees shall be composed of up to two (2) Union Representatives from within the circuit and at least one (1) Agency representative. These committees shall meet semi-annually. When mutually agreed to, a committee may meet more frequently. Travel and per diem expenses will be paid for safety committee BUE within the circuit to attend safety committee meetings.</p> <p>The Safety Committee is to complete activities outlined in Directive 4791.1 Section VIII.E.</p> <p>As a condition of membership on the safety committee, all members will review and follow Agency policy outlined in Directive 4791.1 Section VIII regarding the roles and responsibilities of committee members.</p>	<p>The Agency shall establish advisory, non-certified, health and safety committees at the circuit level to assure an effective health and safety program throughout the Agency. Such committees shall be composed of up to two (2) <span style="color: green;">designated Union Representative employees</span> appointed by the <span style="color: green;">Agency Union</span> <del>from within the circuit</del> and at least one (1) Agency representative.</p> <p style="color: green;">Face-to-Face training of Safety Committee Members will be conducted on an annual basis or when there is a change of member(s). Travel and Per-Diem will be paid for safety committee members to attend the safety Training.</p> <p>These committees shall meet <del>semi-annually</del> Quarterly. Committees will be allowed access to any</p>	<p>The Agency proposed forming a safety committee within each circuit to meet semi-annually and also provides guidance on the committees reviewing and following the applicable FSIS Directive. The Union proposed to designate 2 Union representatives with no specificity of being within the circuit, meet 4 times per year, have annual face-to-face training, and not follow the applicable FSIS Directive.</p>



## HEALTH AND SAFETY

		<p>facility where unit employees work. When mutually agreed to, a committee may meet more frequently. Travel and per diem expenses will be paid for safety committee representative <del>within the circuit</del> to attend safety committee meetings.</p> <p><del>The Safety Committee is to complete activities outlined in Directive 4791.1 Section VIII.E.</del></p> <p><del>As a condition of membership on the safety committee, all members will review and follow Agency policy outlined in Directive 4791.1 Section VIII regarding the roles and responsibilities of committee members.</del></p>	
<p><b>Section 6. Investigations</b></p>	<p>The Agency supervisor shall investigate the circumstances and the causes of accidents as required by OSHA record keeping regulations. Supervisors shall record accident investigations on OSHA form 301 and summarize investigations on OSHA form 300. A representative or designee of the Union shall be provided with</p>	<p>The Agency supervisor shall investigate the circumstances and the causes of accidents as required by OSHA record keeping regulations. Supervisors shall record accident</p>	<p>The Union struck the proposed language for a Union representative to be from within the circuit.</p>

## HEALTH AND SAFETY

	<p>reasonable advance notice from the District Office and an opportunity to accompany, but not interfere with an occupational safety inspection conducted by the Environmental, Safety and Health Group. At the close of the inspection, the Occupational Safety and Health Specialist or Industrial Hygienist will provide a closing conference to discuss the findings.</p> <p>The Union will be notified and allowed to designate a Union representative to participate in the opening conference of an OSHA investigation. The Union representative will be allowed to accompany OSHA inspectors during safety investigations in facilities undergoing inspection by OSHA where Unit employees work. Travel and per diem expenses will be paid for a Union representative from within the circuit to accompany the OSHA inspector(s) conducting inspections within that circuit.</p> <p>The Agency will ensure that OSHA Notices are posted in the USDA office to alert FSIS employees of the items that need to be corrected by the Establishment.</p>	<p>investigations on OSHA form 301 and summarize investigations on OSHA form 300. A representative or designee of the Union shall be provided with reasonable advance notice from the District Office and an opportunity to accompany, but not interfere with an occupational safety inspection conducted by the Environmental, Safety and Health Group. At the close of the inspection, the Occupational Safety and Health Specialist or Industrial Hygienist will provide a closing conference to discuss the findings.</p> <p>The Union will be notified and allowed to designate a Union representative to participate in the opening conference of an OSHA investigation. The Union representative will be allowed to accompany OSHA inspectors during safety investigations in facilities undergoing inspection by OSHA where Unit employees work.</p>	
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**HEALTH AND SAFETY**

		<p>Travel and per diem expenses will be paid for a Union representative <del>from within the circuit</del> to accompany the OSHA inspector(s) conducting inspections. <del>within that circuit</del>.</p> <p>The Agency will ensure that OSHA Notices are posted in the USDA office to alert FSIS employees of the items that need to be corrected by the Establishment.</p>	
<p><b>Section 8. Reports</b></p>	<p>The Chairperson of the Council, upon written request, shall be provided a copy of the accident reports (OSHA form 301) Safety Inspection Reports, and/or Industrial Hygiene Reports created at the completion of an investigation into reported accidents and/or potential hazards in the workplace. A copy of the same reports shall be made available to the appropriate circuit health and safety committee at the completion of the investigation.</p>	<p>The Chairperson of the Council, upon written request, shall be provided a copy of the accident reports (OSHA form 301) Safety Inspection Reports, and/or Industrial Hygiene Reports created at the completion of an investigation into reported accidents and/or potential hazards in the workplace. A copy of the same reports shall be made available to the appropriate <del>circuit health and</del> safety committee at the completion of the investigation.</p>	<p>The Agency proposed that a copy will be made available to the appropriate circuit health and safety committee at the completion of the investigation, while the union strikes “circuit health and” from the committee name to only read safety committee.</p>

## HEALTH AND SAFETY

<p><b>Section 10. Plant Reviews by Environmental Health and Safety Specialists</b></p>	<p>At the close of a Plant Review, conducted by an Occupational Safety and Health Specialist or an Industrial Hygienist in the Environmental, Safety and Health Group, the Agency will provide for an exit interview with the In-Plant Union representative.</p>	<p><del>At the close of a Plant Review, conducted by an Occupational Safety and Health Specialist or an Industrial Hygienist in the Environmental, Safety and Health Group, the Agency will provide for an exit interview with the In-Plant Union representative. When a Safety Review is conducted by the agency official qualified to conduct such review, the Union will be provided proper advance notice, which will allow the Union Official the ability to attend and be actively involved in the review, including exit review(s) while on agency paid time and expense(s).</del></p>	<p>The Agency proposed to provide for an exit interview with the In Plant Union representative, while the Union requests the Agency provide the Union notice to attend both the review and the exit review on Agency paid time and expense.</p>
<p><b>Section 11. Introduction of new chemicals</b></p>	<p>Move to strike</p>	<p>Prior to the introduction of new chemicals into any facility where unit employees work or have the possibility of working, an air quality study will be conducted prior to the introduction of any chemical and after the introduction. Any and all corrective actions will be</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and</p>

**HEALTH AND SAFETY**

		<p>implemented in order to provide employees with a safe and healthy working environment.</p> <p>The parties agree that most causes of irritants result from the lack of proper ventilation, therefore, the agency will ensure proper ventilation prior to the introduction of any chemical use in facilities where unit employees work or have the possibility of working.</p> <p>Existing plants that use chemicals will be reviewed by a qualified person having the ability to assess and take action of current plants where unit employees work or have the possibility of working. This review will take place within 90 days of the signing of this agreement.</p>	<p>copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 12.</b> <b>Use of firearms by establishments</b></p>	<p>See FSIS Directive 6090.1: <a href="https://www.fsis.usda.gov/wps/wcm/connect/77e6947a-4f3b-46fe-8e6f-8305d1829b28/6090.1.pdf?MOD=AJPERES">https://www.fsis.usda.gov/wps/wcm/connect/77e6947a-4f3b-46fe-8e6f-8305d1829b28/6090.1.pdf?MOD=AJPERES</a></p>	<p>When a plant/facility/establishment uses a firearm to render an animal unconscious prior to slaughter, there will be a bullet proof glassed area where the Inspector can</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues,</p>

## HEALTH AND SAFETY

		<p>view the process in a safe and healthful manner. This area will be within a reasonable viewing area.</p> <p>FSIS Directive 6090.1: dated July 24, 2019</p>	<p>and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## HOURS OF WORK

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1 Policy</b></p>	<p>a. Work schedules will be established in accordance with the current versions 9 CFR Chapter III, Government-wide regulations and Agency policy and directives governing tours of duty. The work day excludes the lunch period but includes all time spent performing duties while in a pay status.</p> <p>b. The maximum cumulative time a BUE may perform on-line post-mortem inspection duties is ten (10) hours per work day. The maximum time a BUE may be assigned to perform off-line inspection duties (e.g., in a pay status) is twelve (12) hours per work day.</p> <p>Maximum cumulative times for Inspectors are subject to the following exception:</p> <p>When determined by the immediate</p>	<p>a. Work schedules will be established in accordance with Government-wide regulations and Agency policy and directives governing tours of duty. Except for bargaining unit employees on an approved compressed work schedule, the basic workweek shall consist of five (5) consecutive eight (8) hour work days <del>(excluding the lunch period)</del> within the administrative workweek of Sunday through Saturday except as provided for in Title 5, CFR Part 610.121(a) and 9 CFR Chapter III, The work day <del>excludes the lunch period but</del> includes all time spent performing duties while in a pay status.</p> <p>b. <del>The maximum time an employee may work (e.g. pay status) in a new inspection type system, (such as NPIS, HIMP/NSIS, or similar regardless of species) is up to ten (10) hours per workday. The maximum time an employee may work off line inspection duties (e.g., in a pay status) is twelve (12) hours.</del> The maximum cumulative time a BUE may perform on-line</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## HOURS OF WORK

	<p>supervisor, based upon the Agency's staffing needs, BUEs may be utilized beyond the ten (10) and/or twelve (12) hours to accomplish the Agency's mission. Volunteers normally will be used before non-volunteers are required to work longer than the maximums.</p>	<p>post-mortem inspection duties is ten (10) hours per work day. The maximum time a BUE may be assigned to perform <del>off-line</del> inspection duties (e.g., in a pay status) is twelve (12) hours per work day.</p> <p><del>Maximum cumulative times for Inspectors are subject to the following exception:</del></p> <p><del>When determined by the immediate supervisor, based upon the Agency's staffing needs, BUEs may be utilized beyond the ten (10) and/or twelve (12) hours to accomplish the Agency's mission. Volunteers normally will be used before non-volunteers are required to work longer than the maximums.</del></p> <p>c. Employees will have 10 full hours between shifts to ensure adequate rest and safety.</p>	



## HOURS OF WORK

<p><b>Section 2. Lunch Period</b></p>	<p>In accordance with Title 9 CFR Part 307.4 and Title 9 CFR Part 381.37, the lunch period is the only officially authorized interruption in the inspector's basic tour of duty once it begins. The lunch period may be any length of time from thirty (30) minutes to one (1) hour in duration. The lunch period is unpaid time and is not included in the BUEs basic workweek.</p>	<p>a. The lunch period is the only officially authorized interruption in the inspector's basic tour of duty once it begins. The lunch period may be thirty (30) minutes, forty-five (45) minutes, or in any case will not exceed one (1) hour in duration. The lunch period is unpaid time and is not included in the employee's basic workweek. Lunch periods will be on the respective clock <math>\frac{1}{2}</math> hour, <math>\frac{3}{4}</math> hour or 1-hour marks as necessitated by the respective assignment respectively. In accordance with Title 9 CFR Part 307.4 and Title 9 CFR Part 381.37, the lunch period is the only officially authorized interruption in the inspector's basic tour of duty once it begins. <del>The lunch period may be any length of time from thirty (30) minutes to one (1) hour in duration. The lunch period is unpaid time and is not included in the BUEs basic workweek.</del></p>	
		<p>b. An on-line slaughter inspector's basic tour of</p>	

## HOURS OF WORK

		<p>duty generally corresponds with a plant's approved hours of operation. The on-line slaughter inspector's lunch period shall be scheduled to coincide with the plant's scheduled lunch break. Once established, lunch periods should remain relatively constant as to time and duration.</p> <p>c. In accordance with Title 9 CFR Part 307.4 and Title 9 CFR Part 381.37, lunch periods for inspectors shall not, except as provided herein, occur prior to four (4) hours after the beginning of scheduled operations nor later than five (5) hours after operations begin.</p> <p>d. Where an off-line inspector's tour of duty is not linked to a plant shift or in multi-plant assignments, off-line inspectors shall take their lunch within four (4) to five (5) hours after their start as determined by the immediate supervisor. In plants where a company rest break of not less than thirty (30) minutes is regularly observed, approximately midpoint between the start of</p>	
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## HOURS OF WORK

		<p>work and the lunch period, the lunch period may be scheduled as much as five and a half (5 ½) hours after the beginning of the scheduled operations. If operations are due to cease five and one-half (5-½) hours after the start of operations, the requirements of this section shall not apply.</p> <p>e. <del>When unit employees work 4 hours, but not to exceed 5 hours past the end of the first lunch, there will be a 2<sup>nd</sup> lunch break, provided operations will cease no more than 5 ½ hours after operations have resumed from the 1<sup>st</sup> lunch break.</del></p>	
<p><b>Section 3. Agency Relief Breaks</b></p>	<p>The parties recognize that relief breaks to BUEs from performing on-line post-mortem inspection duties are desirable. A total of thirty (30) minutes of break time in an eight (8) hour day shall be given. The immediate supervisor shall determine the scheduling of the break time. The break time authorized under this section cannot be scheduled as a thirty (30) minute block, extend the lunch period,</p>	<p><del>The parties recognize that relief breaks for all BUE's are desirable. A total of forty (40) minutes of break time in an eight (8) hour day shall be regularly scheduled. For BUE's assigned to slaughter establishments, the immediate supervisor shall determine the scheduling of the break time, after consultation with the appropriate Union representative. Agency relief breaks at slaughter facilities shall not be scheduled to coincide with plant breaks. All break times currently in place at the time of the effectuation of this Agreement shall remain</del></p>	

## HOURS OF WORK

	<p>arrive after the scheduled start, or shorten the work day. If overtime is scheduled for a two-hour period, an additional ten (10) minute break may be authorized by the immediate supervisor.</p> <p>Agency relief breaks may coincide with plant breaks. If a BUE works at a plant that provides plant breaks, then the inspector shall take their break at the same time.</p> <p>Where staffing or the Agency's mission would prevent providing the relief breaks, e.g., where it is not feasible to provide the break time due to a temporary staffing shortage.</p> <p>The supervisor shall advise the local Union representative of the reasons an exception exists.</p>	<p><del>in effect. The break time authorized under this section cannot be scheduled as a block or to extend the lunch period or shorten the workday. If overtime is worked, there will be an additional ten (10) minutes of break time provided when overtime is required lasting at least one hour in duration.</del> The parties recognize that relief breaks to BUEs from performing <del>on-line post-mortem</del> inspection duties are desirable. A total of thirty (30) minutes of break time in an eight (8) hour day shall be given. The immediate supervisor shall determine the scheduling of the break time. The break time authorized under this section cannot be scheduled as a thirty (30) minute block, extend the lunch period, arrive after the scheduled start, or shorten the work day. If overtime is <del>to be scheduled</del> worked for a <del>two-hour</del> 1.5 hrs or more period, an additional ten (10) minute break <del>may will</del> be authorized by the immediate supervisor.</p> <p>The agency will ensure break times will remain consistent in time and duration.</p> <p>Plant breaks are not subjected to agency rules, regulations or directives and are not guaranteed, the above will be in addition to plant breaks. Plant breaks are also recognized as a time when BUE's can address or tend to personal needs.</p>	
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## HOURS OF WORK

		<p><del>The only exceptions to the above relief break provisions shall be where staffing or the Agency's mission would prevent providing the relief breaks, e.g., where it is not feasible to provide the break time due to a temporary manpower shortage. The supervisor shall advise the Union representative of the reasons an exception exists.</del></p> <p>Where staffing or the Agency's mission would prevent providing the relief breaks, e.g., where it is not feasible to provide the break time due to a temporary staffing shortage.</p> <p>The supervisor shall advise the local Union representative of the reasons an exception exists. Supervisory personnel will be provided for those that need to leave the work area due to urgent sickness, restroom needs, etc.</p>	
<p><b>Section 4. When Plants Do Not Operate for All or Part of the Day</b></p>	<p>When Plants do not Operate for All or Part of the Day</p> <p>a. When these circumstances occur for a BUE working at an official establishment, the supervisor will assign work as appropriate or grant leave requests.</p>	<p>a. When these circumstances occur for an employee working at an official establishment, the Agency will take one or more of the following actions, as appropriate, in the order listed:</p> <ol style="list-style-type: none"> <li>1. Assign or detail the employee to other duties where services are needed.</li> </ol>	

## HOURS OF WORK

		<ol style="list-style-type: none"> <li>2. Hold "Work Unit" Meetings.</li>   <li>3. Assign the employee to meaningful on-the-job training, classroom training, or individual instructions.</li>   <li>4. Grant an employee's request for leave to cover the time in non-work status, that is:             <ol style="list-style-type: none"> <li>a. Annual leave, if available, or</li> <li>b. Leave without pay (LWOP).</li> <li>c. An employee may remain in a duty status at his/her residence with supervisory approval (i.e., "on call"). This option shall be given serious consideration at any time plants are not operating (aka down/dark days). Both the needs of the employee and the Agency will be considered.</li> <li>d. Employees may be excused where appropriate after seven (7) hours of a scheduled 8-hour workday.</li> </ol> </li> </ol>	
<p><b>Section 5. Flexible and Compressed Work Schedules</b></p>	<p>Agency did not provide a response.</p>	<p>The parties agree that employees may use flexible and compressed work schedules to principally improve productivity, provide greater</p>	

## HOURS OF WORK

		<p>Agency service to the public, enhance employees' lives, and conserve energy, based on governing regulations and policy, in accordance with the following conditions:</p> <ul style="list-style-type: none"><li>a. The work unit for purposes of this Section will include all unit employees assigned to an official establishment or rotation pattern, where appropriate.</li><li>b. A majority of unit employees in the work unit must vote to adopt the compressed workweek and be approved by the Administrator before it will be implemented.</li><li>c. The employees in the work unit involved shall hold an election by simple majority. The vote will be by secret ballot and conducted by a Union representative who will certify the results in writing to the appropriate Front-Line Supervisor/Regional Import Supervisor, as applicable. An Agency representative may explain the type of compressed work schedule and answer related questions prior to the vote.</li><li>d. Upon written request, and if the District</li></ul>	
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## HOURS OF WORK

		<p>Manager, OFO/Director, IID or their designees, as applicable, determines that participation by an employee in a compressed work schedule would impose a personal hardship on such employee, the District Manager, OFO/Director, IID or their designees, as applicable, shall make every effort to reassign such employee to a non-compressed work schedule assignment within his/her commuting area for which the employee is qualified.</p> <p>e. Employees participating in a compressed work schedule shall have an eighty (80) hour biweekly basic work requirement and a daily and weekly basic work requirement consistent with governing regulations and the type of compressed work schedule established.</p> <p>f. Employees participating in a compressed work schedule will be entitled to all existing holiday and premium pay benefits including overtime pay for hours in excess of the basic work requirement.</p>	
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## HOURS OF WORK

		<p>g. Employees participating in compressed work schedules who are required to work on a holiday, Sunday, or nights, as part of the compressed work schedule, will be entitled to holiday, Sunday, or night differential pay, as appropriate, under the provisions of Title 5, United States Code, as presently applied.</p> <p><del>In accordance with governing regulations, the Administrator may terminate a compressed work schedule if it has caused an adverse impact on Agency operations. Except for a hardship exemption, an individual unit employee or group of employees within a work unit will not be excluded from the compressed schedule once the employees in the work unit have voted to participate in the program.</del></p> <p><del>The contents of this Section shall constitute the total agreement between the parties with respect to a compressed work schedule for unit employees.</del></p>	
<p><b>Section 6. Preparatory or Concluding Activity</b></p>	<p>Agency did not provide a response.</p>	<p>Union moves to strike.</p>	

## MERIT PROMOTION

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The parties agree that the purpose of a Merit Promotion Plan is to ensure that merit principles are applied in a consistent manner with fairness and equity to all employees. The parties further agree that the viability and acceptability of a Merit Promotion Plan is to a great extent dependent on its effectiveness in providing employees a definite opportunity for career advancement through judicious use of the selection process. The provisions of the FSIS Merit Promotion Plan and this Article shall govern promotions to positions within the bargaining unit for which unit employees are eligible to compete.</p> <p>Pursuant to Title 5 U.S.C., Section 7106(a) (Management Rights), the program does not guarantee employee promotions nor require that vacancies be filled by promotion. Promotions to positions within the bargaining unit for which unit employees are eligible to compete shall be governed by <a href="#">DR 4030-335-002</a>.</p> <p>The parties agree that Merit Promotion Principles shall be applied in a consistent manner without discrimination in regards to political affiliation, race, color, national origin, sex, marital status, politics, membership or non-membership in an employee organization, age, or disability.</p>	<p>The parties agree that the purpose of a Merit Promotion Plan is to ensure that merit principles are applied in a consistent manner with fairness and equity to all employees. The parties further agree that the viability and acceptability of a Merit Promotion Plan is to a great extent dependent on its effectiveness in providing employees a definite opportunity for career advancement through judicious use of the selection process. The provisions of the FSIS Merit Promotion Plan and this Article shall govern promotions to positions within the bargaining unit for which unit employees are eligible to compete.</p> <p>Pursuant to Title 5 U.S.C., Section 7106(a) (Management Rights), the program does not guarantee employee promotions nor require that vacancies be filled by promotion. Promotions to positions within the bargaining unit for which unit employees are eligible to compete shall be governed by the Agency's Merit Promotion Plan, including the Online Promotion System, and this Agreement.</p> <p>The parties agree that Merit Promotion Principles shall be applied in a consistent manner without discrimination in regards to political affiliation, race, color, national origin, sex, sexual orientation, marital status, politics, membership or non-</p>	<p>The Union wishes for the Agency to afford BUE's a paid move regardless if the move involves a promotion or not. This provision would allow BUEs to move from one position to another throughout the country at Agency expense with no benefit to the Agency.</p> <p>The Union's proposal attempts to dictate which positions will be posted in the "Online Promotion System" (i.e. USAJobs) and disregards 1/3 of the total BUEs in Food Inspector positions.</p> <p>Allowing BUEs 4 hours of time to apply for vacant positions is unreasonable and will negatively impact the mission.</p> <p>The 21 calendar day requirement for posting vacancy announcements negatively impacts the Agency's ability to hire staff in an expeditious manner.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already</p>

## MERIT PROMOTION

		<p>membership in an employee organization, age, or disability.</p> <p>All employees selected from a merit promotion application/certificate, regardless if the employee just wants to move from one location to another under their current grade, the employee will be afforded the right(s) for a paid move in accordance with applicable government relocation allowances. For example: A GS-9 in Portland Oregon is selected to fill another GS-9 position location in Portland, Maine the relocation will be paid due to the selection be made from a promotion certificate and not the lateral transfer list.</p> <p>In the event the agency chooses to contact one person as a form of interview for a job or position, it will contract every candidate on the certificate. The employee will be given a minimum of 48 hours advanced notice prior to the interview.</p>	<p>covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 2. The Online Promotion System</b></p>		<p>The Online Promotion System covers permanent fulltime Inspector positions that are filled on a periodic basis. The positions covered are:</p> <ul style="list-style-type: none"> <li>a. Consumer Safety Inspector, GS-1862-8, 9, and 10</li> <li>b. Egg Products Inspector, GS-1863-8 and 9</li> </ul>	

## MERIT PROMOTION

		c. Import/Export Inspector, GS-1863-9	
<b>Section 3. Application Procedure</b>		<p>Applicants will need to complete the one-time online registration process at <a href="http://www.usajobs.gov">www.usajobs.gov</a>, which includes posting a resume; or, a hard copy application that includes a resume. Eligible bargaining unit employees will make application for promotion above GS-7 through the Online Promotion System electronically, or may submit a paper application to receive consideration. Either method used will allow the employee to update the original application, for example to include additional education, training, or other qualifying/selection factors.</p> <p>b. A separate application must be submitted for each vacancy announcement for which consideration is requested.</p> <p>c. Appropriate job competencies are available for each posted vacancy announcement through <a href="http://www.usajobs.gov">www.usajobs.gov</a>.</p> <p>d. Agency employees will be granted up to 4 hours</p>	

## MERIT PROMOTION

		<p>per job announcement to apply for positions they wish to be considered.</p> <p>e. All bargaining unit jobs will be announced for a minimum of 21 consecutive calendar days for Grades GS-8, GS-9 and GS-10.</p>	
<b>Section 4. Timeframes for Filing Applications</b>		<p>Applications must be submitted by the closing date posted in the vacancy announcement in order to receive consideration for the announced vacancy. Bargaining unit jobs will be announced for a minimum of 21 calendar days.</p>	
<b>Section 5. Evaluating and Ranking Employees</b>		<p>Automated systems for evaluating and ranking candidates shall be relied upon for use within the Agency.</p> <p>Employees will be provided guidance on the use of the automated promotion application system upon request. Technical support will be available for employees using the automated system, during normal business hours, through the contact person listed on the vacancy announcement.</p> <p>c. An employee, or the Union representative, may file a written request with the Human Resources Field Office</p>	

## MERIT PROMOTION

		(HRFO) to review records used as a basis for ranking and selecting employees in the promotion action being grieved by the Union. It is recognized that all documents determined by the Agency to be appropriate for release will be reviewed and sanitized, as necessary, prior to being released.	
<b>Section 6. Referral of Candidates for Promotion</b>		<p>Up to ten (10) candidates with the highest ranked scores are referred as “best qualified” for each vacancy filled.</p> <p>b. When more than one (1) vacancy can be filled from the promotion certificate, up to three (3) additional candidates are certified for each additional vacancy.</p> <p>c. The promotion certificate lists the best qualified candidates alphabetically.</p>	
<b>Section 7. Notification of Selection</b>		<p>a. Applicants may view the status of their on-line application by accessing the “Applicant Status” feature on the Food Safety Jobs On-Line (FSJO) application. Employees will obtain</p>	

## MERIT PROMOTION

		<p>the following information:</p> <ol style="list-style-type: none"> <li>1. If they were considered for a specific promotion.</li> <li>2. If they were found eligible.</li> <li>3. Who was selected.</li> <li>4. The reason for non-selection</li> </ol> <p>b. Employees considered for a vacancy shall be notified of selection by the selecting official. The employee may ask the supervisor to provide suggestions for improvement that may enhance the employee's chances for career advancement.</p>	
<p><b>Section 8. Complaints</b></p>		<p>Employee or Union complaints arising over the interpretation or application of the provisions and requirements of this Article and the Agency's Merit Promotion Plan shall be processed in accordance with the appropriate method as determined by the employee <u>or the Union</u>, including but not limited to the negotiated grievance procedure contained in Article --of this Agreement, or a complaint of discrimination.</p>	

## MERIT PROMOTION

<b>Section 9. Exceptions to Merit Promotion</b>		Competitive merit promotion procedures do not apply to:  a. Promotions without current competition when an employee(s) was previously selected under competitive procedures.  b. Promotions resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities, which meet the criteria established in the Agency Merit Promotion Plan.  c. Reinstatement, transfer, promotion, reassignment, or change to lower grade provided the position to be filled is not at a higher grade than that previously held under a career or career-conditional appointment, the position has no known promotion potential beyond the highest grade previously held, and the employee was not demoted for cause or for deficiencies in performance.  d. Placement in a position having no higher promotion potential than as a position previously held on a permanent basis under a career or career-conditional appointment, if the	
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## MERIT PROMOTION

		<p>employee was not demoted or separated from the previous position because of performance deficiencies or other “for cause” reasons. The promotion potential of the previous position must be documented in the employees’ personnel records, in promotion file records, or there is other acceptable evidence of the promotion potential of the former position on which noncompetitive eligibility is based.</p> <p>e. Temporary promotion or details to a higher grade position (or to a position with higher promotion potential) of one hundred twenty (120) days or less. Prior service during the preceding twelve (12) months under noncompetitive temporary promotions and noncompetitive details to higher graded positions counts toward one hundred twenty (120) day total.</p> <p>f. All temporary promotions in excess of thirty (30) days will be documented by Standard Form 52, Notification of Personnel Action (or its replacement).</p> <p>g. It is agency policy that Term employees may apply to the register for bargaining unit positions</p>	
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## MERIT PROMOTION

		<p>provided they meet eligibility requirements. Term employment does not make an employee eligible to apply to a merit announcement. In order to be eligible to apply to a merit announcement, the employee must be a current, permanent employee, or they must have some other eligibility, such as VRA, 30% disabled veteran, schedule A, etc.</p> <p>h. The parties agree that government rules and regulations for the hiring and utilization of Term employees will be followed, including any changes to government wide OPM regulations that may occur in the future. 5 CFR 316.301 provides that an agency may make a Term appointment for a period of more than one year but not more than four years to positions where the need for employee services is not permanent. Agencies may extend appointments made for more than one year but less than four up to the four year limit in increments determined by the agency.</p>	

## OVERTIME

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Responsibility for Overtime</b></p>	<p>a. In accordance with 5 USC §7106, (a), (2), when overtime is required the Agency retains the right to assign the overtime through use of appropriate FSIS policies. Supervisors may combine overtime assignments during periods of reduced inspection coverage requirements when they deem it operationally necessary (i.e. during Saturday work when all establishments within a patrol assignment are not operating).</p> <p>b. In situations where BUEs are required to work at least six (6) days per week, after working at least three (3)</p>	<p>a. If overtime is required, it is the responsibility of the Bargaining Unit BUE(BUE) covering the position. This provision shall not apply to situations such as a combination of assignments, emergencies, reduced inspection requirements, and when the BUE can locate a voluntary, qualified, and available replacement. When an BUE is in an 8-hour leave status (annual or sick leave, etc.) on Friday, the BUE is not normally entitled be assigned to overtime work on Saturday. BUEs who are assigned to a position on Monday and work is require the preceding Sunday, the BUE assigned to the position on Monday will work the overtime on Sunday.</p> <p>b. In situations where BUEs are required to work at least six (6) days per week, after working at least three (3) consecutive weeks, supervisors shall, upon request from the assigned BUE, make a concerted effort to provide sufficient relief from the overtime work to allow the BUE(s) adequate time to take care of personal needs. The Agency may excuse a BUE from an overtime assignment, provided another qualified BUE is available for the assignment, upon receipt of a timely request. BUEs must request such relief as soon as possible after learning of the available</p>	<p>The Agency states that management retains the right to assign work, and the Union is proposed it is the BUEs responsibility to determine the overtime coverage. The union also proposed stipulations for overtime applicability and parameters for the assigned overtime work.</p>

## OVERTIME

	<p>consecutive weeks, supervisors shall, upon request from the assigned BUE, make a concerted effort to provide sufficient relief from the overtime work to allow the BUE(s) adequate time to take care of personal needs. The Agency may excuse a BUE from an overtime assignment, provided another qualified BUE is available for the assignment, upon receipt of a timely request. BUEs must request such relief as soon as possible after learning of the available overtime.</p>	<p>overtime. When an BUE is in an 8-hour leave status (annual or sick leave, etc.) on Friday, the BUE will not normally be assigned to overtime work on Saturday.</p> <p><del>c. This does not preclude the supervisor from authorizing an BUE's absence when requested in advance, and the supervisor is able to locate a qualified replacement. An BUE who accepts voluntary overtime or is assigned mandatory overtime as a replacement under this Section has the same responsibility to perform the overtime work as the BUE who was originally assigned the overtime. It is understood that an BUE who has been directed to, or authorized to work overtime and who fails to report and work as directed, may be subjected to disciplinary action for just and sufficient cause. In such case, the BUE is required to notify his or her supervisor as soon as practical concerning the reason for failing to report.</del></p> <p>d. Agency Supervisors stationed at slaughter facilities, will post irregular overtime notices in the USDA offices in conspicuous locations before the end of the shift. If overtime notices are not posted in the USDA offices before the end of the shift, those BUEs will not be required to work the irregular overtime.</p>	
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## OVERTIME

		<p>e. The equalization of overtime procedure applies to the above provisions.</p> <p>f. Meal periods are the only periods of non-pay status during an BUE's assignment to overtime work.</p> <p>g. In the event that an emergency arises and the Agency contacts a BUE that is in an approved leave status (annual, sick, etc.) or while in a non-pay status, the BUE will be compensated at a minimum of two (2) hours of overtime</p>	
<p><b>Section 2. Voluntary Overtime Replacement</b></p>	<p>BUEs willing to volunteer to work overtime may post their names on a roster for that purpose. Supervisors may utilize the roster to obtain a qualified replacement.</p> <p>Replacement is subject to the approval of the supervisor and is to be at no additional cost to the Agency.</p>	<p>If a BUE elects to not work overtime associated with their position/assignment, that BUE is free to find a replacement in accordance with current established local practices.</p> <p>BUEs willing to work voluntary overtime may post their name on a roster for that purpose. These rosters may then be used to assist BUEs who wish to obtain a qualified replacement for overtime work. There is no requirement for a BUE to be on a Voluntary roster.</p>	<p>The Agency reserves the right to assign work in a fair and equitable manner and proposed the creation of a roster to be approved by the supervisor and at no additional cost to the Agency. The Union proposed to allow the BUE to find a replacement with no consideration for cost.</p>
<p><b>Section 3. Equalization of Overtime</b></p>	<p>Distribution of overtime shall be fairly and equitably assigned by the supervisor among eligible and qualified BUEs.</p>	<p>Distribution of overtime shall be fairly and equitably assigned by the supervisor among eligible and qualified BUEs. The parties agree to maintain current overtime roster systems, which are effective at the time of implementation of this</p>	<p>The Agency proposed procedure to fairly and equitably assign overtime by the supervisor, while the Union proposed to maintain current procedures and proposed new procedures if the current practices are no longer</p>

## OVERTIME

	<p>The following procedure shall be utilized for equitable assignment of overtime in all duty locations:</p> <ol style="list-style-type: none"><li>1. The Agency shall determine the pool of BUEs deemed qualified and eligible to perform overtime work and shall update the pool as qualifications of BUEs change.</li><li>2. One roster of all BUEs in seniority order, by grade shall be maintained.</li><li>3. The pool will be made available to involved BUEs.</li><li>4. Consistent with <b>Section 1</b> of this <b>Article</b>, a BUE who is scheduled on the roster for overtime duty</li></ol>	<p>Agreement. The following procedure shall be established if the current policy and practice is no longer practicable or a change is required to provide overtime inspection activities.</p> <p>The supervisor shall list all bargaining unit personnel on a roster in seniority order, by grade, at the permanent duty location. The Agency shall determine a pool of BUEs from the roster who are eligible and qualified to perform overtime work and shall update the pool as qualifications or qualified BUEs change. The pool will be provided to the Union, upon request, and posted on the official Agency bulletin boards.</p>	<p>practicable. The Union also proposed that the pool of employees to be posted on official Agency bulletin boards.</p>
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## OVERTIME

	is responsible for the overtime.		
<b>Section 4. Overtime and Premium Pay</b>	In assigning standby duty or on-call status, the Agency shall comply with 5 CFR 551.	BUEs shall be compensated for overtime, including appropriate premium pay and differentials for Sunday, holiday, and nights, at those rates permissible under appropriate laws, rules, and regulations.	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.
<b>Section 5. Call back</b>	Combined with Section 4  In assigning standby duty or on-call status, the Agency shall comply with 5 CFR 551.	Call back overtime work performed by an BUE on a day when work was not scheduled or for which the BUE is required to return to the place of employment, is deemed at least 2 hours in duration for the purpose of pay. The supervisor shall call back BUEs on a voluntary basis to meet Agency work needs before utilizing mandatory overtime rosters.  BUEs are not required to hold themselves in readiness for return to work when overtime was not previously scheduled. If contacted to return for overtime work, an	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.

## OVERTIME

		BUE will be excused if not in a condition to work.	
<b>Section 6. Time Spent on Standby Duty or in an On-Call Status</b>	<p>Combined with Section 4</p> <p>In assigning standby duty or on-call status, the Agency shall comply with 5 CFR 551.</p>	<p>a. An BUE will be considered on duty and time spent on standby duty shall be considered hours of work if:</p> <ol style="list-style-type: none"> <li>1. The BUE is restricted to the Agency's premises, or so close thereto that the BUE cannot use the time effectively for his or her own purposes; or</li> <li>2. The BUE, although not restricted to the Agency's premises: <ol style="list-style-type: none"> <li>(a) Is restricted to his or her living quarters or designated post of duty; and</li> <li>(b) Has his or her activity substantially limited.</li> </ol> </li> </ol> <p>b. An BUE will be considered off duty and time spent in an on-call status shall not be considered hours of work if:</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>



## OVERTIME

		<ol style="list-style-type: none"> <li>1. The BUE is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the BUE is required to remain within a reasonable call-back radius; or</li> <li>2. The BUE is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.</li> </ol>	
<p><b>Section 7. Appeals</b></p>	<p>Move to strike</p>	<p>Any alleged violation of this Article is both grievable and arbitrable pursuant to Article --, Grievance Procedures, and Article --, Arbitration, of this Agreement. Grievances concerning backpay will be processed in accordance with Article -- Backpay, Discipline/Adverse Actions, Conflict of Interest and Hazardous Pay of the Grievance Procedures.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## PERFORMANCE MANAGEMENT

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Overview</b></p>	<p>The Agency will administer the Performance Management program in accordance with 5 USC Chapter 43, 5 CFR. Part 430, and DR 4040-430. Terms used in this Article that relate to the Performance Management System, such as “appraisal,” “critical element,” or “performance rating”, will have the same meaning as in 5 C.F.R. Part 430.</p>	<p><b>Section 1. Policy(Performance Management, Managements Counter 9/24/19 Overview)</b></p> <p>Performance evaluations shall be administered in accordance with applicable laws, regulations, and internal guidelines. The Agency and the Union recognize and endorse the concept that performance management is a continuous, systematic process by which managers and supervisors integrate the planning, directing, and executing of organizational work with the personnel performance appraisal, pay, awards, promotion, and other systems. Supervisors organize work, make specific assignments, assign duties and tasks, and establish standards for employees to follow when accomplishing the work. Individual employee work elements and standards are documented and communicated in writing. Ratings for the bargaining unit is from October 1 to September 30 of each year. Any rating conducted prior to this time will be considered premature and rating/standard setting conducted after this time will be considered untimely.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable</p>

## PERFORMANCE MANAGEMENT

			CFR references, statues, and OPM guidelines.
<p><b>Section 2. Critical Elements and Performance Standards</b></p>	<p>The Agency will comply with 5 CFR Part 430 when making its reserved management right decision as to the number of levels of performance for each critical element, and when determining whether a rating level will have a written performance standard. Application of all performance standards shall be fair and equitable, and consistent with 5 C.F.R. Part 430.</p>	<p><b>Performance Standards and Ratings( ie, Critical Elements and Performance Standards, This is managements counter for 9/24/19))</b></p> <p>The application of performance standards and critical elements to bargaining unit employees shall be fair, objective, reasonable, achievable and directly related to the duties involved in the employee’s official position. Employee will be provided with all the tools necessary to perform their job based on the requirements set in the standards. At the beginning of the appraisal cycle, employees shall be furnished a copy of the performance elements and standards for their position. Performance Standards will be discussed with employees at the beginning of their appraisal cycles. Employee job performance will be appraised under established performance elements. Ratings will be communicated in writing. At the conclusion of the rating cycle employees will immediately receive a hard copy.</p> <p>Ratings as well as progress reviews, will be given in a conducive, relaxed environment, ensuring privacy and without interruption to the extent possible (i.e., phone calls, intrusions, etc.). Providing each employee with the opportunity to ask questions during or after the supervisor having</p>	

## PERFORMANCE MANAGEMENT

		<p>provided an extensive review of their performance, including how to achieve a rating above fully successful. Adequate time will be allowed to conduct the rating to enable interaction between the rating supervisor and the employee receiving the rating.</p> <p>Situations such as doubling of assignments, where employees may be assigned additional duties, as well as periods when employees work out of their normal job classifications will be considered in the applicable performance element during evaluations.</p>	
<p><b>Section 3. Communications</b></p>	<p>Normally within the first thirty (30) calendar days of every rating period or within thirty (30) calendar days of employment or reassignment, the supervisor will discuss and issue the performance plan with each employee. During the rating period, the supervisor will discuss with and notify the employee of any changes in the employee's Critical Elements or performance standards, annotate them in the performance plan, and provide a copy of the revised performance plan to the employee. Performance discussions:</p>	<p><b>Section 3. Progress and Performance Reviews/Discussions (Communications- From Management counter 9/24/19)</b></p> <p>Performance discussions will occur at appropriate times between employees and supervisors during the appraisal period. At least one progress review is mandatory and should take place approximately midway during the appraisal cycle. In addition, the rating official and the employee may meet on a more frequent basis if desired by either party and are encouraged to have ongoing dialogue and feedback as needed. The employee will be provided clear guidance on what type of performance will merit a rating of "meets" standards. Appropriate assistance will be provided whenever performance is determined by the Agency to not be at the "fully successful" level.</p>	

## PERFORMANCE MANAGEMENT

	<p>a. Progress reviews and a closeout of current appraisal period and establishment of standards for the new appraisal period discussion must take place each appraisal period.</p> <p>b. Performance discussions should occur throughout the performance appraisal period. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.</p> <p>c. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and progress and</p>	<p>At a minimum, an employee will receive Seventy-Two (72) hours of advance notice prior to the progress review and rating being conducted. Progress reviews will be given in a conducive environment to the extent possible ensuring privacy, and without interruption (i.e., phone calls, intrusions, etc.).</p> <p>Two-way communication between the supervisor and employee is an effective tool for successful performance. Discussions should be a candid, forthright dialogue between the supervisor and the employee aimed at improving performance. Employees are encouraged to request clarification concerning issues related to their performance and be provided guidance by their supervisor as appropriate within a reasonable time. Adequate time will be allowed to conduct the progress review to enable interaction between the rating supervisor and the employee receiving the rating</p>
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## PERFORMANCE MANAGEMENT

	<p>identify and resolve problems.</p> <p>d. Employees must be working under a performance plan for a minimum of ninety (90) days before a rating can be given.</p> <p>e. Performance discussions are not formal discussions.</p>		
<p><b>Section 4. Rating of Record</b></p>	<p><b><u>Management failed to counter Union Section 4.</u></b></p>	<p>Employees must perform the duties of an assigned position for a minimum of ninety (90) days during the rating period to be eligible to receive a performance rating. Sometimes a rating of record cannot be prepared at the time specified. In this case, the appraisal period for the time necessary to meet the ninety (90) day minimum appraisal period may be extended by the supervisor in accordance with governing regulations. At the end of the ninety (90) days, an appraisal is completed. <b>Employees will receive at least 72 hours' notice prior to a yearly performance rating being conducted.</b></p> <p><b>Supervisors will notify the employee, in writing, as to why a rating was lowered from the previous year, citing examples of how the employee is not performing at the previous level(s).</b></p>	

## PERFORMANCE MANAGEMENT

<p><b>Section 5. Addressing Unacceptable Performance</b></p>	<p>a. At any time during the rating period, if the supervisor identifies that an employee's performance in one or more Critical Elements is at the Unacceptable level, the supervisor may notify the employee of the Critical Elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Demonstration Opportunity Plan (DOP).</p> <p>b. The DOP must inform the employee that unless his or her performance in the Critical Element(s) at issue improves and is sustained at an acceptable level of</p>	<p>a. At any time during the appraisal year that a performance-related problem is identified, a meeting will normally be held with the employee prior to initiating a Performance Improvement Plan (PIP). The employee will be counseled regarding actions necessary to bring their performance to an acceptable level. Counseling sessions shall be documented in writing and the employee provided a copy.</p> <p>b. Following the counseling session(s), if the employee's performance has not improved, the employee shall be notified in writing that he/she shall be placed on a formal PIP and that personnel-related actions related to performance shall be withheld while this level of performance continues. The employee shall also be notified that unless performance in a critical element(s) improves to and is sustained at the "Acceptable" level, the employee shall be reassigned, removed, or reduced to a lower position. In the event the agency chooses to terminate the employee, the employee will be given the opportunity to resign. If an employee is to be reassigned or chooses to reduce to a lower graded position, the employee will be provided with a list of vacant positions within the</p>	
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## PERFORMANCE MANAGEMENT

	<p>performance, the employee may be reassigned, demoted, or removed from employment.</p> <p>c. The DOP of 30 calendar days is normally sufficient to demonstrate acceptable performance under the Critical Elements at issue, commensurate with the duties and responsibilities of the employee's position.</p> <p>d. During the DOP period, the supervisor will offer assistance to the employee in improving unacceptable performance.</p> <p>e. A supervisor can issue an Unacceptable rating prior to issuing a DOP. However, no reduction in grade or removal action will be taken under 5 C.F.R. Part 432 until the completion of the DOP period.</p>	<p>district, as well as nearby district(s) to choose from.</p>	
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## PERFORMANCE MANAGEMENT

	<p>f. Once the DOP period has ended or the supervisor determines that the opportunity period is no longer needed, the supervisor will provide the employee with a written notice of his/her determination of the employee's level of performance at that time.</p> <p>g. The provisions in this Article shall not preclude the Agency from taking an action for unacceptable performance under 5 U.S.C. Chapter 75.</p>		
<p><b>Section 6. Performance Improvement Plan (PIP)</b></p>	<p><b><u>Management failed to counter Union Section 6.</u></b></p>	<p>a. If the supervisor determines that the employee has failed to meet the requirements as documented in the counseling session(s), a written PIP shall be developed and a copy provided to the employee. The PIP will identify the employee's deficiencies, the acceptable level of performance, the action(s) that must be taken by the employee to achieve an acceptable level of performance, and the</p>	

## PERFORMANCE MANAGEMENT

		<p>methods that will be employed to measure the improvement. The deficiencies and strengths will be provided to the employee in a side by side comparison. The goal of the PIP is to return the employee to an acceptable performance level as soon as possible. Supervisors will be knowledgeable as to how administer a PIP to ensure the intent of the parties.</p> <p>b. Under the PIP, the employee will be afforded a reasonable opportunity, normally ninety (90) calendar days, to demonstrate acceptable performance in the critical element(s) in which he or she is considered to be performing at an “unacceptable” level. The agency will make sure the PIP is successful by providing, examples of but not limited to; training, coaching, and mentoring.</p> <p>e. If, at any time during the PIP, the supervisor concludes that the employee’s performance has improved to an acceptable level, the supervisor has the option to terminate the PIP. In that event, the employee shall be notified in writing that the PIP is being terminated and the employee will be appropriately rated.</p>	

## PERFORMANCE MANAGEMENT

<b>Section 7. Grievances</b>	<b><u>Management failed to counter Union Section 7</u></b>	Any alleged violations of the performance management system may be grieved under the negotiated grievance procedure. Interim progress reviews may be grieved, as well as the failure of Management to provide a progress review to the employee.	
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## PERFORMANCE MANAGEMENT

<b>Section 8. Performance- Based Actions</b>	<b><u>Management failed to counter Union Section 8</u></b>	<ul style="list-style-type: none"><li>a. Change to lower-graded positions, reassignments, or removals for unacceptable performance will be in accordance with law, regulations, and this section.</li><li>b. At the end of the PIP period, if the employee's performance is unacceptable in any critical element, the employee may be reassigned, placed in a lower-graded position, or removed. The employee also shall be informed of his/her right to representation.</li><li>c. An employee who is reassigned or changed to a lower position shall be given a new performance plan within fourteen (14) calendar days of placement in the position to which assigned. However, it is acknowledged that the regulatory timeframe remains thirty (30) days.</li><li>j. An employee who is to be changed to a lower position or removed is entitled to thirty (30) calendar days advance written notice of the proposed action that identifies the specific instances of unacceptable performance on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance.</li><li>k. When a change to a lower-graded position or removal is</li></ul>	
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## PERFORMANCE MANAGEMENT

		<p>proposed for “unacceptable” performance, the employee is entitled to:</p> <ol style="list-style-type: none"><li>1.<ol style="list-style-type: none"><li>a) Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based.</li><li>b) An employee shall be provided with a second copy of any proposed formal action, including the evidence file, for the purpose of informing his or her union representative, if the employee so chooses to be represented by the Union.</li><li>c) An employee may be represented</li></ol></li></ol>	
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## PERFORMANCE MANAGEMENT

		<p>by the Union or other representative of his or her choice. Designations will be in writing and signed by the employee. Once the designation has been made, all contacts and correspondence will be through the representative.</p> <p>2. <u>Right to Reply:</u> Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. Oral conferences will be conducted in-person or by telephone. It will also include video conferencing if available. The Agency will honor the employee's choice whether to have an oral conference and if so, the methods to be</p>	
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**PERFORMANCE MANAGEMENT**

		<p>used- accordance with Article 30, Disciplinary &amp; Adverse Actions, Section 4. The employee has a right to a representative in responding to the proposed action.</p> <p>3. <u>Notice of Decision:</u> A written decision, including the action to be taken, the effective date, and applicable rights.</p> <p>f. The Agency shall normally make its final decision within thirty (30) calendar days after expiration of the advance notice period and shall issue a written notice of the decision to the employee, except as provided below.</p> <p>1. The Agency may extend the advance notice period for a change to a lower graded position or removal for a period not to exceed thirty (30) calendar days. An Agency request for an additional extension of the advance notice period is forwarded to the Office of Personnel Management (OPM) for consideration.</p>	
<p><b>Section 9. IPPS reviews</b></p>	<p><b><u>Management failed to counter Union Section 9.</u></b></p>	<p>Employees will be provided with all questions and Topics, in writing, that will be asked/discussed of the Inspector(s) at least 5 working days prior to the IPPS review session. IPPS reviews will not take the place</p>	

## PERFORMANCE MANAGEMENT

		<p>of progress reviews, nor will they be held simultaneously with a progress review.</p> <p>In the event that more than one management personnel will be conducting/Attending the review the employee shall have the right to Union Representation.</p> <p>IPPS reviews will not be given more weight than a progress review when an employee is rated, (direct supervision observation, indirect supervision observation) etc.</p>	
<p><b>Section 10. Security Level changes</b></p>	<p><b><u>Management failed to counter Union Section 10.</u></b></p>	<p>When there is a change to the security level, which the employee does not meet for whatever reason and the employee does not meet the requirements for the new security level the employee will be offered the opportunity to downgrade, if possible, to the nearest job to the employee, provided the downgrade is to a lower security level that the employee does meet. If an employee is to be reassigned or chooses to reduce to a lower graded position, the employee will be provided with a list of vacant positions within the district, as well as nearby district(s) to choose from.</p> <p>Any changes the agency chooses to make, or is required to make, will result in bargaining to the fullest extent of the law, and the contract between the parties.</p> <p>The employee will be given the opportunity to retrain for another job at agency time and expense. Such as but not limited to: paying the employee salary while attending</p>	



## PERFORMANCE MANAGEMENT

		College, Trade School, etc. (pay mileage, books, tuition, etc.).	

## REASSIGNMENTS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 2. Voluntary Internal Placement of Bargaining Unit Employees</b></p>	<p>a. Employees may voluntarily request to be reassigned to a new duty station by submitting their name for inclusion on the Voluntary Internal Placement list</p> <p>b. Employees are not eligible for voluntary internal placement until they have completed the probationary period and have served one (1) year in their current position and duty station.</p> <p>c. A Reassignment Package shall include, FSIS Form 4335-3, Employee Request for Reassignment within Field Operations and a one (1) page statement which demonstrates the employees' knowledge, skills and abilities in accordance with <u>DR 4030-335-002</u>.</p> <p>d. Eligible employees must complete a Reassignment Package selecting up to five duty locations. BUE's shall recertify annually by resubmitting the Reassignment Package prior to the</p>	<p>a. Full-time inspection positions are permanent jobs in the locations to which employees are assigned. The Voluntary Placement Program applies to all employees in the collective bargaining unit, and allows for:</p> <ol style="list-style-type: none"> <li>1. Voluntary placement of bargaining unit employees to a position for which they are qualified and trained under the provisions of this Article. This includes voluntary reassignments, voluntary demotion, and noncompetitive re-promotion.</li> <li>2. Consideration for employees who incur unexpected hardships in their personal lives.</li> <li>3. <del>Relocation based on the</del> voluntary</li> </ol>	<p>The Agency prefers to streamline the process to prevent from having multiple list with individuals who either already have taken the desired position or left the Agency. The reapplying yearly allows for the list to updated and accurate.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current</p>

## REASSIGNMENTS

	<p>anniversary of the initial enrollment date. Employees that have access to an agency issued computer must submit the Reassignment Package electronically via the approved agency system. Employees without access to an agency issued computer may email <a href="mailto:FieldReassignments@usda.gov">FieldReassignments@usda.gov</a>, fax 1-833-840-9220, or mail the Reassignment Package directly to:</p> <p style="text-align: center;">USDA FSIS, HROD, HUMAN RESOURCES USDA, FSIS 920 2<sup>nd</sup> Avenue South Suite 1300 Minneapolis, MN 55402</p> <p>e. Employees offered Voluntary Internal Placement shall have up to three (3) workdays to accept or decline the offer. Failure to do so shall indicate declination. Employees that decline an offer will be removed from the Voluntary Internal Placement list for all locations. Employees will be eligible to submit a new Reassignment Package as indicated in</p>	<p><del>placement procedures for the benefit of the employee is at the expense of the employee.</del></p> <p>4. Non-bargaining unit employees will not be placed on a voluntary placement list(s) with Unit employees.</p> <p>b. Definitions</p> <p>1. <u>Job Swap.</u> Employees in similar or identical jobs in different locations arrange to exchange jobs The District Manager must approve a job swap.</p> <p>2. <u>Noncompetitive Re-promotion.</u> An eligible employee is re-promoted to a grade previously held on a permanent basis. <del>Demotion must not have been for deficiencies in performance or "for cause" reasons.</del></p>	<p>Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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## REASSIGNMENTS

	<p>paragraph d. above, a year from the date of declination.</p> <p>f. Selections from the Voluntary Internal Placement list are at the discretion of the selecting official based on qualifications and are not made on a first come, first serve basis. Employees who accept a reassignment must remain in that position for one (1) year before submitting a new Reassignment Package.</p>	<p>3. <u>Reassignment.</u> An employee changes from one (1) position or geographical location to another without promotion or demotion.</p> <p>4. <u>Voluntary Demotion.</u> An employee requests a change to a lower grade for personal reasons.</p> <p>5. <u>Voluntary Placement.</u> A general term used to describe a number of voluntary placement actions including voluntary reassignment, voluntary demotion, and noncompetitive re-promotion.</p> <p>6. <u>Voluntary Reassignment.</u> An employee requests a reassignment for personal reasons.</p>	
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## REASSIGNMENTS

		<p>c. Exceptions</p> <ol style="list-style-type: none"><li>1. Involuntary reassignments in localized work reductions.</li><li>2. Voluntary placements within the same duty station. (EXAMPLE: Moving from one (1) plant to another within the duty station.) EXCEPTION: If a local practice does not exist, the Voluntary Placement Program is used.</li><li>3. Job swaps where employees in similar or identical jobs in different locations arrange to change jobs. Job swaps are subject to local practices within the district.</li></ol>	
		<p>d. Eligibility</p>	

## REASSIGNMENTS

		<ol style="list-style-type: none"><li>1. All bargaining unit inspectors, unless prohibited by restrictions in item (e), of this section below, are eligible to apply for voluntary movement to any other inspection position at the same grade that they currently hold or have previously held, including voluntary demotions.</li> <li>2. Noncompetitive re-promotion applicants must have previously held higher-grade positions on a permanent basis. Applicants may be considered for re-promotion to the highest grade previously held. <del>Consideration is limited to</del></li></ol>	
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## REASSIGNMENTS

		<p>employees who were not demoted for deficiencies in performance or "for cause" reasons.</p> <p><del>3. Employees with formal disciplinary action pending, under leave restriction, or other similar actions may apply for voluntary placement if otherwise eligible. The applicant's control date is established upon receipt of the application, but the employee will not be selected for placement until the situation is resolved.</del></p> <p>e. Restrictions</p> <p>1. Employees are not eligible for voluntary placement until they have completed the probationary period and have served one (1) year in their current position. Employees may submit a request for voluntary placement no more than</p>	
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## REASSIGNMENTS

		<p>sixty (60) thirty 30 days before becoming eligible.</p> <p>2. Employees accepting reassignment under the voluntary placement program or those selected for promotion under merit promotion procedures, are not eligible for another placement until 30 days after the effective date of the previous personnel action. Employees may submit a request no more than sixty (60) thirty 30 days before becoming eligible.</p> <p>3. <del>Movement to a specific plant or location may be restricted because of a conflict of interest.</del></p>	
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## REASSIGNMENTS

		<p><b><u>(UNION f and MANAGEMENT d are alike)—9-24-2020</u></b></p> <p>f. Submitting Requests for Voluntary Placement</p> <p>1. The eligible employee</p> <p>(a) Completes FSIS Form 4335-3, Employee Request for Reassignment Within Field Operations Employees interested in any location within a state may show the state or cities or counties. Employees may indicate availability for up to <del>ten</del> <del>(10)</del> five 5 locations. If the agency elects to develop lists below the state level the agency will notify the bargaining unit of these changes. The agency will ensure that employees will be placed on all appropriate lists. BUE's shall recertify annually by resubmitting the Reassignment Package prior to the anniversary of the initial enrollment date. Employees that have access to an agency issued computer <del>must</del> may submit the Reassignment Package electronically via the approved agency system. Employees with or without access to an</p>	
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## REASSIGNMENTS

		<p>agency issued computer may email <a href="mailto:FieldReassignments@usda.gov">FieldReassignments@usda.gov</a>, fax 1-833-840-9220, or mail the Reassignment Package directly to:</p> <p>(b) Submits the completed form to: USDA, FSIS, HROD, HUMAN RESOURCES USDA, FSIS 920 2<sup>nd</sup> Avenue South Suite 1300 Minneapolis, MN 55402</p> <p>(c) Employees may rescind <del>or change</del> the application or location preferences at any time by notifying the Human Resources Field Office in writing, at the address in f (1), subparagraph (b) of this section. When the employee adds new locations, the Human Resources Field Office establishes a new control date for the new locations. The existing control date remains unchanged and continues to apply for locations already on file. Employees offered Voluntary Internal Placement shall have up to three (3) workdays to accept or decline the</p>	
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## REASSIGNMENTS

		<p>offer. Failure to do so shall indicate declination. Employees that decline an offer will be removed from the Voluntary Internal Placement list for <del>at</del> that location. Employees will be eligible to submit a new Reassignment Package as indicated <del>in</del> above</p> <p>Selections from the Voluntary Internal Placement list are at the discretion of the selecting official based on the control date received by HRFO. Employees who accept a reassignment must remain in that position for one (1) year before submitting a new Reassignment Package.</p> <p>2. The Human Resources Field Office</p> <p>(a) Informs employees of the appropriate contacts for questions on voluntary placement applications. The name, address, and toll-free number for these contacts will be updated as changes occur, which will be provided to the Union and employees in written hard copy form.</p>	
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## REASSIGNMENTS

		<p>(b) Date stamps the form the day it is received in the mailroom. This is referred to as the "control date." EXCEPTION: If the form is received before the employee's eligibility date, the control date is the eligibility date (that is the date the employee completes one (1) year in their current position), rather than the date received. The control date is established to identify the beginning of the employee's period of eligibility in the Voluntary Placement System.</p> <p>(c) Notifies employees, in writing, of receipt of their requests.</p> <p>(d) Upon request, the Council or Local Presidents will be furnished updated lists within their respective jurisdictions.</p> <p><del>g. Length of Eligibility</del></p> <p><del>FSIS Form 4335-3, Employee Request for Reassignment within Field Operations, is valid until rescinded by the employee, or until the employee moves to a different position, either via voluntary placement</del></p>	
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## REASSIGNMENTS

		<p>or selection for promotion. An employee who moves to another position can immediately submit a new 4335-3 for a new location. If a BUE is offered the same location from the same voluntary placement list three (3) separate occasions and doesn't accept, they will be removed from that placement list.</p> <p>a. Procedure for Filling Vacancies</p> <p>Employees are referred under the Voluntary Placement Program, as follows:</p> <ol style="list-style-type: none"><li>1. Names of employee(s) seeking voluntary placement are made available to the selecting official in the District Office in control date order.</li><li>2. The Voluntary Placement List contains the names of any candidates entitled to return rights under Section 3 of this</li></ol>	
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## REASSIGNMENTS

		<p>Article and the names of employee(s) requesting voluntary placement.</p> <p><del>3. Employees exercising their return rights receive priority over other candidates on the Voluntary Placement List.</del></p> <p><del>5. When district offices elect to fill a position via the voluntary placement list, the selecting official will select on a first come first serve basis. If another individual on the list is selected the specific reasons will be provided in writing to the appropriate Council President.</del></p> <p><del>6. Employees offered voluntary placement shall have three (3) workdays to accept or</del></p>	
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## REASSIGNMENTS

		<p><del>decline the offer.</del></p> <p><del>7. Employees must report to the new duty station within thirty (30) days, unless delayed by mutual agreement between the gaining and losing districts.</del></p> <p>b. Return Rights</p> <p>Employees who wish to exercise their return rights as specified in Section 3, below, of this Agreement, must submit a request for transfer based on return rights within ninety (90) days of the involuntary reassignment. When an offer is made, the employee is obligated to respond within three (3) working days from the date of the offer. Failure to respond within the timeframe will indicate a declination of rights. Once submitted, the request will remain active.</p>	
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## REASSIGNMENTS

		<p><b><u>(THE UNION IS REQUESTING A MEETING WITH MANAGEMENT TO DISCUSS HARDSHIP REQUESTS) 9-24-2020</u></b></p> <p>c. Hardship Requests</p> <p>Consideration for voluntary placement is granted in situations when there is an unanticipated severe personal hardship. However, a number of employees typically request voluntary placement to other locations to alleviate or minimize personal difficulties in their lives. These personal difficulties vary in nature and degree of severity. While the Agency is concerned with the welfare of its employees, management cannot become involved in personal issues resulting from choices made freely and willingly by employees or applicants for Agency inspection positions; nor can they make judgments that one (1) individual's needs are more severe than another's. Consequently, it is expected that situations warranting hardship</p>	
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## REASSIGNMENTS

		<p><del>consideration will be rare. No consideration will be given to employees requesting hardship reassignments during their first year of full-time employment. Such requests shall be returned to employees without action.</del></p> <p>Employees and applicants should consider all personal circumstances before accepting a position in the location offered.</p> <ol style="list-style-type: none"><li>1. Employees requesting hardship consideration for voluntary placement must submit to HRFO at the address in Paragraph f, 1(b) of this section.</li></ol> <ol style="list-style-type: none"><li>(a) FSIS Form 4335-3, Request for Voluntary Reassignment Within Field Operations.</li><li>(b) A memorandum describing their circumstances in detail, including actions taken to mitigate the hardship.</li></ol>	
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## REASSIGNMENTS

		<p>(c) Any supporting documentation.</p> <p>(d) In the event a hardship request is granted, the Union and the employee will be serviced simultaneously, in hard copy writing, of the requested hardship approval.</p>	
<p><b>Section 3. Reassignment of BUEs in Work Reduction Situations</b></p>	<p>In the event that a staff reduction becomes necessary, the Agency shall make a concerted effort to reassign BUEs to vacant positions to avoid a reduction-in-force. In those situations where a reduction-in-force becomes necessary, procedures in <b>Article --, Reduction in Force and Transfer of Function</b>, will govern. Staff reductions generally result from work reduction situations where there is a change in operations at plants where BUEs are assigned. The following procedures apply when there are no vacancies within the commuting area to offer impacted BUEs.</p> <p>a. Area of Competition:</p> <p>The area of competition (competitive area) in work reduction situations includes all plants within a 35-mile radius of the</p>	<p>In the event a staff reduction becomes necessary, the Agency shall make a concerted effort to reassign employees to vacant positions to avoid a reduction-in-force. In those situations where a reduction-in-force becomes necessary, procedures in <b>Article --, Reduction in Force and Transfer of Function</b>, will govern. Staff reductions generally result from work reduction situations where there is a change in operations at plants where BUEs are assigned. The following procedures apply when there are no vacancies within the commuting area to offer impacted employees.</p> <p><b><u>UNION AGREES WITH FIRST PARAGRAPH OF SECTION 3—9-24-2020</u></b></p> <p>a. Area of Competition</p> <p>The area of competition (competitive area) in work reduction situations includes all plants within a 35-</p>	<p>The Agency proposed the area of competition to be determined with the use of appropriate authoritative mapping software, while the Union wants the determination to be made by the Union accompanying an Agency representative to physically drive the route at agency expense. The Union also proposed different stipulations on when the retention roster will be requested and when employees will select available positions. The Union also proposed that the Agency will provide, to the Council President, written hard copy service of all retention rosters sent to each district, and the Union also adds the specific reassignment form number.</p>

## REASSIGNMENTS

	<p>plant where the reduction occurs measured from plant to plant as provided in an appropriate authoritative computerized mapping program.</p> <p>b. Work Reduction Process:</p> <ol style="list-style-type: none"> <li>1. The District Office notifies Human Resources when work reduction procedures are to be implemented, including the impacted duty station, number and type of positions impacted and positions available to be offered to BUEs impacted in the work reduction.</li> <li>2. Human Resources tentatively identifies locations to be included in the competitive area and forwards this information to</li> </ol>	<p>mile radius of the plant where the work reduction occurs (measured from plant-to-plant) Measuring will be calculated as the actual driving amount driven by an agency representative, with the Union being offered the opportunity to accompany the agency official conducting the study. The Union official will be on official time and expenses, if applicable.</p> <p>b. Work Reduction Process</p> <ol style="list-style-type: none"> <li>1. The District Office notifies the HRFO, who will then request a retention roster of affected employees, when work reduction procedures are to be implemented, including the impacted duty station, number and type of positions impacted and positions available to be</li> </ol>	
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## REASSIGNMENTS

	<p>the District office for confirmation.</p> <p>3. Human Resources identifies and confirms locations to be included in the competitive area and prepares retention registers in accordance with appropriate regulations. Retention standing is used to determine which BUEs are offered reassignment outside the commuting area.</p> <p>4. BUEs subject to reassignment under work reduction procedures may elect to fill a priority vacant position in the commuting area at a lower grade level, in accordance with their standing on the</p>	<p>offered to individuals impacted in the work reduction. Employees will select available locations within the commuting area based on their standing on the retention roster.</p> <p>2. The HRFO tentatively identifies locations to be included in the competitive area and forwards this information to the District Office for confirmation.</p> <p>3. HRFO identifies and confirms locations to be included in the competitive area and prepares retention registers in accordance with appropriate regulations. Retention standing is used to determine which BUEs are offered reassignment outside the commuting area.</p>	
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## REASSIGNMENTS

	<p style="text-align: center;">retention register, and subject to the availability of vacant positions.</p> <p>c. <b>Return Rights:</b></p> <p>A BUE who has been involuntarily reassigned as the result of a work reduction and who follows the return rights procedures shall be given first opportunity to return to his/her original position or a similar position at the BUE's expense, if such position becomes available in the commuting area from which he/she was reassigned. At the time of the work reduction, reassigned BUEs shall be provided with instructions for applying for return rights. A request for return rights must be submitted within sixty (60) calendar days of the effective date of the reassignment. Entitlement to return rights remains in effect provided the BUE maintains an active request on file (updated annually) and does not turn</p>	<p>4. BUE subject to reassignment under work reduction procedures may elect to fill a priority vacant position in the commuting area at a lower grade level, in accordance with their standing on the retention register, and subject to the availability of vacant positions.</p> <p style="text-align: center;"><b><u>UNION AND MANAGEMENT AGREEMENT 2, 3, 4--- 9-24-2020</u></b></p> <p>5. The agency will provide, to the Council President, written hard copy service of all retention rosters sent to each district.</p> <p>c. <b>Return Rights</b> An employee who has been involuntarily reassigned as a result of a work reduction shall be given the first opportunity to return to his/her original position or a similar</p>	
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## REASSIGNMENTS

	<p>down an offer of the same or a similar position in the commuting area from which he/she was reassigned. A BUE must respond to an offer of return rights within three (3) working days from the date of the offer. Failure to do so shall indicate a declination of return rights.</p>	<p>position at the employee's expense, if such position is reestablished in the commuting area from which he/she was reassigned. At the time of the work reduction employees shall be provided with instructions for applying for return rights. A request for return rights must be submitted <b>on FSIS form 4335-3</b> within sixty (60) days of the effective date of the reassignment. Entitlement to return rights remains in effect provided the employee maintains an active request on file (updated annually), and does not turn down an offer of the same or a similar position in the commuting area from which he/she was reassigned. A BUE who has been involuntarily reassigned as the result of a work reduction and who follows the return rights procedures shall be given first opportunity to return to his/her original position or a similar position at the BUE's expense, if such position becomes</p>	
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## WORKPLACE BULLYING

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1: Objective</b></p>	<p>The Parties agree to mutually establish and maintain a work environment that is safe, positive, respectful, and productive, and free of conduct or language that may contribute to harassment and/or workplace violence.</p> <p><del>professional work environment that promotes good workmanship; values employees for who they are and what they contribute; ensures fair, equitable, and respectful treatment of employees; and maintains high standards of employee performance.</del></p> <p>In accordance with <a href="#">Departmental Regulation (DR) 4200-001, Workplace Violence Prevention and Response Program</a>, violent behavior of any kind or threats of violence, either implied or direct, against persons or property will not be tolerated.</p> <p><del>Agency will not in any instance tolerate bullying behavior.</del></p>	<p>The Parties agree to mutually establish and maintain a safe, positive, and professional work environment that promotes good workmanship; values employees for who they are and what they contribute; ensures fair, equitable, and respectful treatment of employees; and maintains high standards of employee performance.</p> <p>Agency will not <i>in any instance</i> tolerate bullying behavior.</p>	<p>The Union’s language attempts to define workplace bullying and sets out unnecessary examples of what constitutes bullying. The language infringes on management’s right to determine what constitutes misconduct and the right to discipline the workforce.</p> <p>In addition. <i>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</i></p>
<p><b>Section 2: Definition</b></p>	<p><del>Defines bullying as repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes:</del></p>	<p>Defines bullying as repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes:</p> <ul style="list-style-type: none"> <li>• Threatening, humiliating or intimidating behaviors.</li> </ul>	

## WORKPLACE BULLYING

	<ul style="list-style-type: none"> <li>• <del>Threatening, humiliating or intimidating behaviors.</del></li> <li>• <del>Work interference/sabotage that prevents work from getting done.</del></li> <li>• <del>Verbal abuse.</del></li> </ul> <p><del>All employees will be treated with dignity and respect.</del></p> <p><del><b>Examples;</b></del></p> <p><del>The Union and the Agency considers the following types of behavior examples of bullying:</del></p> <ul style="list-style-type: none"> <li>• <del><b>Verbal bullying.</b> Slandering, ridiculing or maligning a person or his or her family; persistent name-calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks.</del></li> <li>• <del><b>Gesture bullying.</b> Nonverbal gestures that can convey threatening messages.</del></li> <li>• <del><b>Exclusion.</b> Socially or physically excluding or disregarding a person in work-related activities.</del></li> </ul> <p><del>In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:</del></p>	<ul style="list-style-type: none"> <li>• Work interference/sabotage that prevents work from getting done.</li> <li>• Verbal abuse.</li> </ul> <p>All employees will be treated with dignity and respect.</p>	
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## WORKPLACE BULLYING

- Persistent singling out of one person.
- Shouting or raising one's voice at an individual in public or in private.
- Using obscene or intimidating gestures.
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form.
- Constant criticism on matters unrelated or minimally related to the person's job performance or description.
- Public reprimands.
- Repeatedly accusing someone of errors that cannot be documented.
- Deliberately interfering with mail and other communications.
- Spreading rumors and gossip regarding individuals.
- Encouraging others to disregard a supervisor's instructions.

## WORKPLACE BULLYING

	<ul style="list-style-type: none"> <li>• <del>Manipulating the ability of someone to do his or her work (e.g., overloading, underloading, withholding information, setting deadlines that cannot be met, giving deliberately ambiguous instructions).</del></li> <li>• <del>Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave.</del></li> <li>• <del>Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).</del></li> </ul>		
<p><b>Section 3: Reporting incidences</b></p>	<p>Employees who believe that they have been subjected to harassment and/or workplace violence incidents instigated by other FSIS employees or outside entities should immediately report it in accordance with <a href="#">FSIS Directive 4735.4</a>, Preventing Harassment and Workplace Violence.</p> <p><del>Individuals who feel they have experienced bullying should report this to their supervisor before the conduct becomes severe or pervasive. All employees are strongly encouraged to report any</del></p>	<p>Individuals who feel they have experienced bullying should report this to their supervisor before the conduct becomes severe or pervasive. All employees are strongly encouraged to report any bullying conduct they experience or witness as soon as possible. If an employee is reluctant to report the bullying a report can be filed on their behalf. All employees have the right to file FSIS Form 4735.4.</p> <p>Upon receipt of a report of workplace bullying, Management will initiate an inquiry, address any inappropriate conduct, assist the affected employee, and act to prevent any retaliation by the bully</p>	

## WORKPLACE BULLYING

	<p><del>bullying conduct they experience or witness as soon as possible. If an employee is reluctant to report the bullying a report can be filed on their behalf. All employees have the right to file FSIS Form 4735.4.</del></p> <p>Upon receipt of a report of workplace bullying, Management will initiate an inquiry, address any inappropriate conduct, assist the affected employee, and act to prevent any retaliation by the bully or bullies. Management will not retaliate against any employee for reporting workplace bullying.</p>	<p>or bullies. Management will not retaliate against any employee for reporting workplace bullying.</p>	

## COMMUNICATIONS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 3. Distribution of Agreement</b></p>	<p>a. If the Union chooses to have Union membership ratify the Agreement, it will distribute the Agreement to its membership for a ratification vote within seven (7) days following receipt of the Agreement from the Agency. A confirmation of this distribution will be provided to the Agency within seven (7) days of receipt.</p> <p>b. Upon ratification an electronic/digital version of the Agreement will be made available for all BUEs with agency-issued computers. The Agency will distribute hard copy to those without computers. Subsequently the Agreement will be available in electronic/digital version (i.e. .pdf).</p> <p>c. The Agreement will be available within ninety (90) days of the effective date of</p>	<p><del>a. The Agency will reproduce and provide hard copies of this Agreement to the Union in quantities necessary for ratification purposes.</del></p> <p><del>b. The Agency will provide, at no cost to the Union, or unit employees copies of the Agreement, printed on 4 3/4" x 7" paper, in type that can be read easily, with a table of contents, index, and glossary of terms, to each employee on the distribution date and to all employees entering on duty after that date. The Agency will also provide additional copies, to the Union, as needed/requested.</del></p> <p>Physical/hard correct copies of the Agreement will be sent to all current slaughter establishments. This copy of the Agreement will be maintained at the respective establishments for use by Bargaining Unit Personnel on a as needed basis. Additional hard copies of the Agreement will be sent to and maintained at future slaughter establishments in</p>	<p>The Agency will provide electronic copies of the agreement to all employees with access to Agency issued computers. The Union wants the Agency to provide paper copies of the agreement to the Union upon request.</p>

## COMMUNICATIONS

	<p>this Agreement. Should any errors occur in the printed version, corrections will be made in an updated electronic version available to all employees.</p>	<p><del>accordance with this Section of the Agreement.</del></p> <p>Additionally, the Agency will create and distribute an electronic/digital versions (example, .pdf, .docx, etc) of the Agreement. The electronic copy will include a table of contents, index glossary of term, and scan of the signatory page. An electronic copy of the LMA and any referenced publications used will also be loaded on to all government issued computers, laptops, E-devices, or similar, as part of the standard software load, that will be used by Bargaining Unit Employees.</p> <p>c. <del>The distribution as shown in this section shall be made within ninety (90) days of the effective date of this Agreement. Any errors in printing will result in a reprint and re-distribution, will be provided to the Union and all bargaining unit employees would be within 60 days of the discovery of the error.(s)</del></p>	
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## DISCIPLINARY AND ADVERSE ACTIONS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 2. Formal Actions</b></p>	<p>a. Any notice of proposed disciplinary or adverse action will advise the employee of his/her applicable rights.</p> <p>b. Letters of Reprimand will be retained in the employee's eOPF for up to two (2) years from the effective date.</p>	<p>Letters of Reprimand will be retained in the employee's Official Personnel Folder for not more than two (2) years from the effective date, which can be removed at any point.</p> <p>b. An employee against whom a suspension for fourteen (14) days or less is proposed is entitled to:</p> <ol style="list-style-type: none"> <li>1. Advance written notice stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;</li> <li>2. Ten (10) working days <del>to respond in writing, and/or</del> to request in writing for the opportunity to present a face to face oral response. <del>and to furnish</del> Statements and other documentary evidence in support of the answer may be presented at the oral conference. An oral conferences will be conducted in person.</li> </ol>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## DISCIPLINARY AND ADVERSE ACTIONS

		<ol style="list-style-type: none"><li>3. A written decision, including the action to be taken, the effective date, and applicable rights.</li></ol> <p>c. An employee against whom an adverse action is proposed (removal, suspension for more than fourteen (14) calendar days, reduction in grade or pay, and furlough of thirty (30) calendar days or less) is entitled to:</p> <ol style="list-style-type: none"><li>1. Advance written notice of thirty (30) calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;</li><li>2. Ten (10) working days to <del>respond in writing, and/or to</del> request in writing the opportunity to present an oral response face to face. The advance written notice will include the oral conference options available to the employee, which includes face to face. The</li></ol>	
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## DISCIPLINARY AND ADVERSE ACTIONS

Agency will honor the employee's choice whether to have an oral conference, and if so, the method to be used. The oral Conference officer assigned to hear the employee's side of the case will take into consideration the schedule of the employee and the Union Representative. An oral conference will be set at a time of mutual agreement in the area of the accused employee.

3. A written decision, including the action to be taken, the effective date, and applicable rights.

a. The thirty (30) day advance notice period and other time frames are curtailed for actions taken under the crime provision where there is reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed.



## DISCIPLINARY AND ADVERSE ACTIONS

		<p>b. An employee represented by the Union for all formal actions will afford the named representative with all travel related expenses paid by the agency.</p> <p>c. Employees, if they choose, can present evidence; furnish affidavits and other documentary evidence in support of the BUE's defense prior to or at the oral conference.</p> <p>Employees who sign a last chance agreement will not automatically be terminated/removed in the event there is an allegation of a violation of the agreement. The employee will have all rights under the law, including case law prior to termination/removal.</p>	
<p><b>Section 3. Representation</b></p>	<p>a. An employee shall be provided with a second copy of any proposed formal action, including the evidence file, for the purpose of informing his or her Union representative, if the employee so chooses to be represented by the Union.</p> <p>b. An employee may be represented by the Union or other representative of his or her choice.</p>	<p>An employee shall be provided with a second copy of any proposed formal action, as described in Section 2, for the purpose of informing his or her Union representative, if the employee so chooses to be represented by the Union. Upon request the agency will provide the designated Representative an electronic copy of the evidence file. <del>No action</del></p>	<p>a. The Agency will provide the employee with an addition copy of the action and evidence file for the designated union representative. The Union requires the Agency to provide an electronic copy of the evidence file to the Union representative.</p> <p>b. The Agency requires the designation to be in writing and sent electronically to the Agency by the employee. The Union requires the</p>

## DISCIPLINARY AND ADVERSE ACTIONS

	<p>Designations will be in writing and signed by the employee. Designations received electronically from the employee will suffice as proper designation. Once the designation has been made, all contacts and correspondence will be through the representative.</p> <p>c. In the event of a proposed adverse action, the oral conference will be held via teleconference or video conference.</p> <p>d. In instances where an employee designates a union representative, the scheduling of an oral conference or the proceedings of the disciplinary action case shall not be delayed.</p>	<p><del>shall be taken against any employee where direct evidence is not contained in the evidence file.</del></p> <p>b. An employee may be represented by the Union or other representative of his or her choice. Designations will be in writing or verbal. <del>signed by the employee.</del> Designations received electronically from the employee via email will suffice as proper designation <del>This designation can be made by the employee via electronically (email).</del> Once the designation has been made, all contacts and correspondence will be through the representative.</p> <p><del>e. In the event of a proposed adverse action, the oral conference may be held face to face, teleconference, or video conference.</del></p> <p><del>d. In instances where an employee designates a union representative, the scheduling of an oral conference or the proceedings of the disciplinary action case shall not be delayed.</del></p> <p>e. The Union will be provided sufficient notice</p>	<p>designation to be writing or verbal. The Union removed "email" as a way for the employee to send the designation.</p> <p>c. The Agency requires the oral conference to be held via teleconference or video conference. The Union wants to have the option of face to face oral conference.</p> <p>d. The Agency requires the oral conference not be delayed. The Union struck the language.</p> <p>e. The Agency did not include this section as a part of streamlining the contract; this is part of a current practice. The Union added language that is in the current contract.</p>
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**DISCIPLINARY AND ADVERSE ACTIONS**

		<p>and opportunity to be present when known discipline is being delivered to any bargaining unit employee. Travel expense and official time will be paid by the agency for all cases where known discipline is delivered.</p>	
<p><b>Section 5. Evidence file</b></p>	<p><b>Agency moves to strike</b></p>	<ul style="list-style-type: none"> <li>a. No allegations will be considered that is not supported by evidence.</li> <li>b. All evidence used to take or propose action, will be contained in the evidence package provided to the employee and the representative.</li> <li>c. Actions will not be taken, which is not supported or referenced, unless it is contained in the evidence file.</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## DISCIPLINARY AND ADVERSE ACTIONS

<p><b>Section 6. Outside activities</b></p>	<p>Agency moves to strike Addressed in Employee Rights and Responsibilities Section 1</p>	<p>Activities that are not directly related to the job of the employee shall not be considered in a disciplinary action or adverse action.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
<p><b>Section 7. Splitting Suspension</b></p>	<p>Agency moves to strike</p>	<p>Whenever possible, the agency will split discipline of more than one week between pay periods. For examples: a two-week suspension might have the employee serve the last week of one pay period and the first week of the next. Splitting discipline does not establish guilt or innocence.</p>	<p>o The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## DUES WITHHOLDING

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. General</b></p>	<p>Bargaining Unit Employees (BUE) who occupy positions represented by the Union may have their dues withheld through payroll deduction. Dues withholding is to be voluntary on the part of the individual employee. The Union is responsible for informing the BUE of the voluntary nature of dues withholding and the conditions governing a BUE revocation of dues withholding.</p> <p>In implementing the dues deduction program, the Employer and Union will be governed by the provisions of 5 USC 7115 and this Article.</p>	<p>Members of the unit are authorized to effect voluntary allotment for the payment of dues subject to the procedures and stipulations set forth in this Agreement. By this Labor Management Agreement, the National Joint Council of Food Inspection Locals, AFGE, agrees that for the duration of this Agreement it will continue to designate the National Office of the American Federation of Government Employees as the recipient of dues allotted pursuant to 5 U.S.C., Section 7115. Union dues shall be deducted from an employee's pay each pay period and remittances will be made each pay period to the National Joint Council, or designee.</p> <p>The Agency shall process the SF-1187 and SF-1188 (<del>Cancellation of Payroll Deductions for Labor Organization Dues</del>) forms in accordance with the terms and conditions specified on the forms, this Agreement, and 5 U.S.C., Section 7115.</p> <p>An employee may submit a SF-1188 Form, <del>in duplicate</del>, for the revocation of an</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## DUES WITHHOLDING

		<p>allotment within thirty (30) days of the anniversary date when the bargaining unit employee joined the Union. The appropriate Human Resources Office will process the request pursuant to 5 U.S.C., Section 7115.</p>	
<p><b>Section 2. Supply of Forms</b></p>	<p>The Union will be responsible for the distribution of Standard Form (SF) 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. Standard Form 1188 will also be available through the Union, the appropriate Human Resources Office, or online at <a href="http://www.opm.gov/forms/pdf_fill/sf1188.pdf">www.opm.gov/forms/pdf_fill/sf1188.pdf</a> for employees who wish to revoke the allotment as described in Section 4.</p>	<p>The Union will be responsible for the distribution of Standard Form (SF) 1187 for the use by an eligible member of the Union who wishes to authorize the deduction of his/her dues. <del>Standard Form 1188 will also be available through the Union, the appropriate Human Resources Office, or online at <a href="http://www.opm.gov/forms/pdf_fill/sf1188.pdf">www.opm.gov/forms/pdf_fill/sf1188.pdf</a> for employees who wish to revoke the allotment as described in Section 4.</del></p>	<p>The Agency includes language and hyperlinks that informs employees how to retrieve Form 1188 to revoke allotment. The Union has removed the language that informs employees how to retrieve the Form 1188, to revoke allotment.</p>

## DUES WITHHOLDING

<p><b>Section 3. Requesting Dues Withholding</b></p>	<p>In order to initiate dues withholding, a BUE must complete and sign an SF-1187. BUEs must themselves submit the completed, signed and certified SF-1187 forms to the appropriate Human Resources Office for concurrence, at no expense to the Agency. The Union, its representatives, or another individual may not submit the forms on the BUE's behalf. Dues will be withheld beginning no later than two pay periods following receipt of Standard Form 1187.</p>	<p><b>In order to initiate dues withholding, a BUE must complete and sign an SF-1187. The SF-1187 certifies the amount of dues to be withhold initially each by-weekly pay period, and identify the local to receive the dues deduction. BUEs must themselves submit the completed, signed and certified SF-1187 forms to the appropriate Human Resources Office for concurrence, at no expense to the Agency. The Union, its representatives, or another individual may not submit the forms on the BUE's behalf. Agency will provide contact information to where/who the SF-1187 can be mailed, faxed or emailed in the Human Resource Office. Dues will be withheld beginning no later than two pay periods following receipt of Standard Form 1187.</b></p>	<p>The Agency requires employees to complete and submit the SF-1187. The Union language provides for the Union to submit the SF-1187 on behalf of the employee.</p>
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## DUES WITHHOLDING

<p><b>Section 4. Termination of Dues Withholding</b></p>	<p><b>1. Automatic</b></p> <p>All allotments of Union dues withholding will be automatically terminated in the following events:</p> <p>(a) Loss of Exclusive Recognition. All deductions of Union dues provided for in this Article will automatically terminate in the event of loss of exclusive recognition.</p> <p>(b) Temporary assignment to a non-BUE position. If the employee is on a temporary assignment to a non-BUE position, the Employer will notify Payroll to cease the allotment of Union dues deduction and so inform the Union. The employee will be responsible for submitting a new SF-1187 upon returning to a BUE position if they elect to voluntarily continue to pay Union dues through Payroll deduction.</p> <p>(c) Separation or transfer. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Agency or transfer of the employee from the bargaining unit.</p> <p>(d) Change in membership status. The Union will</p>	<p><b>1. Automatic</b></p> <p>All allotments of Union dues withholding will be automatically terminated in the following events:</p> <p>(a) Loss of Exclusive Recognition. All deductions of Union dues provided for in this Article will automatically terminate in the event of loss of exclusive recognition.</p> <p style="text-align: center;"><u><b>Union agrees with (a) on 7-9-2020</b></u></p> <p>(b) <del>Temporary assignment to a non-BUE position. If the employee is on a temporary assignment to a non-BUE position, the Employer will notify Payroll to cease the allotment of Union dues deduction and so inform the Union. The employee will be responsible for submitting a new SF-1187 upon returning to a BUE position if they</del></p>	<p>(b) The Agency's language includes information for BUE's who accept a temporary assignment and what steps to take when terminating their dues and restarting their dues upon return to the BUE position; the Union removed language that provided the steps for terminating and reinstating their dues allotment.</p> <p>(d) The Agency requires the Union to certify to management members who are not in good standing. The Union removed language that requires them to report employees not in good standing.</p>
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## DUES WITHHOLDING

	<p>certify to management any member who ceases to be a member in good standing.</p>	<p><del>elect to voluntarily continue to pay Union dues through Payroll deduction.</del> When an employee ceases to be eligible for inclusion in the Union, such as through promotion to a non-bargaining unit position</p> <p>(c) Separation or transfer. Any individual allotment for dues withholding shall automatically terminate upon the separation of the employee from the Agency or transfer of the employee from the bargaining unit.</p> <p><u>Union agrees with (c) 7-9-2020</u></p> <p>(d) Change in membership status. The Union will certify to management any member who ceases to be a member in good standing.</p>	
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## DUES WITHHOLDING

		<p><u>Union moves to strike (d) 7-9-2020</u></p>	
<p><b>Section 5. Correction of Errors</b></p>	<p>The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as practicable after the Employer has discovered the error or has received written notification from the Union of the error. The parties agree that the Agency will be held harmless for any corrected errors.</p> <p>If a BUE has been improperly separated and is ordered reinstated by the appropriate authority to a BUE position, the employee is required to initiate a new SF-1187 to restart dues withholding if they voluntarily elect to do so</p>	<p><b>The Employer agrees that the total error in the amount of dues withheld from BUE shall be adjusted as soon as <u>practicable possible but not more than 2 pay periods</u> after the Employer has discovered the error or has received written notification from the Union or <u>Designee</u> of the error. The parties agree that the Agency will be held harmless for any corrected errors.</b></p> <p><b>The Agency agrees to automatically reinstate the dues withholding of</b></p>	<p>The Agency does not give a timeframe for processing the adjustment of an error of the dues withheld. The Union requires no more than two pay periods to adjust errors, and have included the Designee to submit the written notification to the employer.</p>

**DUES WITHHOLDING**

		<p>a bargaining unit employee returning to pay status from a non-pay status (e.g., LWOP);</p> <p>If a BUE has been improperly separated and is ordered reinstated by the appropriate authority to a BUE position, the <del>employee is required to initiate a new SF-1187</del> employer will restart dues withholding if they <del>voluntarily elect to do so</del>. within two pay periods of the reinstatement</p>	
<b>Section 6. Disputes</b>	<b>Agency request further discussion on this section</b>	<u><b>Union agrees to have a discussion with the Agency on Union Counter Section 6 from 10-8-19</b></u>	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental

**DUES WITHHOLDING**

			Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Accountability</b></p>	<p>Except as required by law or government-wide regulation in effect on the original effective date of this Agreement, employees are accountable for performing duties as assigned and conducting themselves in accordance with governing policies and regulations. The Agency recognizes an employee's right to privacy in his or her off-duty conduct where such conduct does not affect job performance and complies with laws, regulations, and Agency and Departmental policies governing outside activities, and the Labor-Management Agreement.</p> <p>Disciplinary and/or Adverse Actions taken based on off-duty misconduct will be handled in accordance with governing laws, rules, regulations, and Agency Directives.</p>	<p>Except as required by law or government-wide regulation in effect on the original effective date of this Agreement, employees are accountable for performing duties as assigned and conducting themselves in accordance with governing policies and regulations. The Agency recognizes an employee's right to privacy in his or her off-duty conduct where such conduct does not affect job performance and complies with laws, regulations, and Agency and Departmental policies governing outside activities, and the Labor-Management Agreement. The Agency shall demonstrate a nexus between the alleged off-duty misconduct and job requirements.</p> <p><del>Disciplinary and/or Adverse Actions taken based on off duty misconduct will be handled in accordance with governing laws, rules, regulations, and Agency Directives.</del></p>	<p>The Agency reserves the right to take disciplinary or adverse action against an employee based on off-duty conduct. The union does not want disciplinary or adverse action taken instead they want the Agency to show a nexus between off-duty conduct and job duties.</p>
<p><b>Section 2. Access to Union and Management Officials</b></p>	<p>Employees shall have the right to contact their Union representative during duty hours in regard to a condition of employment. However, permission to do so</p>	<p>Employees shall have the right to contact their Union representative during duty hours <del>in regard to a condition of employment.</del> regarding representational issues including but not limited to</p>	<p>The Agency's time limit not to exceed 30 mins with discussions with union rep.</p> <p>The Agency prefer issues be handled with the lowest level supervisor first before going to the next level management official.</p>

**EMPLOYEE RIGHTS AND RESPONSIBILITIES**

	<p>during duty hours shall be made in advance through the first level supervisor.          Arrangements to relieve the employee for such contact shall be made in a timely manner.          Resulting discussions shall be reasonable in length and shall not ordinarily exceed thirty (30) minutes. Internal Union business will not be conducted during duty hours.</p> <p>Employees shall have ready access to the next higher level of supervision and management officials.          The parties agree to encourage employees to present their work-related problems to the lowest level of supervision that can effectively deal with the problem.</p>	<p>matters of conditions of employment. However, permission to do so during duty hours shall be made <del>in advance</del> through the first level supervisor. Arrangements to relieve the employee for such contact shall be made in a timely manner. Resulting discussions shall be reasonable in length <del>and shall not ordinarily exceed thirty (30) minutes</del>. Internal Union business will not be conducted during duty hours.</p> <p>Employees shall have ready access to the next higher level of supervision and management officials. The parties agree to encourage employees to present their work-related problems to the lowest level of supervision that can effectively deal with the problem. Employees may communicate with the following offices or officials, as necessary, <del>after discussions with employee's immediate supervisor</del>.</p> <ul style="list-style-type: none"> <li>a. A supervisor or management official of a higher rank (e.g. Frontline Supervisor, District Manager);</li> <li>b. An EEO counselor; or</li> <li>c. Human Resources Office.</li> </ul>	

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

<p><b>Section 5. Industrial Disputes and Civil Disorders</b></p>	<p>In the event of a strike or civil disorder at a regulatory establishment, employees will communicate with their supervisor and await further instructions. As soon as practicable, the Agency will notify the NJC Chairman or designee of the establishment and procedures for reporting.</p>	<p><del>In the event of a strike or civil disorder at a regulatory establishment, employees will communicate with their supervisor and await further instructions. As soon as practicable, the Agency will notify the NJC Chairman or designee of the establishment and procedures for reporting.</del></p> <p>a. Employees in the unit are responsible for not taking sides or becoming personally involved in an industrial dispute between the management and employees of the official establishment or plant to which they are assigned. They are responsible during the plant strike periods for reporting to work as scheduled and performing assigned inspection duties unless otherwise directed by their supervisor.</p> <p>b. If a plant strike date is announced in advance, the supervisor shall prearrange for safe access of his/her subordinates to the worksite and will be present at the access and exit points whenever subordinates are entering or leaving the worksite unless definite arrangements are made with plant</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		<p>management and officials of the striking union to assure the safety of the inspector(s) involved. The designated Union representative and the affected inspectors will be notified prior to the strike of the arrangements, which have been made.</p> <p>c. When the supervisor deems entrances to or exits from the plant to be unsafe, he/she shall inform the inspector(s) involved of the condition and provide further instructions. The local president or designee shall be informed in a timely manner.</p> <p>1. If the plant strike is affected without prior notice and the inspector is confronted with a picket line in reporting for work, he/she shall approach the line, produce proper identification, state his/her responsibility for reporting for work, and request that he/she be allowed access. If access is refused, the inspector shall leave the picket line area</p>	
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## EMPLOYEE RIGHTS AND RESPONSIBILITIES

and promptly report the facts to the supervisor by phone. The supervisor shall remain cognizant of the inspector's safety in any instructions which might be given.

2. An employee who believes his/her personal safety or property may be in jeopardy because of the civil disorders in the area of his/her assignment shall contact the supervisor for advice and guidance. If the supervisor has prior knowledge of civil disorders within his/her area of responsibility, he/she shall advise the involved subordinates, as soon as possible, as to what action they should take.
3. The Agency will assist employees in making claims for any benefits and compensations for which the employees may be eligible under applicable law and regulations.

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

<p><b>Section 6. Use of Agency Equipment and Resources</b></p>	<p>All employees shall comply with all applicable Agency and Departmental information technology policy, including personal use, privacy, security and other policy and guidance can be found on USDA and Agency web sites.</p>	<p>Union moves to strike</p>	<p>The Agency feels this needs to be stated so that employees are aware they must comply with applicable Departmental memorandum, and FSIS policy.</p>
<p>Section 7. Personnel Files and Records</p>	<p>An employee's Electronic Official Personnel Folders (e-OPF) and Employee Performance Folders (EPF) shall be maintained in accordance with applicable laws and regulations. Only information authorized by law and regulation shall be maintained in the e-OPF and EPF. Under the e-OPF system, employees may access their personnel records at any time through a secure internet site.</p>	<p>An employee's Electronic Official Personnel Folders (e-OPF) and Employee Performance Folders (EPF) shall be maintained in accordance with applicable laws and regulations. Only information authorized by law and regulation shall be maintained in the e-OPF and EPF. Under the e-OPF system, employees may access their personnel records at any time through a secure internet site.</p> <p>b. 1) Employees not having access to a government computer at the worksite will receive a hard copy of personnel actions. Upon written request to the servicing personnel office, such employees</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

	<p>b. 1) Employees not having access to a government computer at the worksite will receive a hard copy of personnel actions. Upon written request to the servicing personnel office, such employees or their representative may request a hard copy of their e-OPF annually. Employees are encouraged to maintain a copy of their official personnel actions to preclude unnecessary copying of the contents of the employee's e-OPF.</p> <p>2) Upon receipt of a written request or authorization, the Agency shall forward to the employee or their authorized representative, a copy of the e-OPF together with the</p>	<p>or their representative may request a hard copy of their e-OPF annually. Employees are encouraged to maintain a copy of their official personnel actions to preclude unnecessary copying of the contents of the employee's e-OPF.</p> <p>2) Upon receipt of a written request or authorization, the Agency shall forward to the employee or their authorized representative, a copy of the e-OPF together with the following statement:</p> <p style="text-align: center;">This is a complete copy of your e-OPF as maintained by the Human Resources Field Office consisting of (number of) pages as of (date).</p> <p>c. Employees may request a copy of the EPF annually by submitting a written request to the servicing personnel office.</p> <p>a. In accordance with applicable laws and regulations,</p>	
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## EMPLOYEE RIGHTS AND RESPONSIBILITIES

	<p>following statement:</p> <p>This is a complete copy of your e-OPF as maintained by the applicable Human Resources Office consisting of (number of) pages as of (date).</p>	<p>employees may formally request that a record contained in his/her e-OPF/EPF be corrected or amended. Such requests must be accompanied with supporting documentation.</p>	
<p><b>Section 9. Parking</b></p>	<p>The Agency shall make a reasonable effort to obtain parking spaces for inspectors at official establishments.</p>	<p><del>The Agency shall make a reasonable effort to obtain parking spaces for inspectors at official establishments.</del></p> <p>The Agency shall make a reasonable effort to obtain parking spaces for inspectors at offices and official establishments. This shall include proper marking to preclude use by other than Agency employees. Employees having inspection duties at more than one location or those having a permanent physical disability will be provided parking spaces at such locations, whenever possible.</p> <p>An employee who believes his/her personal safety or property may be in jeopardy because of the area of his/her assignment shall contact the supervisor for advice and guidance.</p>	<p>The Agency is not in charge of parking at private facilities. The Agency makes a reasonable effort to ensure there are spaces for inspectors.</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		<p>Where there are documented instances, whether written or verbal, of unsafe conditions involving FSIS personnel in parking areas owned and provided to FSIS employees by establishments, the Agency shall take appropriate action, as necessary, within existing authorities to address the safety and well-being of Agency personnel.</p>	
<p><b>Section 10. Personal Rights</b></p>	<p>Agency moves to strike</p>	<ul style="list-style-type: none"> <li>a. The Agency agrees to annually inform all employees of their rights under Title 5, U.S.C., Chapter 71, Section 7114(a)(2)(B) of the Statute. Each new employee shall be given a copy of the Weingarten Rights during employee orientation.</li> <li>b. Unit employees shall have the protection of rights afforded all Federal employees. Additionally, both parties agree to abide by all written understandings reached by the parties with regard to such employees.</li> <li>c. Employees have the right to be treated with courtesy, dignity, and respect in all aspects of</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

personnel management. Additionally, the Agency will not discriminate against employees based on political affiliation, race, color, religion, national origin, sex, marital status, sexual orientation, parental status, genetic information, age, or disabling conditions, and with proper regard and protection of their privacy and constitutional rights. The Agency will not require employees to disclose their marital status, race, sex, national origin, religion, parental status, genetic information, sexual orientation, age, or political affiliation unless required to do so by law, directive, or higher authority.

- d. Employee privacy will be protected in all dealings with the Agency or other entities in accordance with applicable law, rules, regulations, and this Agreement.

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		<p>e. No employee will be subjected to intimidation, coercion, harassment, or unreasonable working conditions, nor be used as an example to threaten other employees.</p> <p>f. The parties agree that in the interest of maintaining a congenial environment, both supervisors and employees shall deal with each other in a professional manner with courtesy, dignity, and respect.</p> <p>g. Supervisory guidance shall be given in a reasonable and constructive manner. Such supervisory guidance shall be provided to subordinate employees in an atmosphere that will avoid public embarrassment or ridicule.</p> <p>h. If an employee is to be served with a warrant or subpoena, it shall be done in private without the</p>	
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**EMPLOYEE RIGHTS AND RESPONSIBILITIES**

		<p>knowledge of other employees to the extent it is within the Agency's control.</p> <p>i. No employee shall be subjected to intimidation, coercion, harassment, or unreasonable working conditions as reprisal, nor be used as an example to threaten other employees.</p>	
<p><b>Section 11. Freedom from Reprisal</b></p>	<p>Covered by the Statute (7102).</p>	<p>Each employee, without exception, has the right, freely and without penalty of reprisal, to form, join and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in Title VII of the Civil Service Reform Act, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the Executive Branch, Congress, and other appropriate authority. The Agency shall take the action required to assure that employees are apprised of their rights and that no interference, restraint, coercion, or</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>



**EMPLOYEE RIGHTS AND RESPONSIBILITIES**

		<p>discrimination is practiced to encourage or discourage membership in the Union.</p>	
<p><b>Section 12. Employee Pay</b></p>	<p>Covered by governing laws and regulations.</p>	<p>a. Employees are entitled to timely payment of salary and travel expenses. Agency officials will assist employees in expediting payment where processing is delayed.</p> <p>a. The Agency will provide timely notification of overpayments to bargaining unit employees.</p> <p>b. Upon notification, employees are responsible for arranging for the timely repayment of overpayment.</p> <p>c. Employees shall be furnished a Personal Statement of Benefits on an annual basis, which includes a report of their CSRS/FERS contributions to the retirement fund.</p> <p>d. Pay Procedures</p> <p>1. Procedures governing the pay of bargaining unit employees shall</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		<p style="text-align: center;">be in accordance with governing regulations.</p> <p style="text-align: center;">2. Where there is any obligation to bargain, the Agency will bargain to the extent required by law.</p> <p>e. Reasonable amount of time will be given to bargaining unit employees to prepare, complete, submit and validate the time &amp; attendance per pay period, while in a pay status.</p>	
<p><b>Section 13. Retirement and Resignation</b></p>	<p>Covered by governing laws and regulations.</p>	<p>a. An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely, in accordance with prevailing regulations, and shall be effective unless rescinded before the effective date of the action.</p> <p>b. If an employee is facing removal or termination, the employee may resign freely and in accordance with prevailing regulations any time prior to the removal or termination effective date.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		c. The Agency agrees to provide retirement planning information or counseling to employees, when requested by the employee.	Management Agreement, applicable CFR references, statutes, and OPM guidelines.
<b>Section 15. Mass Fare Subsidy</b>	Move to strike.	<p>It is FSIS policy to offer employees transit benefits that encourage commuting to work by methods other than driving alone to reduce congestion and conserve energy.</p> <p>Employees who wish to participate in the fare subsidy program shall complete an annual "Application for Transit Benefit." All participants shall certify in writing that they are eligible for a transit benefit for their commute to and from work. A renewal application must be timely submitted or is considered barred until the next year.</p> <p>The Agency shall reimburse for all fees and transponders or any other method used by any governing entity where a BUE will be traveling on any chargeable roadways, bridges, etc. as part of their duties.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p> <p>In addition, there are no Bargaining Unit Employees who utilize transit subsidy.</p>
<b>Section 17. Tort/Indemnification</b>	Covered by Federal Employees Liabilities Reform and Tort	a. In the performance of his/her duties, or when acting within the scope of his/her employment,	The Agency prefers to streamline the contract to include hyperlinks where the language is

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

	<p>Compensation Act of 1988</p>	<p>the employee is entitled to protection under the Federal Employees Liabilities Reform and Tort Compensation Act of 1988, (P.L. 100-694).</p> <p>b. If, as a result of actions taken within the scope of their employment, a verdict, judgment, or monetary award has been entered against an employee, or a settlement proposal entered into by an employee, the employee may submit a written request for indemnification. Such requests must be supported with appropriate documentation in accordance with applicable guidelines.</p>	<p>already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 18. Agency Meetings</b></p>	<p>Move to Strike</p>	<p>Any meetings away from the facility, scheduled by the Agency, which employees are required to attend shall entitle those employees to official duty time <del>(including, for example, overtime where the meeting is held outside an employee's approved tour of duty), travel, and M&amp;IE (meals and incidental expenses), if applicable, in accordance with applicable regulations and travel related expenses.</del></p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already</p>

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

			covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 19. Use of Telephones</b>	<a href="#">Move to Strike</a>	<a href="#">On a limited use basis, phones provided by the establishments in government occupied space may be used by employees if allowed by the establishments, and where the use is at no cost.</a>	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 20. Nursing Mothers</b>	<a href="#">Covered by Public Law 111-148.</a>	<a href="#">Nursing mothers may request accommodations for the purpose of expressing and saving milk in private while at the workplace.</a>	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by

## EMPLOYEE RIGHTS AND RESPONSIBILITIES

		<p>Requests for such accommodation shall be submitted in writing to the employee's immediate supervisor or designee sufficiently in advance to allow for arrangements for privacy based on the schedule requested by the employee to express milk. Requests will include:</p> <ul style="list-style-type: none"> <li>a. Duration of the request;</li> <li>b. Arrangements the employee will make for storing and removing saved milk (i.e. cooler, pick-up arrangements, type of containers, etc.) to ensure consistency with plant policies;</li> <li>c. Type of leave employee is requesting, should the time needed exceed the employee's lunch period; and</li> <li>d. The schedule or times during the employee's tour of duty for which the employee is requesting time/privacy to express milk.</li> </ul> <p>The Agency will attempt to provide necessary privacy in government-controlled space(s) within the Plant/Establishment.</p>	<p>USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 2. EEO Complaints</b></p>	<p>a. In the matter of EEO complaints, the Agency shall follow 29 CFR 1614 and 5 U.S.C. §7114(a)(2)(A).</p>	<p>A. In the matter of EEO complaints, the Agency shall follow 29 CFR 1614 and <del>5 U.S.C. §7114(a)(2)(A)</del>. Any employee who seeks to file an informal or formal complaint shall have the right to select a representative of his or her choosing. If a complaint is filed, the employee shall have the right to be accompanied, represented, and advised by a personally chosen representative subject to applicable regulations and law, he chosen representative may assist the complainant during all phases of the EEO complaint process.</p>	<p>a. The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

<p><b>Section 3. Affirmative Employment Program Plan</b></p>	<p>Agency moves to strike</p>	<p>Establishment and implementation of the Affirmative Employment Program Plan is required by EEOC regulations . The Agency will continue to provide overall management support and budgetary planning to achieve affirmative action objectives throughout the Activity, as outlined in Title 29 CFR 1614.102.</p> <p>b. Prior to submitting the Agency Affirmative Employment Program</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
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**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

		<p>Plan to the EEOC, or successor Agency, for approval, the Agency shall provide a copy of the plan to the Union. The agency shall fulfill its duty to bargain under law and this Agreement .</p> <p>c. The Union may submit its views with respect to the Affirmative Action Program Plan for individuals with disabilities and disabled veterans.</p>	
<p><b>Section 5. Information</b></p>	<p>Agency move to strike.</p>	<p>a. The Agency shall make available to employees written</p>	<p>The Agency prefers to streamline the</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

<p><b>and Data</b></p>		<p>information describing the Affirmative Employment Program Plan and the EEO complaint procedure. <del>EEO posters will be prominently displayed throughout the organization. The EEO poster will provide relevant data needed in order to initiate counseling.</del></p> <p>b The Agency agrees to furnish the Union the following EEO information annually, for the bargaining unit:</p> <ol style="list-style-type: none"> <li>1. Workforce profile.</li> <li>2. Statistical data concerning discrimination complaints filed by bargaining unit employees.</li> </ol>	<p>contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 6. Mediation/Alternative Dispute Resolution</b></p>	<p>Agency moves to strike.</p>	<p>Where a bargaining unit employee files a formal EEO</p>	<p>The Agency prefers to streamline the contract to</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

		<p>complaint and elect's mediation of his/her formal complaint under the Agency's Alternative Dispute Resolution program, the Union will be provided notification and an opportunity to be present, on official time and expenses, during the mediation session, in accordance with 5 U.S.C. §7114(a)(2)(A).</p>	<p>include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 7. EEOC Committees</b></p>	<p>Agency moves to strike.</p>	<p>EEOC Committees  Any EEOC committees where</p>	<p>The Agency prefers to streamline the contract to include</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

		<p>unit members are present will be appointed by the Union</p>	<p>hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 8. Settlement Agreements</b></p>	<p>Agency moves to strike.</p>	<p>Where an EEO settlement agreement triggers a duty to bargain consistent with FLRA case law</p>	<p>The Agency prefers to streamline the contract to include hyperlinks</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

		<p>(i.e. change in conditions of employment), the Agency will fulfill its obligation to bargain to the extent required by law and this agreement.</p> <p>Unless otherwise agreed to by the parties (the agency and the Union) to this Collective Bargaining Agreement, EEO complaint settlement agreements shall not conflict with this Agreement.</p> <p>The Union has the right to be present during the proceedings, whether representing the employee or not in order to protect the interest of the Union. The Union will have the right to be present on official time and expenses, for the development of the settlement and review the agreement prior to an executed agreement.</p>	<p>where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

<p><b>Section 8. Settlement Agreements</b></p>		<p>Where an EEO settlement agreement triggers a duty to bargain consistent with FLRA case law (i.e. change in conditions of employment), the Agency will fulfill its obligation to bargain to the extent required by law and this agreement.</p> <p>Unless otherwise agreed to by the parties (the agency and the Union) to this Collective Bargaining Agreement, EEO complaint settlement agreements shall not conflict with this Agreement.</p> <p>The Union has the right to be present during the proceedings, whether representing the employee or not in order to protect the interest of the Union. The Union will have the right to be present on official time and expenses, for the development of the settlement and</p>	
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**EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

		review the agreement prior to an executed agreement.	
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## FURLOUGH

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>In the event of a furlough, the Agency shall comply with the following and any other applicable government-wide laws and regulations.</p> <p><a href="#">OPM Furlough Guidance 5 CFR 752</a></p>	<p>In the event of a furlough, the Agency shall comply with the following and any other applicable government-wide laws and regulations.</p> <p><a href="#">OPM Furlough Guidance—at the time of a Furlough, the agency will provide hard copies of relevant information needed to the affected Bargaining Unit Employees.</a></p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 2. General Information</b></p>	<p>The parties recognize that bargaining unit employees may be designated as excepted employees</p>	<p>The parties recognize that bargaining unit employees may be designated as excepted employees</p>	<p>The Agency prefers to streamline the contract to include</p>



## FURLOUGH

	<p>and may be required to work in the event of a government-wide shutdown due to a lapse in appropriations. Excepted employees who work during a shutdown furlough period will be retroactively paid and otherwise compensated at the rate consistent with their pay, to the extent permitted by the law and regulation.</p> <p>An administrative furlough will identify the expected time frames, if known prior to the beginning of the furlough and updated as information becomes available:</p> <ol style="list-style-type: none"> <li>a. The reason for the action;</li> <li>b. The bargaining unit employees excepted and not excepted by names, series, and location.</li> <li>c. The proposed</li> </ol>	<p>and may be required to work in the event of a government-wide shutdown due to a lapse in appropriations. Excepted employees who work during a shutdown furlough period will be retroactively paid and otherwise compensated at the rate consistent with their pay, to the extent permitted by the law and regulation.</p> <p>An administrative <del>or</del> Shutdown furlough will identify the <del>excepted</del> expected time frames, if known prior to the beginning of the furlough and updated as information becomes available:</p> <p>The reason for the action;</p> <p>The bargaining unit employees excepted and not excepted by names, series, and location.</p> <p>The proposed effective date of the action.</p> <p>Shutdown furloughs will identify, to the employee, the <del>excepted</del> expected time frames, if</p>	<p>hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p> <p>Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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## FURLOUGH

	<p style="text-align: center;">effective date of the action.</p> <p>Shutdown furloughs will identify, to the employee, the excepted time frames, if known prior to the beginning of the furlough and updated as information becomes available during a furlough period. The Agency agrees to notify the Union at the earliest possible time and/or date, both verbally and in writing.</p> <p>The Agency agrees in the event of a furlough to put forth a concerted effort to expedite processing requests for outside employment.</p>	<p>known prior to the beginning of the furlough and updated as information becomes available during a furlough period. The Agency agrees to notify the Union at the earliest possible time and/or date, both verbally and in writing.</p> <p>The Agency agrees in the event of a furlough to put forth a concerted effort to expedite processing requests for outside employment.</p> <p>Previously scheduled retirement dates, approved LWOP would not be affected regarding a furlough.</p> <p>Prior to being furloughed, employees will be allowed paid work time to contact EAP regarding services that may be available to them such as, but not limited to, food banks, grants, loans, food stamps, free programs, etc. It is possible that furloughed employees may become eligible for unemployment</p>	
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## FURLOUGH

		<p>compensation. Employee packets will include information on unemployment. As state unemployment compensation requirements differ, see the Department of Labor website "Unemployment Compensation for Federal Employees".</p> <p>Employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices.</p> <p>The Agency agrees in the event of a furlough to put forth a concerted effort to expedite processing of requests for outside employment.</p> <p>All employees who are affected by an impending furlough and have received a reporting letter will receive applicable information regarding the furlough, including employee rights.</p> <p>During a government-wide shut down, the</p>	
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## FURLOUGH

		<p>Agency will incur obligations to pay for services of excepted employees due to a lapse in appropriations who will be retroactively paid and otherwise compensated to the extent permitted by law and regulation. During a save money furlough employees furloughed shall not be required or allowed to perform work</p> <p>Employees whose leave is cancelled due to a government-wide shutdown will be allowed to take the same leave period the following leave year, provided they apply for that period.</p> <p>The Agency has initiated changes to enable employees working reimbursable overtime to be paid at the time and a half rate during a government shut-down.</p> <p>Adequate supervisory support</p>		
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## FURLOUGH

		<p>will be available and accessible, and employees will know who that contact person would be and contact information will be provided to all employees prior to the shut-down.</p> <p>All systems, such as but not limited to, PHIS, WebTA, Concur, Outlook will be available and accessible to all employees during a govt. shut-down. In the event there are temporary changes to these procedures, excepted employees will be provided with written notification and procedures to use during this period.</p> <p>The Agency will allow the Union meaningful opportunities to participate and provide input into the development of a save money furlough plan</p> <p><b>Furloughs for govt. shut-down</b></p> <p>Govt. shut down Furloughs will identify, to the</p>	
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## FURLOUGH

		<p>employee, the expected time frames, if known, prior to the beginning of the furlough and updated as information becomes available during a furlough time period.</p> <p>A furlough of 30 calendar days or less (or 22 workdays or less) will be covered under adverse action procedures in 5 CFR Part 752 as well as all applicable provisions of the Labor Management Agreement between the parties.</p> <p>yed. A furlough of more than 30 calendar days (or more than 22 workdays) will be covered under reduction in force procedures in 5 CFR Part 351 and all applicable provisions of the Labor Management Agreement between the parties.</p> <p>The Agency agrees to develop a user notice to explain the elements of the government shutdown that are relevant to the daily</p>	
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## FURLOUGH

		<p>work life of the inspector. Supervisors will conduct a work unit meeting to provide guidance and information for an impending government shutdown. The Union will be given notice and opportunity to attend this meeting.</p> <p>Furloughs are subject to the appeal process to the Merit Systems Protection Board, which is consistent with 5 CFR Part 752 and all applicable provisions of the Labor Management Agreement between the parties.</p> <p>Health insurance continues for 365 days in a non-pay status at normal cost to the employee. Consistent with 5 CFR 890.502(b)(ii) If the employee does not wish to pay the premium directly to the agency and keep payments current, once the furlough is over notification of the indebtedness will be sent to each affected employee by NFC. The</p>	
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## FURLOUGH

		<p>notification will state that one extra premium deduction will be taken each pay period until the bill is satisfied. It will also give the employee the option to pay in full if they choose, with instruction on how to submit the payment. Deductions will commence upon pay becoming sufficient to cover the premiums if the employee does not pay in full.</p> <p>Credit toward retirement - 6 months non-pay service in a calendar year is creditable toward retirement. Any amount over 6 months would affect, for example, the employee's SCD date resulting in retirement dates being moved, leave building date (if not in the 8-hour category) and step increases (if a person is not at a step 10). Employees will be advised in writing at least 30 days prior to reaching the 6 month time frame.</p>	
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## FURLOUGH

		<p>Probation period -- 22 non-pay status workdays is creditable toward the completion of a probation period as per 5 CFR 315.802(c) and 317.503(d) (2).</p> <p>Within-grade increases -- For General Schedule employees, the waiting period is extended if non-pay service exceeds two aggregate weeks for steps 2, 3 and 4; exceeds four aggregate weeks for steps 5, 6 and 7; or exceeds six aggregate weeks for steps 8, 9 and 10, as per 5 CFR 531.406(b).</p> <p><b>Furlough to save money</b></p> <p>The parties agree and recognize there has been no save money furlough plan developed by the agency. The Union will be provided advance notice as per the parties Labor Management Agreement prior to</p>	
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## FURLOUGH

		<p>any implementation of a furlough designed to save money. The save money plan will include how, when, number of days and the amount of money needed to be saved. The parties recognize that furloughs will not provide any rights less than those provided in the Labor Management Agreement between the parties. No save money furlough issues raised during these negotiations will preclude the Union from raising the issue in future negotiations through proposals or bargaining</p> <p>Govt. save money Furloughs will identify, to the employee, the expected time frames, if known, prior to the beginning of the furlough and updated as information becomes available during a furlough time period.</p> <p>A furlough of 30 calendar days or less</p>	
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## FURLOUGH

		<p>(or 22 workdays or less) will be covered under adverse action procedures in 5 CFR Part 752 as well as all applicable provisions of the Labor Management Agreement between the parties.</p> <p>A furlough of more than 30 calendar days (or more than 22 workdays) will be covered under reduction in force procedures in 5 CFR Part 351 and all applicable provisions of the Labor Management Agreement between the parties.</p> <p>Furloughs are subject to the appeal process to the Merit Systems Protection Board, which is consistent with 5 CFR Part 752 and all applicable provisions of the Labor Management Agreement between the parties.</p> <p>In the event of a save money furlough, employees may be affected discontinuously, e.g., an employee serves in a non-pay status one workday</p>		
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## FURLOUGH

		<p>a week for 10 weeks rather than serving in a non-pay status for 10 consecutive days.</p> <p>In the event of a save money furlough, federal insurance will be handled as follows:</p> <p>Federal Employees Health Benefits Program: Health insurance coverage will continue even if Agency does not make premium payments on time. The enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.</p> <p>Federal Employee Group Life Insurance: Life insurance coverage continues for 12 consecutive months in a non-pay status without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of non-pay.</p> <p>Flexible Spending Account (FSAFEDS):</p>	
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## FURLOUGH

		<p>Eligible dependent care expenses incurred during the non-pay status may be reimbursed as long as the expenses allow the employee to work, look for work, or attend school full-time. Once dependent care allotments are restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.</p> <p>Federal Long Term Care Insurance Program (FLTCIP): Coverage continues for as long as premiums are paid. If Long Term Care Partners receives \$0 in premium for 3 consecutive pay periods, they begin directly billing the enrollee. If they receive \$0 in premium for 2 or fewer pay periods, they will adjust future deductions with a cap of an additional \$50 until the balance is collected. Enrollees can contact FSC for a billing change form if they wish to change their</p>	
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## FURLOUGH

		<p>premium billing method from payroll deduction to automatic bank withdrawal or direct billing.</p> <p>Federal Employees Dental and Vision Insurance: Coverage will continue. FSC will generate a direct bill for past due premiums when no premium is paid for 2 consecutive pay periods. Coverage will continue only if the direct bills are paid timely.</p> <p>An aggregate non-pay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employee while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their retirement deductions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411).</p> <p>Agency officials, including supervisors and</p>	
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## FURLOUGH

		<p>Human Resources staffs will make every effort to ensure that promotion actions are not delayed as a result of furlough.</p> <p>Probation period -- 22 non-pay status workdays is creditable toward the completion of a probation period as per 5 CFR 315.802(c) and 317.503(d) (2).</p> <p>Within-grade increases -- For General Schedule employees, the waiting period is extended if non-pay service exceeds two aggregate weeks for steps 2, 3 and 4; exceeds four aggregate weeks for steps 5, 6 and 7; or exceeds six aggregate weeks for steps 8, 9 and 10, as per 5 CFR 531.406(b).</p> <p>In the event of a save money furlough, consistent with 5 CFR 752 and Disciplinary and adverse action Article --, employees are entitled to 30 days</p>	
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## FURLOUGH

		<p>advanced written notice.</p> <p>In the event of a save money furlough, employees shall be provided with a second copy of the advanced written notification of a save money furlough for the purpose of informing is or her Union representative.</p> <p>The Agency's save money plan shall consist of, at a minimum, the following:</p> <p>The reason for the action;</p> <p>The number of bargaining unit employees excepted and not excepted, grades and locations of each group.</p> <p>The proposed effective date of the action.</p> <p>In accordance with Disciplinary and adverse action Article --, an employee against whom a furlough of thirty (30) calendar days or less) is</p>	
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## FURLOUGH

		<p>proposed is entitled to:</p> <p>Advance written notice of thirty {30} calendar days stating the specific reasons for the proposed action, and the evidence upon which the proposed action is based;</p> <p>Ten (10) calendar days to respond in writing, and/or to request the opportunity to present an oral response, and to furnish affidavits and other documentary evidence in support of the answer. The advance written notice will include the oral conference options available to the employee that is, in person or by telephone. The Agency will honor the employee's choice whether to have an oral conference, and if so, the method used.</p> <p>A written decision, including the action to be taken, the effective date, and applicable rights.</p>	
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## FURLOUGH

		<p>In accordance with Disciplinary and adverse action Article --, an employee may be represented by the Union or other representative of his or her choice. Designations will be in writing and signed by the employee. Once the designation has been made, all contacts and correspondence will be through the representative.</p> <p>As a furlough represents a change in working conditions, bargaining unit employees will not be furloughed without bargaining with the NJC over "impact and implementation" of the Agency's decision and over appropriate arrangements for employees adversely affected by the furlough in accordance with 5 USC §7116(a)(5).</p> <p>Should management implement furlough for bargaining unit employees, the Agency will meet</p>		
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## FURLOUGH

		<p>its bargaining obligation under the Statute and the LMA. At that time, the parties are free to consider the retroactive effect to any agreement reached by or imposed on the parties.</p> <p>The Agency agrees to develop a user notice to explain the elements of the save money plan that are relevant to the daily work life of the inspector. Supervisors will conduct a work unit meeting to provide guidance and information for an impending save money furlough. The Union will be given notice and opportunity to attend this meeting.</p> <p>In the event of "furloughs to save money" Work Unit Meetings (WUM's) will be conducted as needed in order that affected employees can be given time to discuss issues related to the furlough.</p>	
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## FURLOUGH

		<p>The WUM's will not be conducted during company breaks.</p> <p>Administrative overtime may be authorized as needed for the WUM's.</p> <p>The Agency will identify the FSIS Management Person at each plant that can and will provide credible information regarding furloughs. The FSIS Management Person will provide a phone number(s), email(s), Fax number(s), etc. where the FSIS Management Person can be reached in order to provide furlough status.</p> <p>In the event of a save money furlough, an employee's right to Union representation will be consistent with the Parties' labor management agreement, and all applicable laws, rules, and regulations.</p> <p>EAP will continue to be available to furloughed bargaining unit</p>		
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## FURLOUGH

		<p>employees designated as excepted. Prior to, during and after a government shutdown, excepted employees will be granted a reasonable amount of on duty time to contact EAP. Prior to or after a save money furlough employees scheduled for furlough will be granted a reasonable amount of on duty time to contact EAP. Agency supervisors will make sure each employee is aware of this benefit.</p> <p>In the event of a save money furlough in accordance with 5 CFR 752.404 (b) and the Parties' LMA, employees are entitled to 30 days advanced written notice unless there is an exception pursuant to section (d). In an emergency furlough, notification will be given as soon as possible.</p> <p>In the event of a govt. save money furlough, employees will be allowed an opportunity or the</p>		
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## FURLOUGH

		<p>time to attempt to complete travel vouchers prior to the effective date of furlough. If an employee is unable to complete the voucher the district office shall be responsible for preparing the voucher. An employee will not be held responsible for untimely prepared vouchers processed by the district office, which may result in late credit card payments.</p> <p>Furloughs will not prevent the scheduling of pre-scheduled annual leave consistent with the parties' Labor Management Agreement.</p> <p>Save money Furloughs will not be administered in a way that affects a person on OWCP or extended leave.</p> <p>Employees will not be required to provide any kind of contact information out of the ordinary while furloughed.</p>	
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## FURLOUGH

		<p>In the event of a furlough employees should reschedule tasks using the PHIS Task Calendar. For tasks that cannot be performed or rescheduled to be performed at a later date, the assigned employee will use the appropriate not performed code(s).</p> <p>The NJC chairman or his designee will be notified and kept fully informed during all stages of either type of furlough.</p> <p>The Agency will pay performance awards by pay period 7 subsequent calendar year.</p> <p>Employees may use the Agency provided email system to solicit non-monetary donations for those employees who desire to receive donations as a result of furloughs.</p> <p>The implementation of a furlough shall not, in and of itself, otherwise affect an employee's</p>	
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## LABOR-MANAGEMENT MEETINGS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Purpose</b></p>	<p>The intent of Labor Management meetings is to effectively conduct business between the parties. Such meetings shall be conducted face-to-face or via conference call in an orderly, professional, and business-like manner. Meetings shall encourage solutions rather than positions, demonstrate mutual respect, and encourage the resolution of issues at the lowest level. The parties agree to ensure that taxpayer-funded time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest.</p> <p>Each party shall submit up to 5 topics at least 20 calendar days before the meeting to</p>	<p>The parties recognize that they have a common interest in effecting a sound and progressive labor-management relations program and in solving issues which might arise between them. Additionally, the Agency recognizes the major contributions the Union can make toward achieving an efficient, effective, fair, and equitable workplace. Therefore, to achieve maximum results, periodic labor-management meetings will be held pursuant to this Agreement. When issues submitted for LMR meetings are not discussed to completion, a common interest meeting will be scheduled within 30 days, with the meeting taking place no later than 45 day of the completion of the LMR meeting in order to complete the remaining LMR agenda items.</p> <p>In the event agenda items submitted have not been resolved by mutual agreement a common interest meeting will be scheduled within 30 days, with the meeting taking place within 45 days of the completion of the LMR Meeting in order to satisfy the</p>	<p>The Agency requires each party to submit five (5) topics and the time frame of twenty (20) days in which the Union has to submit their requested topics, and the Agency specified that HQ related topics will be discussed at the headquarters meeting and District topics will be discussed at the District meeting. The Union did not specify the number of topics they will submit for the meeting and they did specify if the topics to be covered for would be for headquarters related topics or district related topics.</p>

**LABOR-MANAGEMENT MEETINGS**

	<p>prepare. Topics are to be specific for the office, i.e. management will address HQ-related topics at the HQ meeting and District related topics at each District LM meeting. Topics will be addressed as an overarching presentation to share policy and operational matters that are applicable to FSIS employees.</p> <p>However, this does not preclude the parties from mutually agreeing to modify the agenda after the list of items has been received by both parties.</p>	<p>outstanding LMR Agenda Items. Such meetings shall be conducted in an orderly and business-like manner, although this provision does not waive any rights under the statute, and shall encourage solutions rather than positions, demonstrate mutual respect, and encourage the resolution of issues at the lowest level.</p> <p>Issues proposed for discussion by either party shall be forwarded to the other at least five (5) calendar days in advance of the meeting in order to prepare a meeting agenda and assure representatives appropriate to the agenda will be present, which only applies to common interest meetings. However, this does not preclude the parties from mutually agreeing to modify the agenda after the list of issues has been submitted.</p>	
<p><b>Section 2. Common Interest Meetings</b></p>	<p>*Agency moves to strike</p>	<p><b>Section 2. Common Interest</b></p> <p>The parties recognize that they have a common interest in effecting a sound and progressive labor-management relations program and in solving issues which might arise between them. Additionally, the Agency recognizes the major contributions the Union can make toward achieving an efficient, effective, fair, and equitable workplace.</p>	<p>*During mediation, the Parties developed language together and reached agreement; however, the union has no recollection.</p>

## LABOR-MANAGEMENT MEETINGS

		<p>Therefore, to achieve maximum results, periodic labor-management meetings will be held pursuant to this Agreement. When issues submitted for LMR meetings are not discussed to completion, a common interest meeting will be scheduled within 30 days, with the meeting taking place no later than 45 day of the completion of the LMR meeting in order to complete the remaining LMR agenda items.</p> <p>In the event agenda items submitted have not been resolved by mutual agreement a common interest meeting will be scheduled within 30 days, with the meeting taking place within 45 days of the completion of the LMR Meeting in order to satisfy the outstanding LMR Agenda Items.</p> <p>Such meetings shall be conducted in an orderly and business-like manner, although this provision does not waive any rights under the statue, and shall encourage solutions rather than positions, demonstrate mutual respect, and encourage the resolution of issues at the lowest level.</p> <p>Issues proposed for discussion by either party shall be forwarded to the other at least five (5) calendar days in advance of the meeting in order to prepare a meeting agenda and assure representatives appropriate to the agenda will be present, which only applies to common interest</p>	
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## LABOR-MANAGEMENT MEETINGS

		meetings. However, this does not preclude the parties from mutually agreeing to modify the agenda after the list of issues has been submitted.	
<b>Section 3. Headquarters LM Meetings</b>	Agency officials shall meet with the National Joint Council (NJC) (or Union) face to face at the Agency's Washington, DC office, one (1) time per fiscal year. The	Agency officials shall meet with the National Joint Council (NJC), or their designees, at a Agency's Washington, DC, facility <del>four (4)</del> two (2) times per year. The meetings shall be facilitated by an individual chosen jointly and scheduled Tuesday, Wednesday,	The Agency provided a description of the number of meetings per year, the number of Union representatives allowed to attend, and if the meetings will be held via face to face or

## LABOR-MANAGEMENT MEETINGS

	<p>meetings shall be scheduled Tuesday, Wednesday, and Thursday beginning at 8:00 a.m. and concluding at 4:30 p.m. each day. Up to a total of eight (8) Council President or his/her designee, may attend the face to face meeting. If appropriate, upon mutual agreement, one (1) additional meeting may be held per fiscal year via face to face or video conference.</p>	<p>and Thursday beginning at 8:00 a.m. and concluding at 4:30 p.m., with a one (1) hour lunch, unless mutually agreed to otherwise. The meeting will be transcribed, with the Union being provided with a copy of the transcription at no cost to the Union. The Agency will pay for eight (8) Union officials to travel to the meetings. A substitute may be designated to attend by a Council President. In the event all agenda items submitted are not able to be fully discussed, a Face-to-Face follow-up meeting will be scheduled, by mutual agreement, within 30 days of the conclusion of the LMR meeting. The meeting will take place no later than 45 days from the conclusion of the LMR meeting. The Follow-up meeting will be on official time with travel paid by the agency. The meeting shall be transcribed by an authorized reporting company and the Union will be provided, at no cost to the Union, a copy of the transcript as soon as it becomes available.</p>	<p>videoconference or teleconference.</p>
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## LABOR-MANAGEMENT MEETINGS

<p><b>Section 4. District Labor Management Meetings</b></p>	<p>Each District shall meet face to face with at least one (1) representative per corresponding Council(s), one (1) time per fiscal year, with the location and duration determined by the Agency, based upon effective use of tax-payer money. Union representation will reflect a maximum of up to nine (9) representatives, which may be a combination of corresponding council presidents and local presidents (or designees) in order to provide appropriate representation of the bargaining unit. If appropriate, upon mutual agreement, one (1) meeting shall be held per fiscal year via face to face and video conference.</p>	<p>The District Manager or designee (singular), unless mutually agreed otherwise, shall meet with the Union within his/her district <del>four (4)</del> three (3) times a year. Local Presidents and/or Council Presidents, or their designees, having jurisdiction within the District, regardless of their current employment status with FSIS, are authorized to participate on official time and at the Agency's expense. There will be a maximum of 9 Union Officials in attendance. In the event the agency implements a re-organization affecting district and there is a reduction/increase in the number of attendees, the agency will provide notice and opportunity to bargain the increase/decrease of the number of attendees. The location, date, time, and duration shall be determined by mutual agreement. There will be a valid and concerted effort placed into reaching a mutual agreement.</p>	<p>The Agency's language requires the location and duration be determined by the Agency, one (1) face to face meeting with the Union representative one (1) time per fiscal year, and if mutually agreed upon an additional meeting will be held via face to face or videoconference or teleconference. The Union's language requires the location and duration be determined by mutual agreement, the District Manager to meet with the Union representative three (3) times a year.</p>
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**LABOR-MANAGEMENT MEETINGS**

<p><b>Section 5. Joint Contract Training</b></p>	<p><b>Agency moves to strike</b></p>	<p>e. There will be a joint contract training face-to-face session between the OFO Head Quarter Management and District Managers along with the 8 Council Presidents within 60 days of the signing of the agreement. The Union’s Chief Negotiator and the Agency’s Chief Negotiator will provide this joint training. A joint District face-to-face training sessions will take place with the Deputy District Managers, Front Line Supervisors along with Council Presidents and Local Presidents within the District jurisdiction at the first LM meeting after the signing of the agreement or within 90 days. The parties will mutually agree to the Articles of the LMA that are applicable to that level for discussion. The agency will agree to pay all travel related expenses associated with this training. The training will be provided by an Agency Representative and one of the Union Bargaining Team Member. In conjunction with the implementation of the LMA, work Unit meetings with in plant supervisory personnel and Union</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
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## LABOR-MANAGEMENT MEETINGS

		<p>Representatives to provide training of applicable articles to that level for discussion within 90 days of signing the agreement. During these work unit meetings, an Agency Representative and one of the Union Bargaining Team Member or designee will jointly provide this training. The agency agrees to pay all travel related expenses associated with these meetings.</p>	



## LEAVE POLICY

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The Agency shall follow all applicable laws, rules, Departmental Regulations, and Agency Directives pertaining to leave. Additional guidance may be found at the following links:</p> <p><a href="#">FSIS Directive 4630.2 Rev 2 – Leave</a></p> <p><a href="#">DR 4060-630-01 – Creditable Service for Annual Leave Accrual</a></p> <p><a href="#">DR 4060-630-02 – Leave Administration, Excused Absence and Administrative Leave</a></p> <p><a href="#">OPM Fact Sheets – Leave</a></p> <p><a href="#">5 CFR 603.403 Medical Documentation Supporting Evidence</a></p> <p><a href="#">Investigative and Notice Leave 5 USC</a></p>	<p>Employees shall be entitled to accrue and use leave in accordance with Government-wide rules and regulations and this Agreement. Employees shall apply in advance for approval of all anticipated leave. Leave may also be granted when it is not scheduled in advance and business permits. Leave for personal emergencies will be granted unless urgent operating requirements require the employee’s presence.</p> <p>All absences shall be charged in increments of a quarter (¼) hour.</p> <p>Employee are entitled to use leave accrued for any pay period starting the beginning of the pay period.</p> <p>Should an emergency occur when Management Personnel must contact a BUE while on leave status that time will be compensable pay, such time will be charged in 15 minute increments. It is strongly discouraged for an employee to be contacted by Management Personnel while in a leave status.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

	<p><a href="#">Section 6329b(b)(1).</a></p>		
<p><b>Section 2. Annual Leave</b></p>	<p>a. Employees are responsible for ensuring that annual leave is scheduled in writing each leave year as necessary to prevent any unintended loss at the end of the leave year. Leave approved at the beginning of the current leave year may be cancelled if necessary to meet valid operational needs or as requested by employees.</p> <p>b. Both the needs of the employee and the Agency will be considered prior to any cancellation. Whenever possible, seventy-two (72) hours of advance notice shall be given to the employee or to management if the employee initiates the leave cancellation. Request for cancellation of leave by the employee with less than forty-eight</p>	<p>a. Annual leave is a benefit provided by law. Employees are entitled to use such leave for any purpose, including vacations and to meet personal and family needs. Supervisors shall grant or deny annual leave and make reasonable efforts to satisfy the leave requests of employees.</p> <p>b. Employees and supervisors share the mutual responsibility of ensuring that annual leave is scheduled in writing each leave year as necessary to prevent any unintended loss at the end of the leave year. Leave approved at the beginning of the current leave year will not be cancelled except in cases of emergency.</p> <p>c. Both the needs of the employee and the Agency will be considered prior to any cancellation of pre-scheduled annual leave. In the event a BUE needs to cancel pre-scheduled annual leave, when possible 72 hours of advance notice will be given to management supervision. This notification can be given verbally, in writing or if available by email. When a BUE needs to cancel leave with less than a 72 hour notice, this advance notice maybe approved by the Supervisor as staffing permits.</p> <p>d. Extended periods of annual leave should be requested as far in advance as possible so that overall consideration can be given to workload and staffing needs. Supervisors will provide a definitive written response as to whether the leave is granted or denied.</p> <p>e. An employee scheduled for annual leave for one (1) or more full</p>	<p>Agency wants a 48-hour notice for cancellation of leave; union wants 72 hours.</p> <p>Union wants supervisors to provide a written response for denial of leave.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

	<p>(48) hours of advance notice may be approved at the option of the supervisor.</p> <p>c. Extended periods of annual leave should be requested as far in advance as possible so that overall consideration can be given to workload and staffing needs.</p> <p>d. Prior to returning to duty status, BUEs are required to ensure they are aware of location and reporting requirements for the upcoming administrative workweek. This may include logging into the Agency issued device to retrieve assignments for the upcoming administrative workweek. BUEs shall be compensated appropriately in accordance with applicable laws.</p>	<p>work weeks is entitled to be free for the full administrative work week to include being free on the day before the first leave day and two days after the last leave day. A holiday which falls during the administrative work week for which annual leave has been approved will be included in determining the full work week and the entitlement to be free for the full administrative workweek will apply as provided for in this section.</p> <p>f. Employees transferring from one (1) permanent duty station with scheduled annual leave to another permanent duty station shall be authorized the scheduled annual leave. Employees who earn leave may be granted, at any time after the beginning of the current year, the annual leave which they will earn during the current leave year. Such unearned leave is granted only with the express understanding that, if annual leave is not later earned during the remainder of the current leave year by reason of unanticipated non-pay status, the employee will be required to make a refund for the unearned portion through a salary offset. Advanced annual leave can only be approved or denied by the District Manager (or designee).</p> <p>a. Full time employees will have their leave granted prior to the granting of leave for other than full time employees</p> <p>BUE's on scheduled leave will be allowed the holiday off, when the holiday falls within the time period of the scheduled annual leave.</p> <p>If the establishments within the assignment are not operating during a holiday, the BUE(s) in that assignment will be given first opportunity to be duty free.</p>
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## LEAVE POLICY

<p><b>Section 3. Tardiness</b></p>	<p>a. Only the immediate supervisor, or designee, shall excuse tardiness of employees.</p> <p>b. When an employee knows that he/she will be tardy, the employee is required to notify the immediate supervisor (or designee) as soon as possible. An employee who is absent from duty without authorization shall have their absence recorded as absence without official leave (AWOL) on the employee's time and attendance report.</p> <p>c. The Agency shall post or email instructions concerning emergency call-in procedures relative to the reporting of tardiness by an employee. Posting will only take place in offices of employees without email access. Such instructions shall include the telephone number(s) of the party to be contacted. The instructions will</p>	<p>a. Only the immediate supervisor, or designee, shall excuse tardiness of employees. If the employee is required to take leave for such period of tardiness, the employee shall not be required to commence work until the leave period has been used in quarter (1/4) hour increments.</p> <p>b. The Agency shall post instructions concerning emergency call-in procedures relative to the reporting of tardiness by an employee in the Government inspection office of each assignment. Such instructions shall include the telephone number(s) of the party to be contacted. All current and recognized emergency call-in procedures remain unchanged and in place. The appropriate Council President or designee will be notified that a change needs to be made concerning these procedure.</p> <p>c. In the event the supervisor is not available leaving a phone number to call the employee or leaving a voice message is acceptable.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

	<p>be shared with the appropriate Union representative.</p>		
<p><b>Section 4. Annual Leave Scheduling</b></p>	<p>Annual leave scheduling for OFO bargaining unit employees shall be as follows:</p> <ol style="list-style-type: none"> <li>1. All yearly annual leave scheduling will be performed by the Agency. The District Office will determine the number, types and grades of employees who can be on annual leave at any time, at each establishment, group of establishments, circuit, or circuits.</li> <li>2. Not later than each October 15, the District Office will notify the appropriate Council President of its determination, if it represents a change from the previous year's numbers, types and grades at each establishment, group of establishments, circuit, or circuits.</li> <li>3. Procedures for determining annual leave selections shall be in accordance with the following:</li> </ol>	<p>Annual leave scheduling for OFO and Imports (formerly OIA) bargaining unit employees shall be as follows:</p> <p>The parties agree that current annual leave scheduling policies and past practices will remain in effect with the implementation of this Agreement, consistent with the following changes:</p> <ol style="list-style-type: none"> <li>1. Not later than each October 1, the District Office will determine the number, types and grades of employees who can be on annual leave at any time, at each establishment.</li> <li>2. Not later than each October 15, the District Office will notify the Union, in writing, of the reason for its determination, if it represents a change from the previous year's numbers, types and grades at that establishment.</li> <li>3. Effective each October 15, employees who would have use or lose annual leave will schedule use of such leave to avoid loss.</li> </ol>	<p>The Agency wants the discretion of Annual leave scheduling to the District offices/Managers. The union wants to continue doing the annual leave scheduling with approval from the District office/Mangers.</p>

## LEAVE POLICY

- a. Annual leave selections will be based on seniority, from highest to lowest.
- b. Inspectors cannot schedule more leave than can be accrued in a calendar year, based on the accrual rate in effect at the beginning of the leave year. (e.g. 4 hours (13 days), 6 hours (20 days), and 8 hours (26 days)).
- c. Only full weeks will be scheduled.
- d. Each DM shall determine the process for scheduling and approving leave for each calendar year. Employees who anticipate use or lose annual leave shall schedule use of such leave to avoid loss.
- e. The District Office will provide each employee with the applicable calendar year annual leave sign-up sheet. The agency will notify employees of the number of employees determined to be on approved annual

- 4. Employees will submit their leave request not later than December 1 to the Designated FSIS Management Individual in accordance with the annual leave scheduling practices in place.
- 5. The Agency will post and provide to each employee, the approved leave schedules no later than January 1.
- 6. All yearly annual leave scheduling will be approved by the Agency.
- 7. Employees that are off on 8 hours of leave on Friday (ie, annual or sick leave) are not normally responsible to overtime work on Saturday-
- 8. The scheduling of a holiday, with no other days requested, will not be considered scheduled annual leave.

## LEAVE POLICY

	<p>leave at any given time.</p> <p>4. The Agency will post the approved leave schedules no later than January 1st.</p> <p>5. Annual leave schedules in place when a new LMA is issued will be honored for the remainder of that year.</p>		
<p><b>Section 5. Sick Leave</b></p>	<p><b>Agency moves to strike.</b></p>	<p>Subject to paragraphs (b) through (d) of this section, an agency must grant sick leave to an employee when he or she—</p> <ol style="list-style-type: none"> <li>1. Receives medical, dental, or optical examination or treatment;</li> <li>2. Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;</li> <li>3. (a) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or</li> </ol>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

(b) Provides care for a family member with a serious health condition;

4. Makes arrangements necessitated by the death of a family member or attends the funeral of a family member or close affinity;

5. Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

6. Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

b. The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(a) and (4) of this section may not exceed a total of 104 hours.



## LEAVE POLICY

- c. The amount of sick leave granted to an employee during any leave year for the purposes described in paragraph (a)(3)(b) of this section may not exceed a total of 480 hours, subject to the limitation found in paragraph (d) of this section.

If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (c) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b) of this section.

### **Advance Sick Leave.**

1. An agency may advance a maximum of 30 days (240 hours) of sick leave to a full time employee at the beginning of a leave year or at any time thereafter when required by the

## LEAVE POLICY

exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. **Thirty (30) days is the maximum amount of advance sick leave an employee may have to his or her credit at any one time.**

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2. The District Manager (or designee) approves advance sick leave. Employees should submit written requests for advance sick leave as far in advance as possible. The request should be supported by medical documentation, which should include a diagnosis, prognosis, and anticipated date of return to duty. Documentation shall include a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation, and legibly show the doctor's name and address. The approving official will consider:

## LEAVE POLICY

- (a) Expectation of return to duty;
- (b) The need for the employee's services;
- (c) Benefit to the Agency in retaining the employee, and
- (d) Ability of the Agency to require repayment of the amount paid to the employee for advance leave.

3. Advance sick leave may not be approved if it is known (or reasonably expected) that the employee will not return to duty.

### **Supporting Evidence for the Use of Sick Leave.**

1. Employees will not be required to furnish a medical certificate to substantiate a request for sick leave if their absence is for three (3) consecutive days or less.
2. When a medical certificate is necessary, it shall include a written statement

## LEAVE POLICY

signed by a registered practicing physician or other practitioner which legibly show the doctor's name and address. An employee must provide medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation.

3. In cases where the nature of the illness is such that the employee would not be expected to see a medical practitioner, the employee's written statement concerning the illness will

## LEAVE POLICY

ordinarily be acceptable. Employees who, because of illness, are released from duty on advice of the appropriate health facility shall not be required to furnish a medical certificate to substantiate the instance of sick leave.

4. Nothing in this section will require an employee to give up any rights to privacy or rights under the HIPPA act.

g. An employee requesting sick leave to care for a family member may be required to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that:

1. The family member requires psychological comfort and/or physical care;
2. The family member would benefit from the employee's care or presence; and
3. The employee is needed to care for the family member for a specified period of time.

## LEAVE POLICY

		<p>h. Family member is defined as spouse and parents of spouse; children, including adopted children, foster children and their spouses; parents; brothers and sisters and their spouses; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family member.</p>	
<p><b>Section 6. Sick Leave Restrictions</b></p>	<p>a. In individual cases, if there is evidence that an employee's leave pattern gives sufficient reason that an abuse of sick leave exists, the employee shall be counseled that he or she may be placed on restricted sick leave. If the employee's sick leave pattern continues, the employee will be placed on a sick leave restriction and advised in writing that a medical certificate must support all future</p>	<p>a. In individual cases, if there is evidence that an employee's leave pattern gives sufficient reason that an abuse of sick leave exists, the employee shall be counseled that he or she may be placed on restricted sick leave. If the employee's sick leave pattern continues, the employee will be placed on a sick leave restriction and advised in writing that a medical certificate must support all future requests for sick leave.</p> <p>c. A medical certificate or completed SF-71 for employees on a sick leave restriction must include a written statement (on physician's or practitioner's letterhead) signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation. The sick leave record of all employees under a sick leave restriction will be reviewed at least every three (3) months and a written</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

requests for sick leave.

b. A medical certificate or completed SF-71 for employees on a sick leave restriction must include a written statement (on physician's or practitioner's letterhead) signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, and the period of disability or incapacitation. The sick leave record of all employees under a sick leave restriction will be reviewed at least every six (6) months and a written justification as to why the restrictions should continue or

justification as to why the restrictions should continue or lift the restriction will be made and a copy provided to the employee.

d. There are no provisions for annual leave restrictions.

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	<p>lift the restriction will be made and a copy provided to the employee.</p>		
<p><b>Section 7. Leave Without Pay</b></p>	<p><b>Agency moves to strike</b></p>	<p>a. Leave without pay (LWOP) is an approved leave status which may be requested by employees to cover periods of absence in lieu of or in the absence of accrued annual leave or sick leave.</p> <p>The District Manager (or designee) approves the use of LWOP. LWOP is granted at the discretion of management, except in the following cases:</p> <ol style="list-style-type: none"> <li>1. When a disabled veteran requests LWOP for medical treatment;</li> <li>2. When requested by a Reservist or National Guard member for military duties (employees may request such leave after their military leave has been exhausted);</li> <li>3. When requested by an employee who has suffered an incapacitating job-related injury or illness and is awaiting adjudication of his or her claim for employee compensation by the Office of Workers' Compensation Programs; or</li> <li>4. When an employee makes a request under the Family and Medical Leave Act (FMLA) and meets the criteria for that program as described in this Article.</li> </ol> <p>b. An employee may be granted leave without pay to engage in Union activities or to work in programs sponsored by the Union or the AFGE</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>



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		<p>upon written request by the appropriate Union office. An employee granted LWOP for this purpose shall continue to accrue benefits in accordance with applicable civil service regulations. LWOP for this purpose is limited to two (2) years, but may be extended or renewed for up to an additional one (1) year upon proper application.</p> <p>An agency may not deny an employee's right to substitute paid leave under 5 U.S.C. 630.1206 (b)</p>	
<p><b>Section 8. Family and Medical Leave</b></p>	<p><b>Agency moves to strike</b></p>	<p>The Family and Medical Leave Act (FMLA) entitles certain Federal employees up to twelve (12) weeks of LWOP for specific personal and family health conditions or emergencies.</p> <p>Under certain circumstances, paid leave may be substituted for the LWOP taken under the Family and Medical Leave Program. This is intended for long term absences.</p> <p>a. While an employee is off work using FMLA, the duties and responsibilities of the position may be covered temporarily by other means. However, the employee may not be replaced permanently as a result of using FMLA. Whenever possible, the employee returns to the same position and in the same location held before using leave.</p> <p>b. When a bargaining unit employee returns to work after</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## LEAVE POLICY

using leave under the FMLA and there is a production decrease or the plant has closed, the following policy applies:

1. If it is not possible to return the employee to the same position held before the leave usage because of production reasons, the employee is reassigned to an equivalent vacant position in the commuting area if such a vacancy exists.
2. In the rare instance that no equivalent vacant position exists in the employee's commuting area, a localized work reduction is conducted to determine where to reassign the employee, in accordance with Article , Reassignments, of this Agreement.

c. Employee absences for FMLA must be related to one or more of the following:

1. Birth of a child;
2. Foster care placement or adoption of a child;
3. Care of a spouse, son, daughter, or parent of an employee, if such spouse, son, daughter, or parent has a serious health condition; or

## LEAVE POLICY

		<p>4. Serious health condition of the employee which prevents him/her from working.</p> <p>b. Requests for approval of leave under this section are subject to the same documentation and approval requirements described in Section 5 (f) except that thirty (30) days advanced notice shall be given for absences, unless in emergencies, and in that case, notice should be given as soon as practicable.</p> <p>c. While an employee is on family and medical leave, the Agency may require subsequent medical recertification from the health care provider if the circumstances described in the original medical certification are subject to change.</p>	
<p><b>Section 9. Maternity/Paternity Leave</b></p>	<p><b>Agency moves to strike</b></p>	<p>a. Maternity leave is granted to cover a period of absence for maternity reasons. Sick leave will be granted for the period of incapacitation due to pregnancy and confinement. Annual leave or LWOP may be requested in lieu of sick leave. Additional periods of annual leave and LWOP may be granted in whatever order the employee requests for an additional period. The employee may also request and be granted annual leave or LWOP for the period of incapacitation.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already</p>

## LEAVE POLICY

- b. Requests for additional leave following the end of the period of maternity leave will be handled in accordance with applicable regulations and this Agreement
- c. No arbitrary cutoff date requiring an employee to cease work will be established. If a cutoff date is established, it must be based on the physical capability of the employee to perform the duties of the job after a determination by competent medical authority.
- d. A male employee may be absent on annual leave, LWOP, or sick leave under Sections 5 and 8 above for the purpose of aiding, assisting, or caring for the mother of his child or minor children while she is incapacitated for maternity reasons.
- e. The Agency may establish with the employee a firm date for maternity/paternity leave to begin. If agreement cannot be reached and the Agency establishes a particular date, the reasons for the determination will be documented and given to the employee. The employee should submit notice at least one month in advance of the prospective need for maternity/paternity leave.

covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.

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<p><b>Section 10. Excused Absence (Administrative Leave)</b></p>	<p><b>Agency moves to strike</b></p>	<p>a. Excused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay.</p> <p>b. Excused time up to four (4) hours will be authorized for employees to donate blood.</p> <p>c. Upon request, subject to certification by a physician, supervisors shall approve excused absence for employees who serve as living donors for bone marrow, organ and tissue donation, and transplantation. The use of excused absence shall be authorized in accordance with governing regulations and shall cover time off for such activities as donor screening, the actual medical procedure, and recovery time.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 11. Military Leave</b></p>	<p><b>Agency moves to strike</b></p>	<p>a. In accordance with laws and regulations, bargaining unit employees who are members of the National Guard or the Armed Forces Reserves are entitled to 120 hours of regular military leave in a fiscal year for active duty, active duty for training, and certain inactive duty training and activities. Employees are only charged military leave for military absences occurring during their scheduled tour of duty. They are not charged military leave for absences during non-duty periods such as holidays and non-work days.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA</p>

## LEAVE POLICY

		<p>b. Employees who perform active military duty as Guard members or Reservists may be ordered to duty by the President or a State Governor under the provisions of Title 5 U.S.C. 6323(b) to assist domestic civilian authorities to enforce the law or protect life and property. Also, this leave is provided for employees who perform military duties in support of full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a) (13) of Title 10, U.S.C.</p> <p>Such employees are eligible to be granted an additional twenty two (22) work days of military leave per calendar year which, when so used, is offset against civilian pay for the same period. Employees may choose to use annual leave instead of military leave for any of the twenty-two (22) work days and no offset against civilian pay will be made.</p> <p>The employee receives/retains both military and civilian pay during this period if annual leave is used.</p>	<p>Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 12. Adjustment of Work Schedules for Religious Observances</b></p>	<p><b>Agency moves to strike</b></p>	<p>An employee whose personal religious beliefs require abstention from work during certain periods of time may request to engage in compensatory overtime work to compensate for time lost for meeting those religious commitments.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS</p>

## LEAVE POLICY

		<p>Supervisors shall afford the employee the opportunity to work compensatory overtime and approve use of compensatory time off for religious observances to the extent that staffing needs allow and such modifications do not interfere with the accomplishment of work. Whenever possible, the Agency will grant appropriate leave to an employee to meet religious commitments.</p>	<p>policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 13. Hazardous Weather Leave</b></p>	<p><b>Agency moves to strike</b></p>	<p>a. When unit employees are required to report for work during hazardous or unusually severe weather conditions, can be requested and/or scheduled and approved. This applies unless the immediate supervisor (or designee) gives specific approval for an absence based on a set of conditions and circumstances for the particular duty station. Inability to report for duty will require that the employee contact the immediate supervisor (or designee) and request leave. An employee who attempts to get to work and is unable to do so will be placed on hazardous weather leave. (i.e administrative leave)</p> <p>b. The Front Line Supervisor (or designee) has the discretion to approve administrative leave for hazardous or unusually</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable</p>

## LEAVE POLICY

		<p>severe weather conditions after evaluating the circumstances on a case by case basis provided by the employee requesting leave. Employees on scheduled annual or sick leave that was planned in advance will be charged leave for the period of leave that overlaps a period of hazardous weather.</p>	<p>CFR references, statues, and OPM guidelines.</p>
<p><b>Section 14. Emergency Leave</b></p>	<p><a href="#">Agency moves to strike</a></p>	<p>Emergency leave is annual leave, sick leave, or leave without pay (LWOP) requested by an employee to deal with a sudden or unanticipated situation.</p> <p>In making a decision on whether to grant a request for emergency leave, the employee’s immediate supervisor or the authorized designee shall evaluate the request against the work requirements and available staffing. If the request is disapproved the employee may make an immediate appeal to the next higher supervisory level. The employee will be allowed paid time in order to make this appeal.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 15. Court Leave</b></p>	<p><a href="#">Agency moves to strike</a></p>	<p>In accordance with laws and regulations, an employee is entitled to court leave for:</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is</p>



## LEAVE POLICY

		<p>a. Jury duty;</p> <p>b. When summoned to court to serve in an unofficial capacity as a witness for, or to supply evidence for, State or local government; or</p> <p>c. When summoned to court to serve in an unofficial capacity as a witness for, or to supply evidence for, a private party when the Federal, D.C., State, or local government is either the plaintiff or defendant.</p> <p>d. Court leave is not granted to an employee who appears in court as either a plaintiff or defendant on his/her own behalf or when neither party is a Federal, State, DC, or local government. Employees shall present the court order, summons, or subpoena to the supervisor when requesting court leave to serve as a witness or juror. Upon return to duty, the employee must submit written proof of attendance from the court to the supervisor. The proof of attendance must show the dates (and hours if less than a full day, if possible) served.</p> <p>e. FSIS Directive 4630.2 Revision 2, Part Ten IV. Court Leave provides further guidance.</p>	<p>already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 16. Voting</b></p>	<p><b>Agency moves to strike</b></p>	<p>The Agency agrees that when voting polls are not open at least three (3) hours either before or after employees' regular hours of work, employees shall be granted an amount</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by</p>

**LEAVE POLICY**

		<p>of excused leave to vote which will permit them to report to work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time.</p>	<p>USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 17. Voluntary Leave Transfer Program</b></p>	<p><b>Agency moves to strike</b></p>	<p>The Federal Employees Leave Sharing Act of 1990 enables qualifying Federal employees to use transferred (or donated) annual leave from other Federal employees to cover LWOP absences and advanced leave indebtedness resulting from personal and family medical emergencies. Employees are able to “donate” leave to a specific individual.</p> <p>There is an opportunity for FSIS Employees to engage with the Leave Bank. Leave Bank has been or will be established for all FSIS Employees. On an annual basis the Agency will advise FSIS Employees of the Leave Bank Program.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-</p>

## LEAVE POLICY

			Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 18. Leave for Preventative Health Care Screenings</b>	<b>Agency moves to strike</b>	Full time employees will be granted up to four (4) hours of excused absence in each leave year to participate in preventive health care screenings. Health care screenings include but not limited to: screening for prostate, cervical, colorectal, and breast cancer; screening for sickle cell anemia; blood lead level; blood cholesterol level; immunity disorders such as Human Immunodeficiency Virus (HIV); and blood sugar levels testing for diabetes. This leave is for the employee’s personal use and not for absences related to family members. Medical absences for stress tests, flu shots, or children’s immunizations are not covered by this provision. Sick leave under Section 5 would apply.	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 19. Holiday leave</b>	<b>Agency moves to strike</b>	When an Inspector's plant is not working on a holiday, or plant(s) on an assignment, the Inspector will be allowed to take the holiday leave.	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management

## LEAVE POLICY

			<p>Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 20. Data request</b></p>	<p><b>Agency moves to strike</b></p>	<p>The Union can, as often as it deems necessary, request any and all information needed regarding leave, including but not limited to: the locations, times, dates, reason and amount of leave cancelled, scheduled, etc.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## NEGOTIATION OF LOCAL AGREEMENTS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1</b></p>	<p>As provided for in Section 3 below, local agreements may be negotiated at the Local/Circuit level by the Council President which represents all the bargaining unit employees assigned to an effected Local/Circuit. It is understood by the Parties to this Agreement that this is the Master Agreement and that only a local agreement may be negotiated at the local level. It is understood that the purpose of local supplemental agreements is for coverage of matters specifically applicable to the respective Local/Council. Both parties must mutually agree to the subject for bargaining. The LMA is governing, and as such nothing may be included in the local agreement which is in conflict with the LMA. If any conflict arises between any supplemental agreement and this Master Agreement, the terms of the LMA shall prevail.</p> <p>All bargaining sessions shall be held in the District Office where the Local Agreement will govern, unless the</p>	<p>As provided for below, local agreements may be negotiated at the Local/Circuit level by the Council President which represents all the bargaining unit employees assigned to an effected Local/Circuit. It is understood by the Parties to this Agreement that this is the Master Agreement and that only a local agreement may be negotiated at the local level. It is understood that the purpose of local supplemental agreements is for coverage of matters specifically applicable to the respective Local/Council. The Agency and the Union must mutually agree to the subject for bargaining. The LMA is governing, and as such nothing may be included in the local agreement which is in conflict with the LMA. If any conflict arises between any supplemental agreement and this Master Agreement, the terms of the LMA shall prevail. Matters included in the negotiations of the local agreements, may include but not limited to: personnel policies and practices and other matters affecting conditions of employment. Any agreement/memorandum of understanding entered into during the life of this contract will be considered an addendum to this contract and subject to its duration or as otherwise agreed in Mou.</p> <p>All bargaining sessions shall be held in the District Office where the Local Agreement will govern, unless the parties mutually agree to conduct bargaining at an alternate site. The timelines will follow those</p>	<p>The Union’s language attempts to reiterate what is already in the statute with regard to bargaining over changes in conditions of employment.</p> <p>The Agency wishes to expedite the resolution process within 7 days when agreements conflict with the master agreement, whereas the Union’s language calls for a 15 work day notice period followed by a 15 work day resolution period.</p> <p>The Agency prefers to streamline the contract, whereas the Union prefers to keep and copy the language already covered by, the current Labor-Management Agreement.</p>

## NEGOTIATION OF LOCAL AGREEMENTS

	<p>parties mutually agree to conduct bargaining at an alternate site. The timelines will follow those set forth in Article XX Bargaining During the Term of the Agreement Section 1(b). For the General provision for bargaining the Parties shall follow the provision set forth in Article XX - Bargaining During the Term of the Agreement Section 3(a) General Provisions for Bargaining.</p> <p>The Agency's Chief Negotiator and the NJC Chairman shall review and resolve any conflicts in the negotiated Local Agreements within 7 calendar days prior to finalization.</p>	<p>set forth in Article -- Bargaining During the Term of the Agreement Section 1(b). For the General provision for bargaining the Parties shall follow the provision set forth in Article -- - Bargaining During the Term of the Agreement Section 3(a) General Provisions for Bargaining.</p> <p><b><u>Paragraph 2 Can not agree because the provision have not yet been negotiated</u></b></p> <p><del>The Agency's Chief Negotiator and the NJC Chairman shall review and resolve any conflicts in the negotiated Local Agreements within 7 calendar days prior to finalization.</del></p> <p>Supplemental agreements are subject to review by the parties to ensure they do not conflict with the Master Agreement. Each party will, within 3015 calendar work days following execution of the supplemental agreement, notify the other of any provision which is alleged to conflict with the Master Agreement. The parties will discuss the provisions in question following notification in an effort to resolve the dispute; any continuing disagreement will be resolved by the Agency and Union's Chief Negotiators or designee. Discussions over disputed issues will take place between the Agency and Union within 30-calendar-15 work days.</p>	

## OFFICIAL TIME

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>Each employee’s foremost responsibility is the completion of the duties of his/her Agency position of record. However, the parties recognize that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, union representatives may use limited amounts of union time under the conditions described in this Article.</p>	<p>The Agency recognizes that in furtherance of good labor-management relations, Union representatives have the responsibility of carrying out representational activities under the Federal Service Labor-Management Relations Statute. The parties agree that Union representatives, when not engaged in authorized labor-management activities, shall accomplish the duties of the position to which they have been assigned. The Agency agrees to recognize the Chairperson, Council Presidents, and any number of Union representatives of the National Joint Council of Food Inspection Locals under Article_ as appropriate users of union official time for authorized representational activities.</p> <p>a. Union representatives shall represent the Union and the employees for their designated area of representation in meetings with officials of the Agency to discuss appropriate matters.</p> <p>The parties may use telephone, electronic, and/or video conferencing methods in communicating relative to representational matters to the</p>	

**OFFICIAL TIME**

		<p>maximum extent practicable.</p> <p><b>b.</b> Overtime compensation shall not be paid for performance of representational duties and responsibilities.</p> <p>However, the regulation does allow for overtime if a situation arises that needs attention and cannot be put off until basic time. <b>§ 551.424 Time spent adjusting grievances or performing representational functions.</b></p> <p>(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency's premises shall be considered hours of work.</p> <p>(b) "Official time" granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work. This includes</p>	
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**OFFICIAL TIME**

		<p>time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.</p> <p>c. No travel and per diem will be permitted unless authorized by the Agency.</p>	
<b>Section 2. Designation</b>	<p>The Union shall maintain an updated list of all designated union representatives, to include name, union position, council, local, duty location, and telephone number of each designated union representative. Only those employees identified on the list provided by the Union will be authorized to use union time.</p>	<p>Union did not provide a counter.</p>	
<b>Section 3. Release from Duty for</b>	<p>a. Each Union representative will be required to complete an electronic request for</p>	<p>It is recognized that Union representatives (who are employees of the Agency may need to conduct official labor</p>	<p>Agency wants to ensure the request for use of official time is done in advance in order to ensure that the Agency's mission is still being carried</p>

**OFFICIAL TIME**

<p><b>Representational Matters</b></p>	<p>official time in the Agency’s Time &amp; Attendance System two (2) workdays in advance. In the event the Union representative’s position is not incorporated into the system, the Union representative is required to submit a written request to their immediate supervisor within two (2) workdays prior to the release from duty.</p> <p>b. The completed request shall specify:</p> <ol style="list-style-type: none"> <li>1. in reasonable detail the tasks the representative will undertake</li> <li>2. the number of hours to be used</li> <li>3. where and when the official time will be used</li> <li>4. how the tasks are related to Union business, and</li> <li>5. a telephone number and email address where the employee can be reached.</li> </ol> <p>c. Requests that do not contain sufficient information for management to assess whether the request is</p>	<p>relations activities and will require a reasonable amount of official time to do so.</p> <p>The procedure for securing advance approval and conducting such official labor relations activities is as follows:</p> <ol style="list-style-type: none"> <li>a. Union officials/representatives desiring to use official time under this Article shall request permission from their immediate supervisor, or designee, of the need to conduct official labor relations activities and inform the supervisor of the approximate duration of time.</li> <li>b. The immediate supervisor, or designee, shall respond to requests for official time in a timely manner. If a request for official time cannot be authorized for the time requested due to a work situation, a release time will be granted as soon as possible.</li> <li>c. Union representatives shall inform the supervisor of the location where they can be contacted.</li> </ol>	<p>out. The union does not want to put in a request beforehand because they may be needed at a last moments notice.</p>
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## OFFICIAL TIME

	<p>consistent with law, regulation and the terms of this Agreement will be denied.</p> <p>d. Request for Official Time must be submitted to the employee's first line supervisor (or higher-level supervisor if the first-line supervisor is unavailable) at least seven (7) days in advance of when the Official Time is requested to be utilized, except in circumstances where such advanced notice is not possible (<i>e.g. an impromptu Weingarten Interview, a Formal Discussion that is noticed one day in advance, management directed notification requiring the need for official time</i>).</p> <p>e. Approval from an authorized supervisor/management official must be obtained by an employee prior to their engaging in union time as a representative. Any employee who uses union time without advance supervisory/management approval will be considered absent without leave and subject to appropriate disciplinary action. The employee will immediately inform the supervisor when he/she</p>	<p>d. Whenever possible, Union representatives shall make arrangements with the supervisor in the location to be visited.</p> <p>e. The Union representative will notify the supervisor, if available, in the visited area prior to commencing Union representational activities.</p> <p>f. In situations where two Union representatives are designated from the same location, the Union representatives shall make every reasonable effort to schedule their use of union official time to avoid simultaneous absence of the Union representatives for representational purposes.</p> <p><b>g. Union officials shall have access to unit employees and their working conditions at any time deemed necessary by the Union.</b></p> <p><b>h. Designated Union official will be entitled to official time and expense to attend the AFGE Legislative conference(s).</b></p>	
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**OFFICIAL TIME**

returns to work after completion of the representational activity using the method determined by the supervisor.

f. If management is unable to approve a request for union time, the reason for denial will be provided. If an operational need does not permit the employee to use the union time when requested, management will generally make a reasonable effort to allow the employee to use the requested union time within two workdays, keeping in mind the interests of the union, as well as the needs of the employer.

g. An employee serving as a Union Representative is responsible for accurately recording union time on their time and attendance for pay purposes. An employee's failure to accurately record union time on their time and attendance creates a financial burden on the agency, as the agency will incur a cost to correct the time and attendance record. In such an instance, the

**OFFICIAL TIME**

	<p>Union will reimburse the agency for the actual cost of processing the correction.</p>		
<p><b>Section 4. Provisions for Union Time</b></p>	<p>A. Consistent with 5 U.S.C. 71 and this Agreement, union representatives will be granted union time, subject to availability as described below, for only the following representational activities:</p> <ol style="list-style-type: none"> <li>1. Term Negotiations (T&amp;A Code 35)—to negotiate a collective bargaining agreement, in accordance with 5 U.S.C. 7131(a).</li> <li>2. Mid-Term Negotiations (T&amp;A Code 36)—to negotiate over issues raised during the life of a term agreement, in accordance with 5 U.S.C. 7131(a).</li> </ol>	<p>a. Consistent with Title 5 U.S.C. 7131 and this Agreement, Union representatives will be granted official time, subject to the availability of official time as described below for the following representational activities. The following activities are examples of, but are not an exhaustive list of, the uses of official time:</p> <p><b><u>T &amp; A Code 35</u></b></p> <ul style="list-style-type: none"> <li>• Term Negotiations.</li> </ul> <p><b><u>T &amp; A Code 36</u></b></p> <ul style="list-style-type: none"> <li>• Time in connection with bargaining during the term of the Agreement.</li> </ul> <p><b><u>T &amp; A Code 37</u></b> <b><u>Examples of but not limited to:</u></b></p> <ul style="list-style-type: none"> <li>• Attendance at meetings initiated by the Agency concerning personnel policies, practices, or other general</li> </ul>	<p>Agency wants to afford the union a bank of 5, 000 hours and the Agency is in the opinion that a representative should use 25% of their time conducting union work to be able to contribute to the food safety mission of the Agency.</p>

**OFFICIAL TIME**

	<p>3. Preparation for Term and Mid-Term Negotiations (T&amp;A Code 35 or 36) authorized under 5 U.S.C. 7131 (d).</p> <p>4. General Labor-Management Relations (T&amp;A Code 37)—perform miscellaneous representational activities authorized under 5 U.S.C. 7131(d), subject to availability of hours in the Union Bank as described below.</p> <p>5. Dispute Resolution (T&amp;A Code 38)—to appear in proceedings before the Federal Labor Relations Authority during such time as an employee would otherwise be in</p>	<p>conditions of employment.</p> <ul style="list-style-type: none"> <li>● Attendance at labor management meetings as defined in Article ____, Labor-Management Meetings. This time/hour does not count toward the bank of official time hours.</li> <li>● Time in connection with statutory (e.g., MSPB and EEOC) appeal procedures in which the Union is designated as the representative. This time or hours does not count toward the bank of official time hours.</li> <li>● Attendance at meetings of joint committees in which Union representatives are recognized members.</li> <li>● Attendance at the recognized events to which the Union has been invited by the Agency. This time/hour does not count toward the bank of official time hours.</li> <li>● Attendance at the Health and Safety Committee activities as defined in Article 9, Health and Safety.</li> </ul>	
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**OFFICIAL TIME**

	<p>a duty status, in accordance with 5 U.S.C. 7131(c).</p> <p>B. Union Bank. Total of available hours of union time per fiscal year for activities covered by 5 U.S.C. 7131 (d) is calculated by four-fifth hour per bargaining unit employee, for a total of 5,040 hours as of October 1. Unused union bank hours do not carry over into the next fiscal year.</p> <p>C. A union representative may request leave without pay to engage in union activities (LWOPUA) that would be permitted under 7131(d). LWOPUA does not count against the union bank. No agency employee shall be permitted to spend more than 25% of their established annual tour of duty on union time, LWOPUA, or any combination thereof. Management will consider requests for LWOPUA and determine whether to grant the leave without</p>	<p><b><u>T &amp; A Code 38 Examples of but not limited to:</u></b></p> <ul style="list-style-type: none"> <li>● Attendance at oral replies to notices of proposed disciplinary or adverse actions under this Agreement as the employee’s designated representative.</li> <li>● To prepare grievances. Due consideration will be granted to the Union’s request to perform duties on authorized official time at a location other than his/her duty station.</li> <li>● Witness preparation to the extent authorized by law or government-wide rule or regulation and this agreement.</li> <li>● To review documents that are not available during non-duty hours.</li> <li>● To prepare a reply to a notice of proposed disciplinary action, adverse action, or unacceptable performance action as the employee’s designated representative.</li> <li>● Arbitration preparation as provided for under Article _____, Arbitration.</li> </ul>	
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**OFFICIAL TIME**

pay. The denial of LWOPUA for union representational activities cannot be grieved or disputed in any forum.

D. Union reps who reach the 25% cap will be authorized union time in accordance with sections 7131(a) and 7131 (c) of Title 5, U.S.C., that do not count against the bank total. Time for these activities are charged to the union bank for that fiscal year. However, if the union bank has been exhausted, time will be charged to the union bank for the following fiscal year (or years).

- Attendance at meetings for the purpose of presenting reconsideration replies in connection with denial of within-grade increases if acting as the employee's designated representative.
- To prepare reconsideration statements in connection with the denial of a within-grade increase if acting as the employee's designated representative.
- Attendance at meetings with the Agency or FLRA to discuss or present unfair labor practice charges or unit clarification petitions.
- To participate in an Authority investigation or hearing preparation as a representative of the Union.
- To effectuate Congressional contacts, if subpoenaed by a member or committee of Congress to appear.
- To participate in training sponsored by the Union in the administration of Public Law 95-454.



## OFFICIAL TIME

		<ul style="list-style-type: none"><li>● To prepare and maintain records and reports required of the Union as provided by 5 U.S.C. Section 7120(c).</li><li>b. The location where official time is used shall be appropriate to the representational activity for which the time is requested. That location is normally the Union official's Union office in their home. An alternate appropriate facility is acceptable. The union official shall inform the supervisor of the alternate facility where they can be contacted.</li><li>c. The Union will be allowed to use up to 22,000 hours per fiscal year for representational activities identified in Section 4 (a). This includes official time authorized pursuant to Title 5 U.S.C. 7131 (a), (c), and (d). Unused official time hours do not carry over into the next fiscal year. The Union shall only receive reasonable official time to fulfill its entitlements under Title 5 U.S.C. 7131 (a) and (c) of the Statute. In the case</li></ul>	
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**OFFICIAL TIME**

		<p>where Official time is covered under Title 5 U.S.C. 7131 (a), (c) and (d) it will not be charged to the bank of hours.</p> <p>The Union has a right to annually negotiate for additional hours when 22,000 hours is insufficient to conduct representational activities in any given year. Time not used within any Fiscal year will roll over to the next fiscal year, which will be added to the 22,000 hours per year. Upon the submission of a written information request, the Agency will provide the Union with an accounting of the total official time usage. Negotiations of additional hours can be triggered by the Union when there are 4,000 hours or fewer remaining in the bank. The agency will notify the Union in writing when the hours remaining reach 4,000 hours. Also, if the Union goes over the bank hours the agency will loan the Union time until such time additional time can be negotiated to</p>	
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**OFFICIAL TIME**

		<p>completion, up to and including third party decision(s).</p> <p>d. Time spent by Union representatives representing employees in statutory EEO complaints is official time under Title 29 Code of Federal Regulations. This time does not count against the bank.</p>	
<p><b>Section 6. Tracking of Official Time</b></p>	<p><a href="#">Agency moves to strike</a></p>	<p>It is important that the use of official time is tracked and used properly. The use of Official Time will be documented using the Time and Attendance System that is in place at the time of this agreement executed. Time and attendance will not be used as a time clock. Union Officials will not be required to request official time in the Time and Attendance System and will not be required to enter in/out times when using official time.</p> <p>If the Agency elects to change the method by which Time and Attendance is recorded, it shall, provide appropriate notice and opportunity NJC Chairperson or designee.</p> <p>The Agency will be responsible to keep a running total of official time hours used to generate a report. That report will include the hours, Union Personnel name and</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

**OFFICIAL TIME**

		code used for Official Time. The Agency will share the report each pay period to the NJC Chairperson or designee.	
<b>Section 7. Allegation of Abuse of Official Time</b>	Agency moves to strike	Alleged abuses of official time will be brought to the attention of the appropriate Union representative, in writing, on a timely basis by an appropriate Agency official. The Agency official will discuss the matter with the appropriate Council President or NJC Chairman, NJC, as appropriate, or designee.	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 8. Training</b>	Agency moves to strike	Joint training sessions on the interpretation and application of the terms of this Agreement shall be held between managers, field supervisors, and all Local/Council Presidents. The training will be scheduled in conjunction with a Labor-Management meeting, and official time and	Agency feels the Agency should be responsible for training management and the union is responsible for training its representatives and constituents on the contract.

**OFFICIAL TIME**

		<p>expense will be approved for the training. Travel related expenses will be paid by the Agency. The interpretation session will extend the LMR meeting by, at a minimum, of one day to accommodate this training. Training for this session will be handled as training would be conducted for agency managers and supervisors, including presentation and training material. Active participation will be expected by all involved parties.</p> <p>Additional, Circuit level, training sessions on the interpretation and application of the terms of this Agreement will be held between New Field Supervisors and the Union designee within 90 days of the New Field Supervisor reporting to their location. It is recognized that joint training sessions are for the benefit of all parties and therefore Official Time used in association will not count against the bank of hours.</p>	

## POSITION CLASSIFICATION

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Classification of Position</b></p>	<p>All positions in the unit will be classified by comparison with Office of Personnel Management classification standards and:</p> <p><b>5 United States Code (U.S.C.) Chapter 51 5 C.F.R., Part 511 5 C.F.R. §1201.21 through 1201.24</b></p>	<p>All positions in the unit will be classified by comparison with published classification standards issued by the Office of Personnel Management.</p>	<p>The Agency included the reference to the 5 U.S.C. and the Union did not provide the reference to the 5 U.S.C.</p>
<p><b>Section 2. Position Description</b></p>	<p>The Agency shall maintain a comprehensive file of position descriptions of all classified positions in the bargaining unit. Classified positions are established after review and approval by the Agency.</p>	<p>a. The Agency shall maintain a comprehensive file of position descriptions of all classified positions in the bargaining unit, which will be provided to the NJC Chairman, or designee annually. Classified positions are established after review and approval by the Agency. The following are the identified positions:</p> <ol style="list-style-type: none"> <li>1) Food Inspector (FI) 1863, GS-5/7</li> <li>2) Food Inspector (FI) 1863, GS-9 (Import, Export)</li> <li>3) Egg Product Inspector (EPI) 1863, GS-8, GS-9</li> <li>4) Consumer Safety Inspector (CSI) 1862, GS-9</li> <li>5) Consumer Safety Inspector (CSI) 1862, GS-9</li> </ol>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

## POSITION CLASSIFICATION

		<p style="text-align: center;">“coverage” (aka. Relief)</p> <p>b. Position descriptions furnished to employees shall contain the principal duties, responsibilities and supervisory relationships for classification purposes. Bargaining unit employees’ position descriptions shall accurately reflect the duties and functions to be performed. The position description can also be used to identify training, qualifications, and performance requirements of the position.</p> <p>c. Supervisors and Employees are encouraged to discuss their position description with the supervisor when there is a question concerning the proper classification of the position. When an employee believes his/her position description does not accurately reflect his or her currently assigned duties and responsibilities (e.g., they are performing additional duties on a regular and recurring basis that are not reflected in their current position description), the employee should discuss</p>	
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## POSITION CLASSIFICATION

		<p>the situation with the immediate supervisor, or designee. If necessary, the supervisor shall forward the issue through the chain of command for appropriate review in accordance with Agency procedures. The Agency will determine the appropriate course of action based on the circumstances which may include:</p> <ol style="list-style-type: none"><li>1. No change;</li><li>2. Amendment of the position description;</li><li>3. Removal of the additional duties by management; or</li><li>4. Reclassification of the position as determined by the Agency.</li></ol> <p>d. The employee may file a statutory classification appeal/reconsideration request of his/her position in accordance with the appropriate rules and regulations at any time. The final decisions rendered in a classification appeal/reconsideration shall be promptly implemented by the Agency. Upon request, the Agency will provide</p>	
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## POSITION CLASSIFICATION

		<p>the procedures to be followed in filing an appeal/reconsideration request.</p> <p>e. The Agency agrees that positions will be reviewed on a periodic basis to ensure that positions are properly classified. When significant changes in the duties and responsibilities of a position occur, the position description will be reviewed and will be amended or rewritten as necessary. The Union will advise the Agency if it has a concern with respect to any of the positions occupied by the members of the unit.</p>	
<b>Section 3. Effective Date</b>		<p>Reclassification actions shall be effective on the first pay period following final approval of the personnel action. There will be no delay and actions shall be taken as soon as administratively possible.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## POSITION CLASSIFICATION

<p><b>Section 4. Employees Affected by a Re- classification Action</b></p>		<p>The Agency agrees to notify the Union in writing prior to the effective date of any reclassifications actions whether or not the actions result in an obligation to bargain in accordance with the law or the contract.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 5. Position Upgrades</b></p>		<p>In the event that the agency determines that a position is to be upgraded, the employee that is holding that position currently, that employee will receive the upgraded position without having to apply.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## RECOGNITION AND COVERAGE

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 2. Governing Laws and Regulations</b></p>	<p>In the administration of all matters covered by this Agreement, Agency officials and employees shall be governed by existing laws and government-wide rules and regulations as defined in Title 5, U.S.C., Chapter 71 of the Statute, by published Agency policies and regulations in existence at the time the Agreement is effectuated.</p> <p>Unless otherwise stated specifically herein, this Agreement supersedes all previous agreements and past practices.</p> <p>Should any conflict arise between the terms of this Agreement and any current or future laws or government-wide regulations which were in effect on the effective date of this Agreement, the provisions of such laws and regulations shall supersede any conflicting provisions of this Agreement. The referenced links contained herein will be managed by the governing office of primary interest.</p>	<p>In the administration of all matters covered by this Agreement, Agency officials and employees shall be governed by existing laws and government-wide rules and regulations as defined in Title 5, U.S.C., Chapter 71 of the Statute, by published Agency policies and regulations in existence at the time the Agreement is effectuated.</p> <p><del>Unless otherwise stated specifically herein, this Agreement supersedes all previous agreements and past practices.</del></p> <p><del>In the event either party, the Union or the Agency, desires to eliminate a past practice, the party desiring to eliminate the past practice must identify said practice to the other party. The parties may then, by mutual agreement, negotiate the identified past practice</del></p> <p>Should any conflict arise between the terms of this Agreement and any current or future laws or government-wide regulations which were in effect on the effective date of this Agreement, the provisions of such laws and regulations shall supersede any conflicting provisions of this Agreement.</p> <p><del>When practical, the Union will be afforded up to three (3) workdays to provide feedback on draft Agency issuances.</del></p>	<p>The Agency would like to eliminate all past practices and start fresh with a new contract; whereas the Union does not want to get rid of past practices.</p>

## RECOGNITION AND COVERAGE

<b>Section 3: Management Rights</b>	The Agency retains all rights as stated in Title 5 U.S.C. Section 7106.	<del>Section 3: Recognition of Management Rights (Title 5 U.S.C. Section 7106)</del>  The Agency retains all rights as stated in Title 5 U.S.C. Section 7106. The above rights do not in any way infringe upon the rights of the union or employees to express concerns with the procedures and appropriate arrangements under section 7106 of the Statute.	

## REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION

Article/Section	Agency Proposal	Union Proposal	Key Difference
<b>Section 2. Applicable Laws and Regulations</b>	<p>In conducting an action under this Article, the Agency will comply with the following:</p> <p>Title 5 U.S.C. Sections 3501-3504</p> <p>Title 5 CFR Part 351.501</p> <p>Title 5 CFR Part 351.203</p> <p>Title 5 U.S.C. 7114 (b)(4)</p> <p>Title 5 CFR 351.601, Subpart F and Subpart G, Office of Personnel Management (OPM) Government-Wide Laws and Regulations <a href="#">DR 4030-330-002, Special Selection Priority Programs</a></p>	<p>In conducting an action under this Article, the Agency will comply with the following:</p> <p>Title 5 U.S.C. Sections 3501-3504—dated January 7, 2011</p> <p>Title 5 CFR Part 351.501—dated 1/3/86 as amended at 56 FR 10142 dated March 11, 1991; 60 FR 3062 January 13, 1995; 62 FR 62500 November 27, 1997</p> <p>Title 5 U.S.C. 7114 (b)(4)—dated October 13, 1978</p> <p>Title 5 CFR 351.601, Subpart F and Subpart G,--73 FR 29388 dated March 21, 2008</p> <p>Office of Personnel Management (OPM) Government-Wide Laws and Regulations <a href="#">DR 4030-330-002, Special Selection Priority Programs</a>—dated February 27, 2014</p>	<p>Union wants to add the dates to the applicable statues and regulations. The Agency does not want the dates as these things will be updated as need be by the governing organizations.</p>

**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

<p><b>Section 3. Union Notification</b></p>	<p>Agency Moves to Strike.</p>	<p>f. The Agency shall be responsible for properly notifying the Union in conjunction with any of the actions described in this Article.</p> <p>For actions covered by this Article, the Agency agrees to notify the Union at the earliest possible date, but no later than ninety (90) calendar days prior to the effective date. The Union will be notified sixty (60) days in advance of the effective date that employees are being issued specific notices of an action under this Article.</p> <p>g. Notice to the Union under this section shall consist, at a minimum, of the following information:</p> <ol style="list-style-type: none"> <li>1. The reason for the action;</li> <li>2. The competitive levels to be affected;</li> <li>3. The approximate number, types, and geographic location of positions affected; and</li> <li>4. The proposed effective date of the action.</li> </ol> <p>h. Upon the Union’s request, the Union shall be provided an unsanitized copy of the retention register for those competitive levels affected by an action under this Article.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>

**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		<p>i. When a RIF plan is completed, the Agency shall provide a copy to the Union. Formal written notification shall be given to the appropriate Union representative simultaneously when the specific notice is provided to the affected employee(s).</p> <p>j. The Agency shall provide the Union, upon request, with information in accordance with Title 5 U.S.C. 7114 (b)(4).</p>	
<p><b>Section 4. Definitions</b></p>	<p>Agency Moves to Strike.</p>	<p>e. <u>Reduction-in-force.</u> A reduction-in-force (RIF) is the release of a competing employee from a 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 the Agency has formally announced a RIF in the employee's competitive area and when the reduction-in-force will take effect within one hundred and eighty (180) days.</p> <p>f. <u>Transfer of Function.</u> A transfer of function is the transfer of the performance of a continuing function from one competitive area to one or more other competitive areas where the</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and</p>

**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		<p>function is not currently being performed, or the movement of the competitive areas in which the function is performed to another commuting area.</p> <p>g. <u>Competitive Area</u>. The area in which employees compete for retention in a reduction-in-force is known as a competitive area. A competitive area is defined solely in terms of the Agency's organizational unit(s) or geographical location. The competitive area for RIF for bargaining unit positions is circuit-wide.</p> <p>h. <u>Competitive Level</u>.</p> <p>3. A competitive level consists of all positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one (1) position could successfully perform the critical elements of any other position upon entry into it, without undue interruption and without any loss of productivity. Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.</p> <p>4. The Agency shall assure that every affected position in the competitive area is</p>	<p>directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		assigned to a competitive level prior to the initiation of the RIF.	
<b>Section 5. Filling of Vacancies</b>	Agency Moves to Strike.	<p>c. The need to apply RIF procedures does not suspend the Agency’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, in accordance with appropriate procedures.</p> <p>d. When the Agency decides to fill a vacant position in the competitive area after the effective date of the RIF, employees who have been separated or demoted by RIF will be offered the vacancy, provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with this Article.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

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<p><b>Section 6. Waivers</b></p>	<p>Agency Moves to Strike.</p>	<p>When the Agency determines to fill vacancies during the RIF process, in order to facilitate placement of affected employees, the Agency may waive all qualifications within its authority to waive, in a position(s) at the same or lower grade, to the maximum extent feasible, when the employee could perform the duties of the position within ninety (90) days.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 7. Employee Notification</b></p>	<p>Agency Moves to Strike.</p>	<p>An individual employee who is adversely affected by actions stated in this Article shall be given a specific notice not less than sixty (60) days prior to the effective date of the action. All such notices shall contain the information required by the Office of Personnel Management (OPM)</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered</p>

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		<p>regulations in addition to the information required by this Article.</p> <p>An employee is entitled to a new notice period of sixty (60) days if the Agency decides to take a more severe action than that specified in the original notice with respect to that employee. New notice is not required when the Agency takes a less severe action than that specified in the original notice.</p>	<p>by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
<p><b>Section 8. Content of Notices</b></p>	<p>Agency Moves to Strike.</p>	<p>The content of the specific notice shall include, at a minimum, the following information:</p> <ul style="list-style-type: none"> <li>a. The specific action to be taken;</li> <li>b. The reasons and plans for the action;</li> <li>c. The proposed effective date of action;</li> <li>d. The employee's competitive area,</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management</p>

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		<p>competitive level, group/subgroup and service computation date, and the three most recent performance ratings of record within the last four years;</p> <p>e. The employee’s assignment rights (e.g., bumping and retreat);</p> <p>f. The place where the employee may inspect the regulations and records pertinent to his/her case and the procedures to be followed;</p> <p>g. The reasons for retaining any lower standing employee in the same competitive level because of a continuing exception;</p> <p>h. The reasons for retaining any lower standing employee in the same competitive level for more than thirty (30) days because of a temporary exception;</p> <p>i. Grade and pay retention information/entitlement, as applicable;</p> <p>j. The employee’s grievance or appeal rights; and</p> <p>k. The employee’s rights, if separated, to</p>	<p>Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		<p>unemployment benefits, severance pay, lump sum payment for all accrued annual leave, eligibility for Interagency Career Transition Assistance Program (ICTAP), and placement on the reemployment priority list, eligibility for discontinued service retirement, and the effect of RIF on life and health insurance coverage. The employee's assignment rights (e.g., bumping and retreat);</p> <p>l. The place where the employee may inspect the regulations and records pertinent to his/her case and the procedures to be followed;</p> <p>m. The reasons for retaining any lower standing employee in the same competitive level because of a continuing exception;</p> <p>n. The reasons for retaining any lower standing employee in the same competitive level for more than thirty (30) days because of a temporary exception;</p>	
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		<ul style="list-style-type: none"> <li>o. Grade and pay retention information/entitlement, as applicable;</li> <li>p. The employee's grievance or appeal rights; and</li> <li>q. The employee's rights, if separated, to unemployment benefits, severance pay, lump sum payment for all accrued annual leave, eligibility for Interagency Career Transition Assistance Program (ICTAP), and placement on the reemployment priority list, eligibility for discontinued service retirement, and the effect of RIF on life and health insurance coverage.</li> </ul>	
<p><b>Section 9. Employee Official Personnel Files</b></p>	<p>Agency Moves to Strike.</p>	<p>The employee and the Union representative, if any, has the right to inspect the employee's OPF and other personnel records, and the retention register and other records pertinent to his/her case, including OPM and Agency regulations.</p> <p>The Union may review any bargaining unit employee's official personnel folder (OPF) and other personnel records, if authorized by the employee in writing, to resolve a complaint or grievance concerning the effect on the employee of an action under this Article.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR</p>

**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		<p>Submission of updated materials shall be accepted no later than thirty (30) days prior to the proposed date for the issuance of RIF notices.</p>	<p>references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 10. Records</b></p>	<p>Agency Moves to Strike.</p>	<p>The Agency will maintain all lists, records, and information pertaining to actions taken under this Article for two (2) years.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already</p>

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			<p>covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
<p><b>Section 11. Retention Registers</b></p>	<p>Agency Moves to Strike.</p>	<p>e. When it appears that a RIF action may be necessary, the Agency shall prepare a retention register for each affected competitive level within the appropriate competitive area(s). The register shall contain the names of employees within the competitive level first by tenure group and then by subgroup.</p> <p>f. Competing employees shall be listed on a retention register on the basis of their tenure of employment, veterans' preference, length of service, and performance in descending order as follows:</p> <p>1. By Tenure Group I, Group II, and Group III.</p> <p>(d) Tenure Group I includes each career employee who is not serving a probationary period. (Title 5 CFR 351.501)</p> <p>(e) Tenure Group II includes each career-condition</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-</p>



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		<p>al employee and each employee serving a probationary period required by Title 5 CFR Part 315, Subpart H. (Title 5 CFR 351.501)</p> <p>(f) Tenure Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of register, status quo appointments, and any other nonstatus nontemporary appointment, as well as appointments which meet the definition of provisional appointments contained in Title 5 CFR § 316.401 &amp; 316.403. (Title 5 CFR 351.501)</p> <p>2. Within each Tenure Group by veteran preference subgroup AD, subgroup A, and subgroup B as contained in Title 5 CFR § 351.501.</p>	<p>Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
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		<p>(d) Subgroup AD includes each veterans' preference eligible employee who has a compensable service connected disability of thirty (30) percent or more.</p> <p>(e) Subgroup A includes each veterans' preference eligible not included in subgroup AD.</p> <p>(f) Subgroup B includes each non-preference eligible employee.</p> <p>3. Within each subgroup by years of service as augmented by credit for performance, beginning with the earliest service computation date.</p> <p>(c) Credit for Performance. The service computation date for RIF purposes shall be adjusted for performance for each competing employee. Additional credit will be given based on a mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (3) annual performance ratings of record, received during the four (4) year period prior to the date of specific reduction-in-force notices, computed on the following basis:</p> <p>(4) Twenty (20) additional years of</p>	
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**REDUCTION-IN-FORCE (RIF) and TRANSFER OF FUNCTION**

		<p>service for each performance rating of outstanding or equivalent;</p> <p>(5) Sixteen (16) additional years of service for each performance rating of superior or equivalent;</p> <p>(6) Twelve (12) additional years of service for each performance rating of fully successful or equivalent.</p> <p>(d) The Agency will establish a cut-off date of at least sixty (60) days prior to the date of the specific RIF notice. After this cut off date, no new annual performance ratings will be put on record and used for RIF purposes. However, all performance appraisals that are due will be prepared to be</p>	
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		<p>considered in the RIF analysis. To be credited under this Section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.</p>	
<b>Section 12. Retention Standing Ties</b>	<p>Agency Moves to Strike.</p>	<p>When two (2) or more employees are tied in retention standing, i.e., two (2) employees in the same subgroup have the same adjusted RIF service computation date; and one (1) or more, but not all, tied employees must be released from the competitive level; the Agency shall break the tie on the basis of:</p> <ul style="list-style-type: none"> <li>a. length of Agency service;</li> <li>b. if a tie remains, government service; then</li> <li>c. if a tie still remains, by random selection.</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the</p>

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			current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 13. Release From Competitive Level</b>	<b>Agency Moves to Strike.</b>	<p>a. When an employee is to be released from his/her competitive level, the Agency will apply Title 5 CFR 351.601, Subpart F and Subpart G, as described below.</p> <p>b. When the Agency selects an employee for release from his/her competitive level it shall:</p> <ol style="list-style-type: none"> <li>1. Offer a position for which the employee is qualified; which shall last at least three (3) months; or</li> <li>2. Furlough him/her; or</li> <li>3. Separate him/her.</li> </ol> <p>c. When a Tenure Group I or II employee has been selected for release from the competitive level, the Agency shall offer to assign him/her to a position for which he/she is qualified in another competitive level, in his/her competitive area which requires no reduction, or the least possible reduction, in representative pay when a position in the other competitive level is held by an employee:</p>	The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.

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		<p>1. In a lower tenure group or in a lower subgroup within the same tenure group AND is no more than three (3) grades or grade intervals below the position from which released; or</p> <p>2. With lower retention standing in the same tenure group AND is not more than three (3) grades or grade intervals below the position from which released (except that for a veteran preference eligible with a compensable service-connected disability of thirty (30) percent or more the limit is five (5) grades or grade intervals AND is the same position or an essentially identical one, previously held by the released employee in a Federal.)</p> <p>d. An employee who is offered a position as a result of an action under this Article in a lower grade position than the previous position, and who is otherwise eligible, shall receive grade and pay retention benefits in accordance with Title 5 U.S.C. 5362 and 5363.</p> <p>e. An employee shall be given five (5) working days in which to accept or reject a reassignment offer made pursuant to this action.</p>	
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		<p>f. When an employee is to be released from his/her competitive level, the Agency will apply Title 5 CFR 351.601, Subpart F and Subpart G, as described below.</p> <p>g. When the Agency selects an employee for release from his/her competitive level it shall:</p> <ol style="list-style-type: none"><li>1. Offer a position for which the employee is qualified; which shall last at least three (3) months; or</li><li>2. Furlough him/her; or</li><li>3. Separate him/her.</li></ol> <p>h. When a Tenure Group I or II employee has been selected for release from the competitive level, the Agency shall offer to assign him/her to a position for which he/she is qualified in another competitive level, in his/her competitive area which requires no reduction, or the least possible reduction, in representative pay when a position in the other competitive level is held by an employee:</p> <ol style="list-style-type: none"><li>3. In a lower tenure group or in a lower subgroup within the same tenure group AND is no more than three (3) grades or grade intervals below the position from which released; or</li></ol>	
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		<p>4. With lower retention standing in the same tenure group AND is not more than three (3) grades or grade intervals below the position from which released (except that for a veteran preference eligible with a compensable service-connected disability of thirty (30) percent or more the limit is five (5) grades or grade intervals AND is the same position or an essentially identical one, previously held by the released employee in a Federal.)</p> <p>i. An employee who is offered a position as a result of an action under this Article in a lower grade position than the previous position, and who is otherwise eligible, shall receive grade and pay retention benefits in accordance with Title 5 U.S.C. 5362 and 5363.</p> <p>j. An employee shall be given five (5) working days in which to accept or reject a reassignment offer made pursuant to this action.</p>	
<p><b>Section 14. Employee Response to Specific Notice</b></p>	<p>Agency Moves to Strike.</p>	<p>Upon receipt of a specific notice that an employee is being offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have fourteen (14) days in which to accept or reject the offer made. If a</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is</p>



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		<p>position with a higher representative rate or grade (but not higher than the rate or grade of the employee’s current position) becomes available on or before the effective date of the RIF, the Agency will make the better offer to the employee, if the Agency is planning to fill the position. However, making the better offer will not extend the sixty (60) day notice period.</p>	<p>already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
<p><b>Section 15. Impact of Details and Temporary Promotion</b></p>	<p>Agency Moves to Strike.</p>	<p>If an employee is released from his/her competitive level during a reduction-in-force, the basis of that action is the employee’s official permanent position, not a position to which the employee is occupying temporarily, e.g., via detail or temporary promotion.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-</p>

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			<p>Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<p><b>Section 16. Transfer of Function</b></p>	<p>Agency Moves to Strike.</p>	<p>In the event of a possible transfer of function, the Agency shall:</p> <ul style="list-style-type: none"> <li>a. Inform employees as fully and as soon as possible of plans for the transfer of function and the governing regulations;</li> <li>b. Notify the employees in writing of the proposed action in sufficient time so that the employees shall be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) days to accept or reject the position offered;</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the</p>

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		<ul style="list-style-type: none"> <li>c. Make every effort to place affected employees in vacant budgeted positions for which they qualify;</li> <li>d. Provide information concerning the right to career transition assistance;</li> <li>e. Counsel employees in individual rights relating to such matters as retirement and severance pay.</li> <li>f. The Agency shall meet with the Union to discuss transfer of function, either by the Agency or any other Government entity, when such transfer of function has been determined to any degree of certainty. Inform employees as fully and as soon as possible of plans for the transfer of function and the governing regulations;</li> <li>g. Notify the employees in writing of the proposed action in sufficient time so that the employees shall be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) days to accept or reject the position offered;</li> <li>h. Make every effort to place affected employees in vacant budgeted positions for which they qualify;</li> <li>i. Provide information concerning the right to career transition assistance;</li> </ul>	<p>Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
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		<p>j. Counsel employees in individual rights relating to such matters as retirement and severance pay.</p> <p>The Agency shall meet with the Union to discuss transfer of function, either by the Agency or any other Government entity, when such transfer of function has been determined to any degree of certainty.</p>	
<p><b>Section 17. Employee Use of Official Time and Agency Facilities</b></p>	<p>Agency Moves to Strike.</p>	<p>Employees who are identified as surplus or displaced under Career Transition regulations shall be entitled to a reasonable amount of official time to make use of the following services:</p> <ul style="list-style-type: none"> <li>a. Prepare, revise, and reproduce job resumes and/or job application forms.</li> <li>b. Participate in employment interviews.</li> <li>c. Review job bulletins, announcements, etc.</li> <li>d. Use the telephone to locate suitable employment.</li> </ul> <p>Reasonable use of facilities and/or services, such as telephone, Agency computers, reproduction equipment, interagency messenger mail, electronic mail, and career counseling is also permitted under career transition regulations.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-</p>

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			Management Agreement, applicable CFR references, statues, and OPM guidelines.
<b>Section 18. Re-promotion Rights of Affected Employees</b>	Agency Moves to Strike.	<p><i>For a period of two (2) years, affected employees demoted by an action covered by this Article are eligible for re-promotion priority, according to the following criteria:</i></p> <ul style="list-style-type: none"> <li>a. The Agency determines to fill the vacancy;</li> <li>b. The employee has the required skills and abilities to perform the position without undue disruption; and</li> <li>c. Another qualified employee does not have higher retention standing.</li> </ul>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

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<p><b>Section 19. Reemployment Priority Rights of Affected Employees</b></p>	<p>Agency Moves to Strike.</p>	<p>Career and career-conditional employees who have received a specific RIF notice and have not declined a valid job offer at a rate lower than the current grade will be entered on the Agency’s Re-promotion Placement Plan (RPP) for the commuting area in which they are qualified and available. Agency components must use the RPP in filling vacancies before otherwise offering employment, in accordance with regulations governing RPP.</p>	<p><i>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</i></p>

## USE OF OFFICIAL FACILITIES

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b><u>Section 1.</u></b> <b><u>General</u></b></p>	<p>The Union's access to and use of the Agency's communication resources shall not interfere with the mission or operation of the Agency.</p>	<p>The Union's access to and use of the Agency's communication resources shall not interfere with the mission or operation of the Agency.</p> <p><b>Any and all Union communications using Agency communication resources or distributed on Agency premises will not violate the law, advocate violating the law, or contain items relating to partisan political matters.</b></p>	<p>The Agency put forward a brief explanation of the use of communications. The Union included language that is covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statutes, and OPM guidelines.</p>
<p><b>Section 3.</b> <b>Use of Bulletin Boards</b></p>	<p>The Agency shall maintain space for a Union bulletin board at each headquarter plant</p>	<p>The Union will be provided bulletin board space in Agency owned or controlled facilities.</p>	<p>The Agency language provides for bulletin space in accordance with limits and the Union's language requires the Agency</p>

## USE OF OFFICIAL FACILITIES

	in accordance with limits imposed on labor organizations engaged in protected activity.	One exclusive bulletin board for union postings will be provided in these locations.	to provide an exclusive bulletin board.
<b>Section 4. Distribution</b>	Union representatives may distribute materials to employees in all facilities where bargaining unit employees work, before and after scheduled working hours. This is subject to internal security requirements, or in the non-work areas during scheduled work hours, provided that both the employee distributing and the employee reading such material are on their own time (breaks, lunch, or off the clock). Distribution of material will not pose an undue disruption of work activities.	Union representatives may distribute material in all facilities where bargaining unit employees work, on Agency-occupied, owned or leased premises in work areas to individual employees before and after scheduled working hours subject to internal security requirements, or in the non-work areas during scheduled work hours, provided that both the employee distributing and the employee reading such material are on their own time (breaks, lunch, or off the clock). Distribution of material will not pose an undue disruption of work activities.	The Agency did not limit the location the Union can distribute materials to bargaining unit employees. The Union's language limits the distribution to only Agency owned and occupied premises and to individual employees.
<b>Section 5. Use of Equipment</b>	At the Agency's Headquarters facility, and other Agency-occupied premises Union representatives shall be afforded access to Agency equipment so long as there is no conflict with the performance of official functions	At the Agency's Headquarters facility, and other Agency-occupied premises Union representatives shall be afforded access to Agency equipment so long as there is no conflict with the performance of official functions and equipment is available. The agency will	The Agency provided language that allowed for the Union to use Agency equipment as long as there is no conflict with official functions. The Union's includes that the Agency to provide filing cabinets, computers, and fax machines at all District offices for the Union Representatives.



## USE OF OFFICIAL FACILITIES

	<p>and equipment is available.</p>	<p>provide a filing cabinet at all District offices for Union Representatives.</p> <p>If available, access to a computer with Internet/Intranet capability shall be provided to members of the Council for official labor-management business. Also, reasonable use of facsimile machines will be allowed for official labor-management business. Meetings space will be provided for the conducting of official labor-management relations business or internal union business provided such use is not conducted on official time</p> <p><b><u>Computers.</u></b> Reasonable access to government computers will be made available to Council and, if available, to Local Presidents for conducting representational activities, provided such use does not disrupt the official business of the Agency.</p> <p><b><u>Faxes and copiers.</u></b> If available at the work site, designated Union representatives will be granted reasonable access to Agency facsimile machines and copiers for the performance of official representational duties.</p>	

## USE OF OFFICIAL FACILITIES

<p><b>Section 8. Meeting Space</b></p>	<p>Agency moves to strike, Agency hosts LM meeting and there is no need to provide space.</p>	<p>Upon request, management officials shall permit the use of government owned or leased space by Union locals for meetings held outside business hours, provided space is available and use of such space does not conflict with the performance of official functions. The Union is responsible for exercising reasonable care in the use of such facilities.</p>	<p>The Agency prefers to streamline the contract by not providing language because the Agency hosts the meeting. The Union prefers to keep and copy the language in the current Labor-Management Agreement.</p>
<p><b>Section 9. Bargaining Unit Employee Information</b></p>	<p>Agency moves to strike</p>	<p>The Agency will provide annually by January 10<sup>th</sup>, to the NJC Chairperson or designee, an electronic list of the names of bargaining unit employees, positions titles, grades, and duty stations of all employees in the bargaining unit.</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## AWARDS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The Parties acknowledge the importance of timely recognition of employees for high quality contributions to the Department and its mission. Recognition and encouragement by the Agency are an important incentive that increases employee job satisfaction and contributes to the overall quality of work performance.</p> <p>FSIS will administer awards in accordance with:</p> <p><i>5 U.S.C. 2301, Merit Systems Principles DR 4040-451-1, USDA Employee Awards and Recognition Program DR 4040-430, Employee Performance Management</i></p>	<p>The Agency and the Union agree and recognize that an Awards Program is a necessary and useful mechanism through which employee accomplishments may be recognized. Non-receipt of an award may not be grieved or arbitrated, except for allegations that the criteria in this Article have not been applied fairly and equitably, or no meritorious reasons such as discrimination. The Agency shall continue to foster and administer awards programs which shall:</p> <ul style="list-style-type: none"> <li>a. Ensure standards and criteria established for making awards are applied consistently and equitably;</li> <li>b. Act promptly on employee contributions so as to encourage maximum employee participation; and</li> <li>c. Identify program or operational areas in which superior work results warrant consideration of employees for awards through performance and other reviews.</li> </ul>	<p>The Agency wishes to maintain concise language in the LMA, however the Union desires to define what the awards program shall do which is an infringement on management's rights to administer the program and the timing of which it is administered.</p>
<p><b>Section 2. Awards Programs</b></p>	<p>c. Management retains their right to exercise discretion to issue or to not issue</p>	<p>a. Performance Awards. Eligibility for awards under this program is based on the individual's performance rating of record. Depending upon the rating and the availability of funds, 1)</p>	<p>Management asserts its rights to develop various awards programs. The Union's language</p>

## AWARDS

	<p>employee awards. It is recognized by the Parties that there are no entitlements to awards, and all awards should be issued in the best interest of the Agency.</p> <p>d. Awards will be granted in a consistent and objective manner without discrimination, and in accordance with applicable laws, rules, and regulations.</p> <p>Awards may include but are not limited to the following: performance awards, quality step increases (QSIs), time off awards, on-the-spot awards, and special act awards to individuals or groups, if they meet the criteria for such an award. Awards must be in accordance with current Department</p>	<p>bargaining unit employees who receive a summary rating of “superior” will receive a cash award; and 2) bargaining unit employees who receive a summary rating of “outstanding” will receive either a cash award or a Quality Step Increase (QSI). Employees involved in current (within the appraisal period) or proposed disciplinary actions may not receive an award. Employees for whom charges are not sustained will receive an award, with interest, retroactively if they otherwise would have received one.</p> <p>b. Superior Accomplishment Awards. Monetary and non-monetary awards are granted to employees for suggestions, inventions, superior accomplishments, productivity gains, or other efforts that contribute to the efficiency, economy, or other improvement of operations or achieve a significant reduction in paperwork. The amount and form of these awards depend upon the value of the employees’ contributions.</p> <p>c. Monetary Awards. These awards are usually processed through the payroll system which will be paid out on or before</p>	<p>encroaches on management’s rights to issue awards at its discretion. There is also descriptions of awards programs that are obsolete or outdated.</p>
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## AWARDS

	<p>policy and applicable laws, rules, and regulations.</p>	<p>pay period 24 of each and every year.</p> <ol style="list-style-type: none"><li>1. Spot Awards. If the award is under a prescribed amount, employees will receive a Spot Award. Spot Awards serve as a more immediate way of rewarding contributions.</li></ol> <p>d. Non-Monetary Award Recognition. Non-Monetary awards may be in the form of:</p> <ol style="list-style-type: none"><li>1. Honorary Awards. This would include certificates, letters, citations, medals, plaques, or other items that have an award or honor connotation.</li><li>2. Informal Recognition Awards. These awards are usually in the form of items that symbolize the employer/employee relationship and are suitable to wear, display, or use in the work environment.</li><li>3. Time-Off Awards. A time-off award is an excused absence, awarded</li></ol>	
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## AWARDS

		<p>in hourly increments, granted to employees, without charge to leave or loss of pay.</p> <p>e. External Awards. The Agency encourages recognition of employees for contributions which benefit the Government and participation in programs sponsored by organizations external to FSIS. These awards can be either monetary or non-monetary. Awards from the regulated industry or their representatives may not be received by employees due to a conflict of interest situation.</p> <p>f. When possible, the supervisor will inform the employee of a monetary award before the employee receives the money.</p> <p>g. Recipients will be given a choice in the type of recognition they receive whenever possible. For example, an employee may select a time-off award in lieu of a monetary award. Once granted, time-off awards cannot be converted to a cash payment (5 CFR 451.104(f)). Also, an employee may be offered the opportunity to select from among several kinds of nonmonetary keepsakes for length-of-</p>	
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## AWARDS

		<p style="text-align: center;">service recognition.</p> <p>h. The Parties recognize that awards to Union officials for performing representational duties are not appropriate. This does not preclude an employee who is from a bargaining unit or Union official from receiving recognition, including cash awards, for special acts or for team involvement in partnership efforts or otherwise contributing to successful collaborative Labor-Management relations, as long as the work being rewarded is nonrepresentational.</p>	
<p><b>Section 3. Statistics</b></p>	<p>The Agency will, on an annual basis, upon request by the Council Chairperson (or designee), provide the Union with information on awards granted to bargaining unit members, including a breakdown by grade level and type of award.</p>	<p>The Agency will, on an annual basis, upon request by the Council Chairperson (or designee), provide the Union with information on awards granted to bargaining unit members, including a breakdown by grade level, district and type of award.</p>	<p>The key difference here is the data being sorted by an added layer of "District".</p>

## CONFLICT OF INTEREST

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>In accordance with Title 5 CFR 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in applicable laws, regulations, and executive orders. The Agency will continue to ensure that all employees are trained on conflict of interest matters for which employees are to be knowledgeable and accountable, in conjunction with providing a copy of the Standards of Ethical Conduct for Employees of the Executive Branch. FSIS as a regulatory Agency is governed by supplemental laws and regulations, and as such, employees are held to a higher ethical standard than other employees of the Executive Branch.</p>	<p>In accordance with Title 5 CFR 2635.101, each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal government, each employee shall respect and adhere to the principles of ethical conduct set forth in applicable laws, regulations <del>and executive orders</del>. The Agency will continue to ensure that all employees are trained on conflict of interest matters for which employees are to be knowledgeable and accountable, in conjunction with providing a copy of the Standards of Ethical Conduct for Employees of the Executive Branch. FSIS as a regulatory</p>	<p>The Union desires to remove the “executive orders” as guidance to employee conduct.</p>
<p><b>Section 2. Applicable Laws, Regulations, and guidance.</b></p>	<p><u>5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch</u></p> <p><u>5 CFR Part 8301, Ethics Guide for U.S. Department of Agriculture Employees</u></p>	<p><del><u>5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch</u></del></p> <p><del><u>5 CFR Part 8301, Ethics Guide for U.S. Department of Agriculture Employees</u></del></p>	<p>The Union desires to remove the guiding applicable Laws, Regulations and Guidance from the Article.</p>



## CONFLICT OF INTEREST

	<p><a href="#">DR 4070-735-001</a>, <a href="#">DR4070-735-001</a>, Employee Responsibilities and Conduct <a href="#">FSIS Directive 4735.9, Rev 2</a>, <a href="#">FSIS Directive 4735.9</a> Office of Field Operations Assignment Restrictions and Rule of Gifts from Industry <a href="#">FSIS Directive 4735.3, Rev 1</a>, <a href="#">FSIS Directive 4735.3</a>, Employee Responsibilities and Conduct <a href="#">USDA Office of Ethics</a>, <a href="http://www.ethics.usda.gov">www.ethics.usda.gov</a></p>	<p><del><a href="#">DR 4070-735-001</a>, <a href="#">DR4070-735-001</a>, Employee Responsibilities and Conduct <a href="#">FSIS Directive 4735.9, Rev 2</a>, <a href="#">FSIS Directive 4735.9</a> Office of Field Operations Assignment Restrictions and Rule of Gifts from Industry <a href="#">FSIS Directive 4735.3, Rev 1</a>, <a href="#">FSIS Directive 4735.3</a>, Employee Responsibilities and Conduct <a href="#">USDA Office of Ethics</a>, <a href="http://www.ethics.usda.gov">www.ethics.usda.gov</a></del></p>	

## FITNESS FOR DUTY

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Scope</b></p>	<p>The Agency shall administer a fitness for duty program in accordance with</p> <p style="background-color: yellow;">INSERT HYPERLINKS</p> <p>5 C.F.R. Part 339 FSIS Directive XXX Medical Standards</p>	<p>An employee may be directed to undergo a fitness for duty examination only under those conditions authorized by this Article. <u>Not all Bargaining Unit Employees have computer access to be able to access any Hyperlink</u></p>	<p>The Agency identifies that the Fitness for Duty program will be administered following the regulations and the Union wants to describe HOW an employee is directed to undergo it. The Union desires to omit the hypelinks.</p>
<p><b>Section 2. Pre-existing Conditions</b></p>	<p>Move to Strike</p>	<p>When there are reasonable grounds to believe that a health problem may be affecting safe and efficient performance, the employee shall be given an opportunity to provide medical evidence documenting the health problem affecting their performance or conduct. The employee will be given an opportunity to voluntarily initiate an application for disability retirement on their own behalf. Fitness for duty is separate from disability retirement</p>	<p>This is covered under the Regulations and Directives and is not needed here.</p>
<p><b>Section 3. Medical Determination</b></p>	<p>Move to Strike</p>	<p>a. If/When the Agency orders or offers a medical examination under the provisions of the prevailing regulations, it shall inform the employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate.</p>	<p>This is covered under the Regulations and Directives and is not needed here.</p>

## FITNESS FOR DUTY

		<p>b. The employee will be afforded administrative time, travel, and all related medical expenses for the ordered examination to be paid by the agency. The agency will provide the employee with the proper documentation to submit at the time of the examination to have all charges sent to the agency's billing department.</p> <p>c. The Agency will offer the employee an opportunity to submit medical documentation from his or her personal physician or practitioner and must review and consider all such documentation. If the employee is in the process of securing documentation from his or her personal physician or practitioner, the employee will be afforded a reasonable time to make an appointment with that physician.</p> <p>d. If the Agency determines documentation establishes the employee is medically fit to remain in the position as provided in 5 C.F.R. Part 339, then</p>	
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## FITNESS FOR DUTY

		<p>the employee will not be referred for further evaluation.</p> <p>e. In the event the employee does not choose to be examined by a personal physician or practitioner, then the Agency shall designate the examining physician.</p> <p>f. The Agency shall provide the examining physician and the employee with a copy of any approved medical evaluation protocol, applicable standards and requirements of the position, and a detailed position description of the duties of the position including critical elements, physical demands, and environmental factors.</p> <p>g. If medical standards are established, they must be justified on the basis that the duties of the position are arduous or hazardous or require a certain level of health status or fitness because the nature of the position. The rationale for establishing the standard must be documented. Standards must be established by written</p>	
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## FITNESS FOR DUTY

		<p>directive and uniformly applied, directly related to the actual requirements of the position, and consistent with OPM instructions published in 5 C.F.R. Part 339.</p> <p>h. A medical standard or physical requirement must be waived when there is enough evidence that an employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.</p> <p>i. A candidate may not be disqualified for any position solely based on medical history. For positions with medical standards or physical requirements, or positions subject to medical evaluation programs, a history of a medical problem may result in medical disqualification only if the condition at issue is itself disqualifying, recurrence cannot medically be ruled out, and the duties of the position are such that a recurrence would pose a reasonable</p>	
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## FITNESS FOR DUTY

		<p>probability of substantial harm.</p> <p>j. The Agency may order a psychiatric examination (including a psychological assessment) only when: 1) the results of a current general medical examination which the Agency has authority to order indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others; or 2) a psychiatric examination is specifically called for in a position having medical standards or subject to a medical evaluation program established under 5 C.F.R. Part 339. A psychiatric examination or psychological assessment must be conducted in accordance with accepted professional standards, by a licensed practitioner or physician authorized to conduct such examination and may only be used to make legitimate inquiry into a person's mental fitness to successfully perform the duties of</p>	
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**FITNESS FOR DUTY**

		<p>his or her position without undue hazard to the individual or others.</p> <p>k. The Agency may require an employee receiving workers' compensation benefits or assigned to other duties (e.g., through the Work Hardening program) because of an on-the-job injury to report for medical evaluation when the Agency has identified an assignment or position (including the employee's regular position) which it reasonably believes the employee can perform.</p> <p>l. All medical examinations ordered or offered pursuant to this Section shall be at no cost to the employee and performed on duty time at no charge to leave. Applicable HIPPA Act and laws will be honored and only necessary information will be shared administratively on a need to know basis.</p>	
<p><b>Section 4. Procedures</b></p>	<p><a href="#">Move to Strike</a></p>	<p>In seeking a fitness-for-duty examination, which may or may not lead to a disability application, the following</p>	<p>This is covered under the Regulations and Directives and is not needed here.</p>

## FITNESS FOR DUTY

		<p>rules and procedures shall apply.</p> <p>a. In all discussions with any management official, the employee shall be entitled to Union representation. Prior to any discussion, the employee shall be notified of this right, given an opportunity to contact and discuss the matter with their Union representative, and permitted the right of representation in such discussion. The discussion will take place in a private location and shall be done a manner that treats the employee with dignity and respect.</p> <p>b. When the results of the medical examination reveal that the employee:</p> <ol style="list-style-type: none"><li>1. Cannot satisfactorily perform useful and efficient service in their regularly assigned job;</li><li>2. Retains the capacity to do other work at the same grade or pay level within the work location or the same commuting area; and</li></ol>	
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**FITNESS FOR DUTY**

		<p>3. Otherwise meets the minimum qualifications for an available position that the Agency seeks to fill; the Agency shall offer the employee(s) a reassignment to a position at the same grade or pay level in the same commuting area.</p>	
<p><b>Section 5. Counseling</b></p>	<p>Move to Strike</p>	<p>a. When the Agency determines that the medical evidence reveals:</p> <ol style="list-style-type: none"> <li>1. The employee is totally disabled for service in their current position, and</li> <li>2. Reasonable accommodation for another position cannot be made, the Agency shall so advise the employee and provide appropriate counseling, including seeking other Federal employment in the area.</li> </ol> <p>b. When a disabled employee meets existing disability retirement requirements, the</p>	<p>This is covered under the Regulations and Directives and is not needed here.</p>

## FITNESS FOR DUTY

		<p>Agency shall counsel the employee concerning disability retirement and explain the procedure for voluntarily applying for disability retirement. If an employee is unable to file on his/her own behalf, the Agency may initiate, with notice to the employee, an application for the employee in accordance with applicable laws and regulations.</p> <p>c. The Agency shall provide the employee, and the employee's Union Representative if represented, proper notice, in accordance with applicable regulations, and shall permit the employee thirty (30) days in which to respond in writing. A copy of the applicable regulations will be provided to the employee.</p> <p>d. If the medical evidence and performance records establish that the employee retains the capacity to perform satisfactorily in a vacant lower grade position which the Agency seeks to fill within the employee's commuting area, the</p>	
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## FITNESS FOR DUTY

		employee will be informed of their option to request such a demotion.	
Section 8. Application of requests	Move to Strike	Application of requests  Bargaining unit employees will not be treated, or given less consideration, because they are unit employees verses non-unit employees. (No double standards)	This does not pertain to this section only but is also found in employee rights.

## GOVERNMENT TRAVEL MANAGEMENT SERVICES

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1: Use of Government Travel Management Services</b></p>	<p>Employees with electronic access will use the electronic travel system (ETS) to make travel arrangements, request travel authorization, and file travel claims for reimbursement as required by federal travel regulations</p>	<p>A. Employees <del>with electronic access</del> will use the electronic travel system (ETS) to make travel arrangements, request travel authorization, and file travel claims for reimbursement as required by federal travel regulations. Employees will use the Electronic Travel System, ETS, to make travel arrangements, request travel authorization, and file travel voucher as required by FTR. Lodging reservations can be made by means (directly to hotels for reservations) other than ETS provided the government rate is met. No outside sources (third party) such as but not limited to Priceline, Kayak, Orbitz or Airbnb, will not be used.</p>	<p>The Agency's language is more concise. The Union adds various parts of procedure.</p>
<p><b>Section 2. Government Credit Cards</b></p>	<p>Federal Travel Regulation (FTR): <a href="#">Federal Travel Regulation (FTR)</a> Agriculture Travel Regulation (ATR): <a href="#">DR 2300-005</a> FSIS Directive 3800.1 TDY: <a href="#">FSIS Directive 3800.1, Rev 2, Amend 14</a> FSIS Directive 3800.2 Use of POV: <a href="#">FSIS Directive 3800.2, Rev 3</a> FSIS Directive 3800.12 Travel Advances: <a href="#">FSIS Directive 3800.12</a> FSIS Directive 3805.1 Travel Authorizations: <a href="#">FSIS Directive 3805.1, Rev 1</a> FSIS Directive 3805.3</p>	<p>Federal Travel Regulation (FTR): <a href="#">Federal Travel Regulation (FTR)</a> Agriculture Travel Regulation (ATR): <a href="#">DR 2300-005</a> FSIS Directive 3800.1 TDY: <a href="#">FSIS Directive 3800.1, Rev 2, Amend 14</a> FSIS Directive 3800.2 Use of POV: <a href="#">FSIS Directive 3800.2, Rev 3</a> FSIS Directive 3800.12 Travel Advances: <a href="#">FSIS Directive 3800.12</a> FSIS Directive 3805.1 Travel Authorizations: <a href="#">FSIS Directive 3805.1, Rev 1</a> <del>FSIS Directive 3805.3</del> <del>Invitational Travel: FSIS Directive 3805.3, Rev 1</del></p>	<p>Three directives are omitted by the Union.</p>

**GOVERNMENT TRAVEL MANAGEMENT SERVICES**

	<p>Invitational Travel: <a href="#">FSIS Directive 3805.3, Rev 1</a>  <a href="#">FSIS Directive 3810.1</a>  Responsibilities of Reviewers and Approvers: <a href="#">FSIS Directive 3810.1</a>  <a href="#">FSIS Directive Travel Vouchers 3810.3: FSIS Directive 3810.3, Rev 1</a>  <a href="#">FSIS Directive 3820.1</a>  Relocation: <a href="#">FSIS Directive 3820.1, Rev 4</a>  <a href="#">FSIS Directive 3830.2</a>  GOVCC: <a href="#">FSIS Directive 3830.2, Rev 5</a>  <a href="#">FSIS Directive 3840.1</a>  Foreign Travel: <a href="#">FSIS Directive 3840.1</a>  <a href="#">FSIS Directive 3850.1</a>  Conferences: <a href="#">FSIS Directive 3850.1</a></p>	<p><del><a href="#">FSIS Directive 3810.1</a></del>  Responsibilities of Reviewers and Approvers: <del><a href="#">FSIS Directive 3810.1</a></del>  <del><a href="#">FSIS Directive Travel Vouchers 3810.3: FSIS Directive 3810.3, Rev 1</a></del>  <a href="#">FSIS Directive 3820.1</a>  Relocation: <a href="#">FSIS Directive 3820.1, Rev 4</a>  <a href="#">FSIS Directive 3830.2</a>  GOVCC: <a href="#">FSIS Directive 3830.2, Rev 5</a>  <a href="#">FSIS Directive 3840.1</a> Foreign Travel: <a href="#">FSIS Directive 3840.1</a>  <a href="#">FSIS Directive 3850.1</a>  Conferences: <a href="#">FSIS Directive 3850.1</a>  The agreement within the official bargaining notes does not waive either party's rights to discuss or bargain on future changes of Department Regulations, Policies or FSIS Directives where there is an obligation by law to bargain.  <u><a href="#">The Union would like to discuss the 3 FSIS Directives that are lined out</a></u></p>	
<p><b>Section 3. Travel Advances</b></p>	<p>At the Agency's election and when operational needs require, the Agency shall provide travel advances to employees. Travel advances are limited to meals and incidentals and other miscellaneous expenses. Travel advances do not include hotel, car rental, and/or airline expenses. In general, employees will not be issued an advance of funds for anticipated</p>	<p><del>At the Agency's election and when operational needs require, the Agency shall provide travel advances to employees. Travel advances are limited to meals and incidentals and other miscellaneous expenses. Travel advances do not include hotel, car rental, and/or airline expenses.</del></p> <p><del>In general, employees will not be issued an advance of funds for anticipated official travel unless there are extenuating</del></p>	<p>The Agency articulates the reasons and uses of advances. The Union omits the majority of the usage of the advanced funds</p>

## GOVERNMENT TRAVEL MANAGEMENT SERVICES

	<p>official travel unless there are extenuating circumstances as determined by an appropriate management official. When an exception to the above rule is granted, any advanced travel funds may be used only to pay reimbursable expenses incurred during official travel and must be repaid as soon as possible by prompt submission of travel voucher(s) for the official travel. Travel advance limitations stipulated in the FTR and ATR must be followed.</p>	<p><del>circumstances as determined by an appropriate management official. When an exception to the above rule is granted, any advanced travel funds may be used only to pay reimbursable expenses incurred during official travel and must be repaid as soon as possible by prompt submission of travel voucher(s) for the official travel.</del></p> <p>An advance of funds for anticipated official travel shall be issued to an employee when, it is considered impractical to issue the employee a Government credit card</p> <p>Advanced travel funds may be used only to pay reimbursable expenses incurred during official travel and must be repaid as soon as possible by prompt submission of travel voucher(s) for the official travel expenses.</p>	
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## HAZARDOUS PAY

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>		<p>The Agency agrees that employees performing hazardous work as defined in 5 CFR Part 550, Subpart I, shall be compensated at the maximum pay differential rate set forth in such regulations. However, hazard pay differential may not be paid to an employee when the hazardous duty or physical hardship has been taken into account in the classification of the position. The Agency further agrees to monitor positions for inclusion in the hazardous pay category and to act promptly and in concert with the Union in processing any requests for inclusion under such pay differential categories.</p>	<p>The Agency believes this proposal is non-negotiable under 5 USC 7106, management's right to assign work.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## HAZARDOUS PAY

<b>Section 2. Union Responsibilities</b>		<p>Should the Union claim that a local work situation warrants consideration for coverage under payable categories, it will provide written notice to the Director, Human Resources Division (HRD), of the title, location, nature of the hazard, and frequency of exposure, to justify payment of hazardous pay differential.</p> <p>Within thirty (30) days of the Union's claim, the Agency will review the situation and determine if the actual circumstances of the specific hazard or physical hardship have changed from that taken into account in the classification, and forward a response to the Union.</p> <p>In the event the Union disagrees with the response of the Agency, a grievance may be filed in accordance with Article --, with the Director, Labor and Employee Relations Division.</p>	
<b>Section 3. Agency Responsibilities</b>		<p>When the Agency determines or proposes that a local work situation is such that it should be included under payable categories, it will notify the Union of the title, locations, and the nature of the hazard to justify payment of hazardous</p>	



## HAZARDOUS PAY

		or physical hardship differential.	
<b>Section 4. Exposure</b>		When employees are assigned work that potentially places their health at risk, the employee will receive Hazardous pay for the time they are in such conditions, such as but not limited to, potential exposure to Brucellosis, Zika Virus, chemical exposure, etc. This provision in no way relieves the Agency of its responsibility to provide employee with a safe healthful working environment.	

## PILOT PROJECTS/DEMONSTRATION PROJECTS

Article/Section	Agency Proposal	Union Proposal	Key Difference
<b>Section 1.</b>		<p>The Parties recognize that innovations and modernization may result in a more efficient operations within the Food Safety Inspection Service. Both parties also agree that there may be different ways of completing various activities which may benefit both parties.</p>	<p>The Agency believes this proposal is non-negotiable under 5 USC 7106, management’s right to assign work.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<b>Section 2.</b>		<p>At least 45 days, prior to implementing any type of new pilot program the Agency will provide written notification to the NJC Chairperson of the Agency’s intent. Written notification will include, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Nature of the pilot program</li> <li>2. Scope of the program</li> </ol>	

**PILOT PROJECTS/DEMONSTRATION PROJECTS**

		<ol style="list-style-type: none"> <li>3. Anticipated duration</li> <li>4. Grades effected</li> <li>5. Locations effected</li> <li>6. Desired outcome of the program</li> <li>7. Any documents, reference material, worksheets, computations, or similar used in the development of the pilot program.</li> </ol> <p>The above list is not all inclusive, nor does it in any way waive, hinder, or restrict the rights of either party.</p>	
<b>Section 3.</b>		In addition to the above, the Union may request a teleconference briefing to discuss the proposed program. During this teleconference, the agency will provide impact and implementation of the program	
<b>Section 4.</b>		If after review of the information provided by the Agency, the Union determines there is a duty to bargain, Mid-Term Bargaining will be conducted in accordance with Article – of this Agreement	

**PILOT PROJECTS/DEMONSTRATION PROJECTS**

<b>Section 5.</b>		If/When Management waives or changes any existing law, rule, regulation, or policy that affects working conditions, Management will give the Union notice and opportunity in accordance with Article –	

## ARBITRATION

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Invoking Arbitration</b></p>	<p>B. The notice to invoke arbitration shall be made in writing to the opposite party within thirty (30) calendar days after receipt of the written decision rendered in the final step of the grievance procedure. Service will be by express/overnight, electronic mail, regular mail, or hand delivery pursuant to Article -- of this Agreement.</p> <p>C. The written arbitration invocation shall clearly state:</p> <ol style="list-style-type: none"> <li>1. The nature of the grievance including relevant facts, names of BUE's or group(s) of individuals impacted and the Article(s) and Section(s) of the LMA alleged to have been violated;</li> <li>2. Any other known violations of law(s), rules or regulations; and</li> <li>3. Corrective actions and requested relief.</li> </ol> <p>D. The written arbitration shall also state whether:</p>	<p>B. The notice to invoke arbitration shall be made in writing to the opposite party within <del>thirty (30) calendar</del> <b>twenty five (25) work</b> days after receipt of the written decision rendered in the final step of the grievance procedure. Service will be by express/overnight, electronic mail, <del>regular mail,</del> <b>USPS, facsimile</b> or hand delivery pursuant to Article - of this Agreement.</p> <p><del>C. The written arbitration invocation shall clearly state:</del></p> <ol style="list-style-type: none"> <li><del>1. The nature of the grievance including relevant facts, names of BUE's or group(s) of individuals impacted and the Article(s) and Section(s) of the LMA alleged to have been violated;</del></li> <li><del>2. Any other known violations of law(s), rules or regulations; and</del></li> <li><del>3. Corrective actions and requested relief.</del></li> </ol> <p>Union proposes to strike section 1.C. as information is included within the</p>	<p>B. Agency proposed a thirty (30) calendar day notice to invoke. Union countered with twenty-five (25) work notice to invoke.</p> <p>Union disagrees with the Agency proposed use of regular mail and proposed use of USPS, facsimile.</p> <p>C. Union move to strike.</p> <p>D. Union removed the word "written" and replaced it with the work "letter"</p>

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		<p style="color: green;">contents of grievance packet</p> <p>D. The <del>written</del> letter <del>invoking</del> arbitration shall also state whether:</p>	
<p><b>Section 2. Arbitrator Appointment – Traditional Arbitration Panels</b></p>	<p>A. The parties shall maintain an existing panel of Arbitrators for each one of the Agency District Offices or similar organizational unit. Each Agency District Office or similar organizational unit shall be comprised of three (3) Arbitrators.</p> <p>B. On the effective date of this Agreement, the total Arbitrators for each Agency District Office or similar organizational unit will be selected and established. Placement of the Arbitrators will be determined to the extent possible based upon the states they are located within the Agency District Office or similar organizational unit, in order to minimize litigation costs. The Arbitrators will be placed per each Agency District Office or similar organizational unit panel in alphabetical order using their last name and selected in turn for the duration of this Agreement. The Agency shall track the order of Arbitrators selected to hear cases</p> <p>C. Once the parties have established the Arbitration Panels, the</p>	<p>A. The parties shall maintain an existing panel of Arbitrators for each one of the Agency District Offices <del>or similar organizational unit</del>. Each Agency District Office <del>or similar organizational unit</del> shall be comprised of <del>three (3)</del> five (5) Arbitrators.</p> <p>B. On the effective date of this Agreement, the total Arbitrators for each Agency District Office <del>or similar organizational unit</del> will be selected and established. Placement of the Arbitrators will be determined to the extent possible based upon the states they are located within the Agency District Office <del>or similar organizational unit</del>, in order to minimize litigation costs. The Arbitrators will be placed per each Agency District Office <del>or similar organizational unit</del> panel in alphabetical order</p>	<p>A. Union moved to strike “or similar organizational unit.” Agency proposed three (3) Arbitrators, Union counter with five (5)</p> <p>B. Union move to strike the use of “or similar organizational unit.”</p> <p>Union move to strike “or similar organizational unit.”</p> <p>Union wants the Agency to provide a copy of the tracking sheet to NJC Chairperson of designee upon request.</p>

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	<p>Agency shall issue written notification to the Arbitrators of their selection to serve on the panels. The Agency shall simultaneously provide a copy of the notification to the Union.</p> <p>E. When an invocation of arbitration is received, the Agency will select an Arbitrator within a reasonable amount of time. not to exceed forty-five (45) calendar days of the date of the invocation.</p> <p>G. If an Arbitrator is not available to hear a case once appointed, he/she shall be passed and not selected again until the time comes for normal selection of that Arbitrator per the established order in the council panel.</p> <p>H. If possible, the Arbitrator shall hear a case within one hundred and twenty (120) calendar days of notification by the Agency of his/her appointment, unless the parties mutually agree otherwise. Should an Arbitrator decline to hear a case within one hundred and twenty (120) calendar days of notification by the Agency of his/her appointment, he/she will be removed from the council panel.</p> <p>I. The parties shall review and replenish the panels annually, during the anniversary of the effective date of the Agreement. At that time, each party may request in writing to remove one Arbitrator from the list, propose the addition of, or jointly</p>	<p>using their last name and selected in turn for the duration of this Agreement. The Agency shall track the order of Arbitrators selected to hear cases and provide the tracking sheet to the NJC Chairperson or designee upon request.</p> <p>C. Once the parties have established the Arbitration Panels, the Agency shall issue written notification to the Arbitrators of their selection to serve on the panels. The Agency shall simultaneously provide a copy of the notification to the <del>Union.</del> NJC Chairperson or designee.</p> <p>E. When an invocation of arbitration is received, the Agency will select an Arbitrator within a reasonable amount of time. <del>- not to exceed forty five (45) calendar days of the date of the invocation.</del></p> <p>G. If an Arbitrator is not available to hear a case once appointed, he/she shall be passed and not selected again until the time comes for normal selection of that Arbitrator per the established</p>	<p>C. Union move to strike "Union" and added "NJC Chairperson or designee."</p> <p>E. Union move to strike "not to exceed forty-five (45) calendar days of the invocation."</p> <p>G. Union move to strike "Council" and replace with "Agency."</p> <p>H. Management and Union disagree on timelines. Management proposed one hundred and twenty (120) days and the Union counter with one (1) year.</p> <p>Union moved to strike Agency language concerning the Arbitrator declining to hear a case, being removed from the list. Union counter with</p>
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	<p>select replacement Arbitrator(s) to replenish the panels.</p> <p>J. The parties may at any time mutually agree in writing to discontinue the service of an Arbitrator on the council panels. The Arbitrator will be notified in writing by the Agency that the parties are discontinuing his/her service. The Agency will simultaneously provide a copy of the notification to the Union. The parties will then select a replacement for any opening as soon as possible or during the anniversary month of the effective date of the Agreement. The parties may seek the services of the FMCS to select new Arbitrators or create a list of proposed names and a striking process to obtain replacements.</p>	<p>order in the <del>council</del> Agency District panel.</p> <p>H. If possible, the Arbitrator shall hear a case within one hundred and twenty (120) calendar days of notification by the Agency of his/her appointment, unless the parties mutually agree otherwise. <del>Should an Arbitrator decline to hear a case within one hundred and twenty day (120) calendar days of notification by the Agency of his/her appointment, he/she will be removed from the council panel.</del> If the arbitrator is unavailable or unable to conduct the hearing within one (1) year from notification of selection, the arbitrator's name shall be placed at the bottom of the agency district office panel.</p> <p>I. The parties shall review and replenish the panels annually, during the anniversary month of the effective date of the Agreement. At that time, each party may request <del>in writing</del> to remove one Arbitrator from each agency district office panel <del>the list,</del> propose the addition of, or and jointly select replacement Arbitrator(s) to replenish the panels. And establish a process to strike and select any cases</p>	<p>he/she will be moved to the bottom of the list.</p> <p>I. Agency proposed "during the anniversary of the effective date." Union added the word "month" after anniversary.</p> <p>Union added a paragraph. The Agency prefers to streamline the contract.</p> <p>J. Union move to strike "council" and counter with "Agency District Office."</p> <p>Union moved to strike "Union" and added " NJC Chairperson or designee."</p> <p>Unions "K" is a part of Managements "H".</p>
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		<p>previously assigned. In addition, the parties may at any time mutually agree to discontinue the service of Arbitrators on the panels and select others to replace them.</p> <p>J. The parties may at any time mutually agree <del>in writing</del> to discontinue the service of <del>an</del> Arbitrators on the <del>council</del> agency district office panels. The Arbitrator will be notified in writing by the Agency that the parties are discontinuing his/her service. The Agency will simultaneously provide a copy of the notification to the <del>Union</del> NJC Chairperson or designee. The parties will then select a replacement for any opening as soon as possible or during the anniversary month of the effective date of the Agreement.</p> <p>K. The parties may seek the services of the FMCS to select new Arbitrators or create a list of proposed names and a striking process to obtain replacements.</p>	
<p><b>Section 3. Arbitrator Appointment – FMCS Process</b></p>	<p>D. Within thirty (30) calendar days of receipt of the FMCS list of impartial individuals qualified to serve as an Arbitrator, either side may contact the other party to conduct striking to select one of the listed Arbitrators.</p>	<p>D. Within <del>thirty (30)-ninety (90) calendar</del> 60 work days of receipt of the FMCS list of impartial individuals qualified to serve as an Arbitrator, either side</p>	<p>D. Union move to strike thirty (30) calendar days and proposed sixty (60) .</p>

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	<p>E. Each party shall strike one Arbitrator from the FMCS list until such time only one Arbitrator remains. The Agency shall maintain a striking log to reflect which party strikes first on each case. The list shall be shared with the Union whenever the FMCS process is used to hear a case.</p> <p>G. The parties agree that in the event that one of the parties refuse to participate in the striking process to select an Arbitrator, the other party may request the FMCS to make a designation and that the FMCS shall be empowered to do so.</p>	<p>may contact the other party to conduct striking to select one of the listed Arbitrators.</p> <p>E. Each party shall strike one Arbitrator from the FMCS list until such time only one Arbitrator remains. The Agency shall maintain a striking log to reflect which party strikes first on each case. <b>The striking order will be provided to the Union Representative along with arbitrator list from FMCS. The striking order-list shall be shared with the Union NJC Chairperson or designee whenever the FMCS process is used to hear a case or upon request.</b></p> <p><del>G. The parties agree that in the event that one of the parties refuses to participate in the striking process to select an Arbitrator, the other party may request the FMCS to make a designation and that the FMCS shall be empowered to do so. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event either party refuses to participate in the selection of</del></p>	<p>E. Union added language requiring the Agency to provide the striking order to the Union Representative, along with the Arbitrator list from FMCS.</p> <p>Union move to strike "list" and added "striking order." Union move to strike "Union" and added "NJC Chairperson or designee" and "or upon request."</p> <p>G. Union move to strike "G." and added language.</p>
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## ARBITRATION

		<p>an Arbitrator or unduly delays such a selection.</p>	
<p><b>Section 4. Arbitration Costs</b></p>	<p>D. <u>Witness Travel Expenses:</u> If travel is necessary for a bargaining unit employee witness approved by the Arbitrator to testify pursuant to Section 7 of this article, the parties agree that travel expenses of such witnesses will be paid in accordance with applicable law.</p> <p>E. <u>Union Representative Travel Expenses:</u> If travel is necessary for a designated Union Representative representing the grievant in the arbitration proceedings, the parties agree that travel expenses will be paid for in accordance with applicable law and shall be limited to one Union Representative.</p> <p>G. <u>Non-Agency Travel Expenses:</u> If travel is necessary for a non-Agency witness(s) approved by the Arbitrator to testify pursuant to Section 7 of this Article, each party will be responsible to cover such travel expenses.</p> <p>H. <u>Cancellation:</u> Unless mutually agreed, if either party wishes to postpone or cancel a hearing, that party shall pay the full costs associated with the postponement /cancellation</p> <p>I. <u>Other Expenses:</u> Unless mutually agreed, each party shall equally bear any other costs</p>		<p>D. Union move to strike “pursuant to Section 7 of this article.” Added “ at agency expense and.”</p> <p>E. Union added that the Union Representative Travel would be paid for by the Agency.” Union move to strike “and shall be limited to one Union Representative.”</p> <p>G. Union move to strike language pertaining to Section 7 of this Article.” Union added language requiring the Agency pay for travel.</p>

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	<p>associated with conducting an arbitration hearing described in the Article.</p>		<p>H. Union move to strike “Unless mutually agreed.” Added “Unless the parties agree otherwise.”</p> <p>I. Union move to strike Agency’s language.</p>
<p><b>Section 5. Participation in Arbitration Proceedings</b></p>	<p>A. The parties agree that official time may be provided for the designated Union Representative to participate in the arbitration process as set forth in Article --.</p> <p>B. The parties agree that bargaining unit employees, including the Grievant and approved witnesses may participate in arbitration hearings in duty status. Participation time shall be limited to witness preparation, any necessary travel, and time spent in the actual hearing. Approved duty time to participate is subject to impact on staffing and Agency operational needs.</p> <p>C. The parties agree to cooperate in scheduling participation in arbitration hearings as described in A and B of this Section in order to minimize disruptions to the workplace and limit the impact on</p>	<p>A. The parties agree that official time <del>may will</del> be provided for the designated Union Representative to participate in the arbitration process as set forth in Article --.</p> <p>B. The parties agree that bargaining unit employees, including the Grievant and approved witnesses <del>may will</del> participate in arbitration hearings in duty status. <del>Participation time shall be limited to witness preparation, any necessary travel, and time spent in the actual hearing. Approved duty time to participate is subject to impact on staffing and Agency operational needs.</del> The agency will approve all</p>	<p>A. Union move to strike the word “May” and added the word “Will.”</p> <p>B. Union move to strike the word “May” and added the word “Will.”</p> <p>Union moved to strike the last paragraph in the Agency’s proposal.</p> <p>Added language requiring the Agency to approve all appropriate time and/or cost if all parties could not be released to participate.</p>

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	<p>Agency staffing and operational needs.</p>	<p>appropriate time associated with arbitration related activities. If the agency determines they cannot release all the parties for arbitration related activities the agency agrees to pay all cost associated with the cancellation or postponement of the hearing. The parties along with the arbitrator will reschedule the hearing.</p> <p>C. <del>The parties agree to cooperate in scheduling participation in arbitration hearings as described in A and B of this Section in order to minimize disruptions to the workplace and limit the impact on Agency staffing and operational needs.</del></p>	<p>Union move to strike Agency's "C".</p>
<p><b>Section 7. Pre-hearing Procedures</b></p>	<p>A. The parties shall engage in a prehearing procedure to promote the prompt and efficient resolution of disputes in arbitration. To this effect, the parties shall conduct a prehearing conference call no later than thirty (30) calendar days prior to the hearing to discuss settlement, witnesses, issues and possible means of expediting the hearing. Either party has the right to request that the Arbitrator attend the prehearing conference call to facilitate resolution of prehearing issues and any disputes.</p>	<p>A. The parties <del>shall</del> may engage in a prehearing procedure to promote the prompt and efficient resolution of disputes in arbitration. To this effect, the parties <del>shall</del> may conduct a prehearing conference call no later than thirty (30) calendar days prior to the hearing to discuss settlement, <del>witnesses</del>, issues and possible means of expediting the hearing. Either party has the right</p>	<p>A. Union move to strike the word "May" and added the word "Will."</p> <p>Union move to strike the word "Witnesses"</p>

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	<p>B. No later than twenty (20) calendar days prior to the hearing date, the parties shall each submit and exchange a written prehearing statement. The prehearing statement will include the proposed issue(s) to be decided by the Arbitrator, proposed witnesses, list of proposed exhibits to be offered at the hearing with copies attached, and proposed stipulations of fact (if any).</p> <p>C. Failure to identify and exchange witnesses and prehearing statements as stated in the sections above may result in the Arbitrator excluding such witnesses and/or evidence from the record except for good cause shown.</p> <p>D. If the parties cannot agree that a witness is necessary, the matter shall be submitted to the Arbitrator, whose decision shall be final and binding. The Arbitrator shall also have the authority to rule on requests by either party to exclude exhibits, evidence or witnesses not relevant and/or material to the issue(s) to be decided.</p>	<p>to request that the Arbitrator attend the prehearing conference call to facilitate resolution of prehearing issues and any disputes.</p> <p><del>B. No later than twenty (20) calendar days prior to the hearing date, the parties shall each submit and exchange a written prehearing statement. The prehearing statement will include the proposed issue(s) to be decided by the Arbitrator, proposed witnesses, list of proposed exhibits to be offered at the hearing with copies attached, and proposed stipulations of fact (if any).</del></p> <p><del>C. Failure to identify and exchange witnesses and prehearing statements as stated in the sections above may result in the Arbitrator excluding such witnesses and/or evidence from the record except for good cause shown.</del></p> <p>D. At least seven (7) ten (10) calendar days prior to the scheduled hearing date, the parties will exchange proposed witness lists. If the parties cannot agree that a witness is necessary, the matter shall be submitted to the Arbitrator, whose decision shall be final and binding. However, either party</p>	<p>B. Union move to strike Agency's "B."</p> <p>C. Union move to strike Agency's "C."</p> <p>D. Union added language concerning exchanging proposed witness list and language concerning the filing of exceptions Union strike the last paragraph of the Agency's proposal.</p>
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		<p>may file an exception to the Arbitrator's award in accordance with applicable law and regulations. The Arbitrator shall also have the authority to rule on requests by either party to exclude exhibits, evidence or witnesses not relevant and/or material to the issue(s) to be decided.</p>	
<p><b>Section 8. Arbitration Procedures and Hearings</b></p>	<p>B. Either party may raise the issue of grievability and /or arbitrability or jurisdiction at any time, including at the hearing. Either party may request to bifurcate the issue of grievability, arbitrability and/or jurisdiction from the merits of the grievance and to submit written briefs addressing such issues prior to the hearing. If a request to bifurcate is granted, the Arbitrator shall render a separate ruling at least seven (7) calendar days prior to the hearing.</p> <p>G. Unless mutually agreed, the parties shall submit written post hearing briefs.</p> <p>H. Either party may request a decision based on written briefs in lieu of a hearing. The Arbitrator shall have the authority to approve a party's request to decide the grievance on the record in lieu of a hearing. Such instances can include</p>	<p>B. Either party <del>may</del> <b>must</b> raise any and all threshold issues <del>the issue of grievability and /or arbitrability or jurisdiction at any time, including at the hearing,</del> at first step of the grievance procedure. Either party may request to bifurcate the issue of grievability, arbitrability and/or jurisdiction from the merits of the grievance and to submit written briefs addressing such issues prior to the hearing. If a request to bifurcate is granted, the Arbitrator shall render a separate ruling at least seven (7) calendar days prior to the hearing.</p> <p><del>G. Unless mutually agreed,</del> the parties <del>shall</del> <b>may</b> submit written post hearing briefs.</p>	<p>B. Union move to strike the word "May" and replace it with "Must." Union added "any and all threshold issues." Union move to language concerning the issue of grievability and added language related to the first step grievance.</p> <p>G. Union move to strike "Unless mutually agreed and shall. Union add "May."</p> <p>H. Union move to strike Agency's language.</p>

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	<p>but are not limited to circumstances when the parties agree on the relevant facts.</p> <p>I. The hearing may be held in person, by phone, videoconferencing or other means of testifying. Either party may submit a written request for such methods to the Arbitrator.</p> <p>J. If the hearing is held in person, it shall be done when possible on Agency premises or other available space during regular work hours of the basic work week at a location within the commuting distance of the aggrieved employee's duty station. In cases where the grievant no longer works at the original duty station, the hearing will be held near the original duty station. The parties agree that the choice of a hearing location should be made with the goal of reducing costs of travel expenses. Nothing in this section prevents the parties from mutually agreeing to a location of the parties' choice or to extend the duration of the hearing proceedings.</p> <p>K. Hearings for institutional grievances as defined in this Agreement shall be held in Washington, DC metropolitan area unless otherwise mutually agreed by the parties. Arbitrators for institutional grievances shall be selected from the Raleigh District or similar organizational unit arbitrator panel.</p> <p>L. Only material and relevant witnesses shall be permitted to testify. In the event either party opposes a witness identified by the other party, the party may request a prehearing ruling as to whether the witness is</p>	<p><del>H. Either party may request a decision based on written briefs in lieu of a hearing. The Arbitrator shall have the authority to approve a party's request to decide the grievance on the record in lieu of a hearing. Such instances can include but are not limited to circumstances when the parties agree on the relevant facts.</del></p> <p><del>I. The hearing may be held in person, by phone, videoconferencing or other means of testifying. Either party may submit a written request for such methods to the Arbitrator.</del></p> <p><del>J. If the hearing is will be held in person, it shall be done when possible on Agency premises or other available space during regular work hours of the basic work week at a location within the commuting distance of the aggrieved employee's duty station. In cases where the grievant no longer works at the original duty station, the hearing will be held near the original duty station. The parties agree that the choice of a hearing location should be made with the goal of reducing costs of travel expenses. Nothing in this section prevents the parties from mutually agreeing to a location of the parties'</del></p>	<p>I. Union move to strike Agency's language.</p> <p>J. Union move to strike the words "If", "is" and added "will be." Union move to strike "language concerning location of the Arbitration.</p> <p>K. Union move to strike "or similar organizational unit." Union added the words "either FMCS or"</p>
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## ARBITRATION

material or relevant by the Arbitrator whose decision shall be final and binding.

choice or to extend the duration of the hearing proceedings.

K. Hearings for institutional grievances as defined in this Agreement shall be held in Washington, DC metropolitan area unless otherwise mutually agreed by the parties. Arbitrators for institutional grievances shall be selected from either FMCS or the Raleigh District ~~or similar organizational unit~~ arbitrator panel.

L. Only material and relevant witnesses shall be permitted to testify. In the event either party opposes a witness identified by the other party, the party may request a prehearing ruling as to whether the witness is material or relevant by the Arbitrator whose decision shall be final and binding. However, either side may file an exception in accordance with applicable laws.

L. Union added  
“However, either side may file an exception in accordance with applicable laws.”

## ARBITRATION

<b>Section 9. Time Limits</b>	<p>A. The parties recognize that the party invoking arbitration is the moving party and as such is responsible for taking reasonable steps to prosecute the case and schedule a hearing. The parties recognize the non-moving party's right to dismiss any pending case if the moving party has failed to take reasonable steps to schedule a hearing within one year, of the date arbitration is invoked. The notification to dismiss pursuant to this section shall be in writing and served in accordance with delivery procedures in this Agreement to the other party with a copy to the Arbitrator.</p>	<p>A. The parties recognize that the party invoking arbitration is the moving party and as such is responsible for taking reasonable steps to prosecute the case and schedule a hearing. The parties recognize the non-moving party's <del>right option to dismiss</del> <del>address</del> any pending case if the moving party has failed to take reasonable steps to schedule a hearing within one year, <del>unless mutual agreed upon, of from</del> the date arbitration is invoked. The notification to dismiss pursuant to this section shall be in writing and served in accordance with delivery procedures in this Agreement to the other party with a copy to the Arbitrator.</p>	<p>Union move to strike "right, dismiss and of." Union added the words "option, address and unless mutually agreed upon from."</p>
<b>Section 10. Expedited Arbitration Procedure</b>	<p>A. <u>Applicability:</u> The party invoking arbitration must make the request for an expedited arbitration at the time the invocation is made per Section 1. Once this method has been agreed upon by the parties, it cannot be changed.</p> <p>C. <u>Hearing Conduct:</u> The parties agree that for the purpose of providing a swift and economical resolution of the dispute the following guidelines apply:</p> <ol style="list-style-type: none"> <li>1. The Arbitrator will be appointed using the traditional Arbitrator Panel described in this Article.</li> </ol>	<p>A. <u>Applicability:</u> The party invoking arbitration must make the request for an expedited arbitration at the time the invocation is made per Section 1. Once this method has been agreed upon by the parties, it cannot be changed.</p> <p>C. <u>Hearing Conduct:</u> The parties agree that for the purpose of providing a swift and economical resolution of the dispute the following guidelines apply:</p>	<p>A. Union move to strike "Applicability"</p> <p>1. Union added "or FMCS."</p>

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	<p>2. Upon mutual agreement of the parties, the Arbitrator may decide the grievance based on the submission of written briefs in lieu of holding a hearing.</p> <p>3. If a hearing is done it shall be scheduled as soon as reasonably possible and conducted via teleconference unless the parties mutually agree otherwise.</p> <p>4. The Arbitrator shall have the authority to streamline the presentation of the evidence, witnesses and to consider the facts and arguments in the most expeditious manner.</p>	<p>1. The Arbitrator will be appointed using the traditional Arbitrator Panel or FMCS described in this Article.</p> <p>2. <del>Upon mutual agreement of the parties, the Arbitrator may decide the grievance based on the submission of written briefs in lieu of holding a hearing.</del></p> <p>3. If a hearing is done it shall be scheduled as soon as reasonably possible <del>and conducted via teleconference unless the parties mutually agree otherwise.</del></p> <p>4. <del>The Arbitrator shall have the authority to streamline the presentation of the evidence, witnesses and to consider the facts and arguments in the most expeditious manner.</del></p>	<p>2. Union move to strike.</p> <p>3. Union move to strike language concerning teleconferences.</p> <p>4. Union move to strike.</p>
<p><b>Section 11. Distribution of awards</b></p>	<p>Agency did not provide a response.</p>	<p>On a quarterly basis, the director of Hearings and Appeals Branch (HAB) will provide the NJC Chairperson or designee, copies of all arbitrational awards that have been ruled on.</p>	<p>Agency did not counter.</p>

## GRIEVANCE PROCEDURE

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Purpose</b></p>	<p>This negotiated grievance procedure shall be the exclusive procedure available to the parties to this Agreement and bargaining unit employees for resolving grievances as hereinafter defined except as specifically provided in Section 2 of this Article.</p> <p>When the Union is representing the employee(s), it may present the grievance with or without the employee being present. No employee(s) representative other than the Union will be recognized under these procedures.</p> <p>In accordance with Section 5, grievance responses shall be transmitted to the grievant. The Agency shall provide the Union representative with information in accordance with statutory requirements.</p>	<p><del>The purpose of this Article is to provide a fair and mutually acceptable method for the prompt and equitable settlement of grievances filed by an employee(s), the Union or the Agency.</del> This negotiated grievance procedure shall be the exclusive procedure available to the parties to this Agreement and bargaining unit employees for resolving grievances <del>as hereinafter defined except as specifically provided in Section 2 of this Article.</del> The Agency and the Union agree that every effort may be made by management and the aggrieved party(s) to settle grievances at the lowest possible level. The parties to the Agreement and employees shall maintain a healthy atmosphere in which parties can speak freely and have frank and professional discussions of problems.</p> <p><del>When the Union is representing the employee(s), it</del> may present the grievance with or without the employee being present. No employee(s) representative other than the Union will be recognized under these procedures.</p> <p>The Union shall be given a reasonable amount of official time, which does not count against the official time bank, to gather relevant facts, prepare, and present grievances for the purpose of representing employees in the negotiated grievance and arbitration procedures.</p>	<p>Union moved to strike Paragraph 1.</p> <p>Union moved to strike “as hereinafter defined except as specifically provided in Section 2 of this Article” and added language pertaining to the settlement of grievances.</p> <p>Union moved to strike “When, is representing the employee(s), it.”</p> <p>Union added language pertaining to official time.</p>

## GRIEVANCE PROCEDURE

		<p>In accordance with <del>Section 5</del> this Article, grievance response(s) <del>shall be transmitted to the grievant</del> as well as the grievance and all supporting documentation, shall be sent simultaneously to the grievant and the grievant's designated representative. The Agency shall provide the Union representative with information in accordance with statutory requirements and contractual requirements.</p>	<p>Union moved to strike "Section 5" and shall be transmitted to the grievant." The Union added language pertaining to supporting documentation and contractual requirements."</p>
<p><b>Section 2. Definitions</b></p>	<p>a. Grievance Procedure Coverage. Except where established by law, rule, regulation, or excluded by the terms of this Agreement, this procedure shall be the exclusive procedure available to the parties to this Agreement, and the employees in the unit for resolving grievances subject to this procedure. Grievances excluded from consideration under this article include:</p> <ol style="list-style-type: none"> <li>1. Any claimed violation relating to prohibited political activities;</li> <li>2. Any complaint concerning retirement, life insurance,</li> </ol>	<p>a. Grievance Procedure Coverage. Except where established by law, rule, regulation, or excluded by the terms of this Agreement, this procedure shall be the exclusive procedure available to the parties to this Agreement, and the employees in the unit for resolving grievances subject to this procedure. <del>Grievances excluded from consideration under this article include:</del></p> <ol style="list-style-type: none"> <li>1. <del>Any claimed violation relating to prohibited political activities;</del></li> <li>2. <del>Any complaint concerning retirement, life insurance, or health insurance;</del></li> <li>3. <del>Any suspension or removal for national security</del></li> </ol>	<p>Union moved to strike the 1 through 9 of a.</p>

## GRIEVANCE PROCEDURE

	<p>or health insurance;</p> <p>3. Any suspension or removal for national security reasons;</p> <p>4. Any examination, certification, or appointment, including the removal of a probationary employee during his/her probationary period;</p> <p>5. The classification of any position which does not result in the reduction in grade or pay of an employee;</p> <p>6. Notices of proposed disciplinary and adverse actions, furloughs, or removals.</p> <p>7. Appealable adverse and performance-based actions;</p>	<p>reasons;</p> <p><del>4. Any examination, certification, or appointment, including the removal of a probationary employee during his/her probationary period;</del></p> <p><del>5. The classification of any position which does not result in the reduction in grade or pay of an employee;</del></p> <p><del>6. Notices of proposed disciplinary and adverse actions, furloughs, or removals.</del></p> <p><del>7. Appealable adverse and performance-based actions;</del></p> <p><del>8. Performance progress reviews and final ratings;</del></p> <p><del>9. Non-selection from a group of properly ranked and certified candidates, provide another grievable issue(s) is not also alleged, e.g. illegal</del></p>	
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## GRIEVANCE PROCEDURE

	<p>8. Performance progress reviews and final ratings;</p> <p>9. Non-selection from a group of properly ranked and certified candidates, provide another grievable issue(s) is not also alleged, e.g. illegal discrimination</p> <p>Terminology:</p> <p>1. Accept: The grievance meets all contractual requirements for filing.</p> <p>2. Reject: The grievance fails in one or more respects to meet the contractual requirements for filing. The reason for the rejection will be stated in the response rejecting the grievance.</p>	<p style="text-align: center;"><del>discrimination</del></p> <p>b. Terminology: The party responding will use at least one of the terms below:</p> <p>1. Accept: The grievance meets all contractual requirements for filing.</p> <p>2. Reject: The grievance fails in one or more respects to meet the contractual requirements for filing. The reason for the rejection will be stated in the response rejecting the grievance.</p> <p>3. Deny: The decision concludes that the evidence does not support the allegations put forth in the grievance in whole or in part. The reason for the denial will be stated in the grievance response.</p> <p>4. Sustain: The grievance review concludes that the evidence supports the grievance in whole or in part.</p> <p>5. Return: A grievance timely filed by an employee on his/her own behalf may be returned to the employee for clarification where the responding official</p>	<p>Union added language.</p> <p>Agency and Union agree with (b) 1 through 5.</p>
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## GRIEVANCE PROCEDURE

	<p>3. Deny: The decision concludes that the evidence does not support the allegations put forth in the grievance in whole or in part. The reason for the denial will be stated in the grievance response.</p> <p>4. Sustain: The grievance review concludes that the evidence supports the grievance in whole or in part.</p> <p>5. Return: A grievance timely filed by an employee on his/her own behalf may be returned to the employee for clarification where the responding official determines further clarification is needed to respond to the</p>	<p>determines further clarification is needed to respond to the grievance. Such a grievant will be granted up to three (3) business days, as determined by the responding official, to submit the requested clarification.</p> <p>6. Remand: A grievance may be remanded back to the grievant or individual that submitted the grievance for more specific information. If remanded, an extension may be granted by mutual agreement.</p> <p>c. For the purposes of this Article, a grievance means any complaint:</p> <ol style="list-style-type: none"> <li>1. by any unit employee concerning any matter relating to the employment of the employee;</li> <li>2. by the Union concerning any matter relating to the employment of the employees; or</li> <li>3. by any employee, the Union, or the Agency concerning:             <ol style="list-style-type: none"> <li>(a) The effect of interpretation, or claim of breach of</li> </ol> </li> </ol>	<p>Union added #6 – pertaining to “Remand.”</p>
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## GRIEVANCE PROCEDURE

	<p style="text-align: center;">grievance. Such a grievant will be granted up to three (3) business days, as determined by the responding official, to submit the requested clarification.</p>	<p style="text-align: center;">this exclusive bargaining agreement; or</p> <p style="text-align: center;">(b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.</p>	
<p><b>Section 3. Appeal and Grievance Options</b></p>	<p>a. An employee affected by a removal or reduction in grade, based on adverse action (5 U.S.C., Chapter 75) or unacceptable performance (5 U.S.C., Chapter 43) may at his or her option raise the matter under a statutory appellate procedure. For the purpose of this section and pursuant to Title 5, U.S.C., Chapter 71, Section 7121 of the Statute, an employee shall be deemed to have exercised his or her option to raise a matter under the aforementioned appellate procedures when the employee files a notice of appeal.</p>	<p>a. An employee affected by a removal or reduction in grade, based on adverse action (5 U.S.C., Chapter 75) or unacceptable performance (5 U.S.C., Chapter 43) may at his or her option raise the matter under a statutory appellate procedure <b>or the negotiated grievance procedure, but not both.</b> For the purpose of this section and pursuant to Title 5, U.S.C., Chapter 71, Section 7121 of the Statute, an employee shall be deemed to have exercised his or her option to raise a matter under the aforementioned appellate procedures <b>or under the negotiated grievance procedure</b> when the employee files a notice of</p>	<p>Union added language pertaining to employees filing under statutory appellate.</p>

## GRIEVANCE PROCEDURE

		<p>appeal under the appellate procedures or files a grievance in writing under the negotiated grievance procedure, whichever occurs first.</p> <p>b. An employee affected by a prohibited personnel practice may raise the matter under a statutory procedure (Office of the Special Counsel or Merit System Protection Board) or the negotiated grievance procedure, but not both. Employees shall be deemed to have exercised their option at such time as they file a grievance in writing or initiate formal action under the appellate procedure within prescribed time frame(s).</p>	<p>Union added (b) language pertaining to employees affected by prohibited personnel.</p>
<p><b>Section 4. Contents of Grievances</b></p>	<p>At each step of the grievance procedure, grievances must state the nature of the grievance, any known violations of law(s), rule(s), regulation(s), or article(s) and section(s) of this Agreement, all relevant facts known at the time, and the corrective action(s) requested (relief).</p> <p>If the deciding official at any step believes the grievance lacks sufficient information to decide the allegations, or is otherwise</p>	<p><del>At each step of</del> Under the grievance procedure, grievances must state the nature of the grievance, any known violations of law(s), rule(s), regulation(s), or article(s) and section(s) of this Agreement, all relevant facts known at the time, and the corrective action(s) requested (relief).</p> <p>If the deciding official <del>at any step</del> believes the grievance lacks sufficient information to decide the allegations, <del>or is otherwise</del></p>	<p>Union moved to strike “At each step of and added Under.”</p> <p>Union moved to strike “at any step.”</p>

## GRIEVANCE PROCEDURE

	<p>deficient, he/she will reject or return the grievance as defined in Section 2. In that case, the grievant is free to submit the grievance to the next step of the procedure. Grievances must be signed by the grievant(s) or the Union representative filing the grievance.</p> <p>For the purpose of this Article, grievant is defined as the aggrieved employee and not the Union.</p>	<p><del>deficient, he/she will remand-reject or return the grievance to the grievant and the Union Representative. as defined in Section 2.</del></p> <p><del>In that case, the grievant is free to submit the grievance to the next step of the procedure. Grievances must be signed by the grievant(s) or the Union representative filing the grievance. filing party.</del></p> <p><del>For the purpose of this Article, grievant is defined as the aggrieved employee and not the Union.</del></p>	<p>Union moved to strike “or is otherwise deficient, reject or return as defined in Section 2.” Union added “will remand the grievance to the grievant and the Union Representative.</p> <p>Union moved to strike the Agency’s language and added “filing party.”</p> <p>Union moved to strike language.</p>
<p><b>Section 6. Grievability/Arbitrability</b></p>	<p>In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue, which will become a threshold issue in arbitration.</p> <p>Either party may raise any question of grievability or arbitrability of a grievance at any time during the grievance procedure or arbitration process and provide notice to the other party.</p>	<p><del>In the event either party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue, which will become a threshold issue in arbitration.</del></p> <p><del>Either party may will raise any question(s) of grievability or arbitrability threshold issues of a grievance at any time at the First Step during of the grievance procedure. or arbitration process and provide notice to the other party.</del></p>	<p>Union moved to strike Agency’s language.</p> <p>Union moved to strike the majority of the Agency’s language and added “will” “t the First Step.”</p>
<p><b>Section 7. Back Pay, Discipline/Adv</b></p>	<p>The LERD Director or designee will either respond to the grievance or refer it to the</p>	<p>If a grievance involves back pay, discipline/adverse actions (or) disciplinary actions, and conflict</p>	<p>Agency and Union disagree on language Agency proposed twenty (2) workdays, Union</p>

## GRIEVANCE PROCEDURE

<p><b>erse Actions, Conflict of Interest, and Hazardous Pay</b></p>	<p>appropriate official for response. The LERD Director or designee shall respond within twenty (20) workdays after receipt of the grievance from the employee, or designee. If referred, the time frame to respond is extended by up to 3 work days. If the grievant(s) remains dissatisfied following the second step response, the grievance may be pursued to arbitration in accordance with the provisions identified in the Arbitration section.</p>	<p>of interest determinations, it shall be sent to the LERD Director, or designee within <del>fifteen (15) forty five (45)</del> 30 calendar days after the date of the event or the date that the Agency or Union became aware <del>or should have known</del> of the action which form the basis for the grievance by <del>emailing to LERD@usda.gov</del>. Should the Agency <del>email</del> address change, the Union shall be provided timely notice.</p> <p style="text-align: center;"><b>1400 Independence Ave., SW, Room 3150 Mailstop 3730 Washington, DC 20250</b></p> <p>The LERD Director or designee will either respond to the grievance or refer it to the appropriate official for response. The LERD Director or designee shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. <del>If referred, the time frame to respond is extended by up to 3 work days.</del> If the grievant(s) remains dissatisfied <del>following the second step response</del>, the grievance may be pursued to arbitration in accordance with the provisions identified in the Arbitration section.</p>	<p>counter with thirty (30) calendar days.</p> <p>Union moved to strike “or should have known.”</p> <p>Union moved to strike the use of email.</p> <p>Union moved to strike language pertaining to the use of extended to response due to the grievance being referred.</p>
<p><b>Section 8. Union/Agency</b></p>	<p>Grievances must be filed within fifteen (15) calendar days after the date of the event</p>	<p>Grievances must be filed within <del>fifteen (15) forty five (45)</del> 30 calendar days after the date of</p>	<p>Union moved to strike fifteen (15) calendar days and</p>

## GRIEVANCE PROCEDURE

<p><b>(Institutional) Grievances</b></p>	<p>or the date that the Agency or Union became aware or should have known of the actions which form the basis for the grievance. The grievance shall be filed using the attached grievance form at the end of this article, or an equivalent in writing.</p> <p>The Director, Labor and Employee Relations Division, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Council Chairperson, or designee. The Council Chairperson, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Director, Labor and Employee Relations Division, or designee.</p>	<p>the event or the date that the Agency or Union became aware <del>or should have known</del> of the actions which form the basis for the grievance. The grievance shall be filed using the attached grievance form at the end of this article, or an equivalent in writing.</p> <p>The Director, Labor and Employee Relations Division, or designee, shall respond within <del>twenty (20)</del> thirty (30) workdays after receipt of the grievance from the Council Chairperson, or designee. The Council Chairperson, or designee, shall respond within twenty (20) workdays after receipt of the grievance from the Director, Labor and Employee Relations Division, or designee.</p>	<p>counter with thirty (30) calendar days.</p> <p>Union moved to strike “or should have known.”</p> <p>Union moved to strike twenty (20) workdays and counter with thirty (30) workdays.</p>
<p><b>Section 9. Service and Time Limits</b></p>	<p>All time limits stated in the grievance procedure may be extended by written mutual</p>	<p>All time limits stated in the grievance procedure may be extended by written mutual consent of the parties involved. Service will</p>	

## GRIEVANCE PROCEDURE

	consent of the parties involved. Service will be by electronic mail, express/overnight mail, or hand delivery.	be by <del>electronic mail</del> , Personal delivery, US Mail facsimile, or by other recognized express/overnight mail, <del>or hand delivery service</del>	Union moved to strike "electronic mail and or hand delivery service."
<b>Section 10. Distribution of grievances and responses</b>	Agency did not provide a response.	On a quarterly basis, the director of LERD will provide the NJC Chairperson or designee, copies of all grievances and responses to grievances that have been filed.	Union added Section 10, Agency did not counter.
<b>Section 11. Numbering system</b>	Agency did not provide a response.	The appropriate district office will apply the number and identification to the grievance upon receipt. These numbers are to be sequential and in the order the grievance is received. This will aid in the responses of the grievances. Example: FY-District-XXX eg. 20-Denver-001	Union added Section 11, Agency did not counter.

## USE OF AGENCY EQUIPMENT AND RESOURCES

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>This section was not labeled.</b></p>	<p>Agency-owned or leased equipment and resources include, but are not limited to, all electronic devices and associated systems as well as any systems or equipment, such as network, telecommunications, video or audio transmissions, duplication/printing and storage equipment and tools. The Parties recognize that the Agency uses approved electronic systems that contain sensitive information to accomplish its mission and that the Agency has a responsibility to ensure the security and protection of designated sensitive information. The Parties also recognize the importance of securing equipment in order to deter theft. As such, all employees are expected to follow applicable laws, rules, regulations, Departmental Regulations and FSIS policies policy pertaining to security. As such use of Agency equipment and shall be governed by the following:</p> <p>5 U.S.C. § 7106</p>	<p>Agency-owned or leased equipment and resources include, but are not limited to, all electronic devices and associated systems as well as any systems or equipment, such as network, telecommunications, video or audio transmissions, duplication/printing and storage equipment and tools. The Parties recognize that the Agency uses approved electronic systems that contain sensitive information to accomplish its mission and that the Agency has a responsibility to ensure the security and protection of designated sensitive information. <del>The Parties also recognize the importance of securing equipment in order to deter theft. As such, all employees are expected to follow applicable laws, rules, regulations, Departmental Regulations and FSIS policies policy pertaining to security. As such use of Agency equipment and shall be governed by the following:</del></p> <p><del>5 U.S.C. § 7106</del>  <del>DR 3300-001</del>  <del>Telecommunications and Internet Services and Use</del>  <del>DR 4070-735-001 Employees Responsibilities and Conduct</del>  <del>FSIS Directive 1300.4 Access to Electronic and Information Technology Systems</del></p>	<p>The Key difference in this section is the Union removes the responsibility of the employee to secure their accountable equipment. Additionally the desire to remove the Regulation and Directive identifiers that guide usage of such equipment.</p>

**USE OF AGENCY EQUIPMENT AND RESOURCES**

	<p><u>DR-3300-001</u> Telecommunications and Internet Services and Use <u>DR-4070-735-001</u> Employees Responsibilities and Conduct <u>FSIS Directive 1300.4</u> Access to Electronic and Information Technology Systems <u>FSIS Directive 1300.7</u> Managing Information Technology (IT) Resources</p>	<p><del>FSIS Directive 1300.7</del> <del>Managing Information Technology (IT) Resources</del></p>	
	<p>5. All e-mail communications to groups of employees that are subject to approval prior to distribution and have not been approved by the Agency (e.g., retirement announcements, Union notices or announcements, charitable solicitations, etc.).</p>	<p><del>5.— All e-mail communications to groups of employees that are subject to approval prior to distribution and have not been approved by the Agency (e.g., retirement announcements, Union notices or announcements, charitable solicitations, etc.).</del></p>	<p>This removes the approval needed to seen mass email.</p>
<p><b>Section 5. Digital signature</b></p>	<p>For those Union officials who desire to use a digital signature, the agency shall furnish the ability to do so and will pay the full cost.</p>	<p><del>For those Union officials who desire to use a digital signature, the agency shall furnish the ability to do so and will pay the full cost.</del></p>	<p>This is already provided for those who have a PIV/CAC card.</p>



**WORK PERFORMED at PRISON/CORRECTIONAL FACILITIES**

Article/Section	Agency Proposal	Union Proposal	Key Difference
<b>Section 1.</b>		<p>In Official establishments where inmate labor is used (such as prisons, correctional facilities, etc.) all employees will be oriented to correctional facility labor programs. Such programs will include, at minimum, entry/exit procedures, daily security screenings (as applicable), appropriate donning &amp; doffing measurements, emergency lock down/safety procedures, and any additional materials/information associated with working in a correctional facility.</p>	<p>The Agency believes this proposal is non-negotiable under 5 USC 7106, management’s right to assign work.</p> <p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>
<b>Section 2.</b>		<p>It is recognized by both Parties that providing regulatory oversight and enforcement in correctional facility is inherently dangerous and because of that inherent danger, the following conditions are agreed to:</p> <p>(A) The Agency agrees, that due to the hazardous nature of working in a correctional facility, that Bargaining Unit Employees assigned to these establishments will be graded as GS-10’s.</p>	

**WORK PERFORMED at PRISON/CORRECTIONAL FACILITIES**

		<p>(B) The parties further agree that Bargaining Unit Employees that are assigned these types of establishments on a rotational basis, will receive hazard pay for the duration of the time that they are assigned there.</p>	
<p><b>Section 3.</b></p>		<p>Prior to being assigned to these types of establishments, BUE's will be provided, in writing, the "do's and don'ts" of working in prisons/correctional facilities.</p> <p>Additionally, these same guidelines will be posted in the USDA office for all BUE's to review.</p> <p>In situations where BUEs have not been assigned to prisons/correctional facilities for a period of time, they will be provided reasonable time to review the guidance material referenced above.</p> <p>Upon request from a BUE reasonable time will be provided to review all reference material.</p> <p>Regardless of duration, working in prisons/correctional facilities will only be done by properly trained employees.</p>	

## WORKER'S COMPENSATION and EMPLOYEE ASSISTANCE PROGRAM

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. References</b></p>	<p>The following references provide USDA and Agency policies pertaining to the Workers' Compensation Program (WC):</p> <ul style="list-style-type: none"> <li>• <a href="#">DR 4430-003, Workers' Compensation Program</a></li> <li>• <a href="#">DR 4430-005, Workers' Compensation Program: Return to Work</a></li> <li>• <a href="#">FSIS Directive 4810.1, Rev 3, On-the-Job Injury and Illness Compensation Program</a></li> <li>• FSIS Supervisory Guide to Worker's Compensation, published</li> </ul> <p>The following references provide USDA and Agency policies pertaining to the Employee Assistance Program (EAP):</p> <ul style="list-style-type: none"> <li>• <a href="#">DR 4430-792-1, Employee Assistance Program</a></li> <li>• Federal Occupational Health (FOH) Website – <a href="http://www.foh4you.com/">http://www.foh4you.com/</a></li> </ul>	<p style="color: green;">When changes are discovered by either party, this agreement does not wave either parties rights to discuss or bargain to the fullest extent of the law the changes of the Department Regulations/Policies or FSIS Directives</p> <p>The following references provide USDA and Agency policies pertaining to the Workers' Compensation Program (WC):</p> <ul style="list-style-type: none"> <li>• <a href="#">DR 4430-003, Workers' Compensation Program</a></li> <li>• <a href="#">DR 4430-005, Workers' Compensation Program: Return to Work</a></li> <li>• <a href="#">FSIS Directive 4810.1, Rev 3, On-the-Job Injury and Illness Compensation Program</a></li> <li>• FSIS Supervisory Guide to Worker's Compensation, published</li> </ul> <p>The following references provide USDA and Agency policies pertaining to the Employee Assistance Program (EAP):</p> <ul style="list-style-type: none"> <li>• <a href="#">DR 4430-792-1, Employee Assistance Program</a></li> <li>• Federal Occupational Health (FOH) Website – <a href="http://www.foh4you.com/">http://www.foh4you.com/</a></li> </ul>	<p>Union moved to add language referencing either parties right to bargain.</p>

**WORKER’S COMPENSATION and EMPLOYEE ASSISTANCE PROGRAM**

<p><b>Section 2. Policy</b></p>	<p>The Agency will make available to all employees the applicable forms for filing claims for compensation due to work-related injuries and illnesses and will provide guidance to claimants through the appropriate Workers’ Compensation Technician.</p>	<p><b>In accordance with current practices,</b> The Agency will make available to all employees the applicable forms for filing claims for compensation due to work-related injuries and illnesses and will provide guidance to claimants through the appropriate Workers’ Compensation Technician.</p>	<p>Union added “In accordance with current practices.”</p> <p>The Union is in belief that the agency agreed to this new language in 2<sup>nd</sup> paragraph</p>
<p><b>Section 4. Employee Assistance Program Services</b></p>	<p>a. Employee Assistance Program</p> <p><u><a href="#">DR 4430-792-1, Employee Assistance Program</a></u></p>	<p>a. Employee Assistance Program</p> <p><u><a href="#">DR 4430-792-1, Employee Assistance Program dated March 12, 2012</a></u></p> <p><b><u>Union moves to stike a, as it is in Section 1 7-9-2020</u></b></p> <p>b. <del>Employees undergoing evaluation, or a prescribed program of treatment(s) shall be granted sick leave (including advanced sick leave), annual leave (including advanced annual leave), leave without pay for this purpose on the same basis as for any other illness when absence from work is necessary. The Agency may also approve administrative leave for</del></p>	<p>a. Union moved to strike.</p> <p>Union moved to strike Agency language and added language concerning the agency approving administrative for EAP reasons.</p>

**WORKER’S COMPENSATION and EMPLOYEE ASSISTANCE PROGRAM**

		<p>EAP reasons: however, there is no entitlement to administrative leave. Employees are also eligible for entitlements under the Family and Medical Leave Act on the same basis as for any illness when absence <del>for</del> from work is necessary. If an employee informs the immediate supervisor or designee that leave is requested for the above reason, that supervisor or designee shall assist the employee in working out an appropriate schedule for taking leave.</p>	
<b>Section 5. Confidentiality</b>	Agency will strike	<p><b>The parties recognize that all confidential information and records concerning employee counseling and treatment shall be maintained and used in accordance with applicable rule and regulations. No information about an employee can be used in any action by the Agency against the employee, without the employee’s consent, if the information was obtained under this Article. The agency will not initiate contacts with EAP counselors or treatment providers for the purpose of obtaining information about the employee.</b></p>	Agency move to strike.

## OFFICIAL TRAVEL

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p><b>Section 1. Policy</b></p> <p>Pursuant to 5 U.S.C., Section 7106(a), the Agency has the management right to make assignments involving travel.</p> <p>Employees are entitled to reimbursement for expenses incurred in official travel in accordance with applicable laws, rules, and regulations regarding travel and compensation while in travel status.</p> <p>Federal Travel Regulations (FTR)  <a href="#">DR 2300-005, Agriculture Travel Regulation</a>  <a href="#">FSIS Directive 3800.1, Temporary Duty Travel Within CONUS</a>  <a href="#">FSIS Directive 3800.2, Reimbursement for Use of Privately-Owned Vehicles</a></p> <p>The Agency will provide sufficient information to inform the employee of the position being assigned and duration of assignment.</p>	<p>Section 1 Policy</p> <p>Pursuant to 5 U.S.C., Section 7106(a), the Agency has the <del>management</del> right to make assignments involving travel. <del>With recognition of Management Right's it is also-is known the Union has rights pursuant to 5 U.S.C Section 7114.</del></p> <p>Employees may be excused from assignments involving official travel when they are medically incapacitated for duty, have a personal emergency or hardship such that leave from duty is approved, or arrange for a substitute traveler who is acceptable to the supervisor at no additional cost to the Agency. <del>To the maximum extent practicable,</del> an employee's assigned duty involving official travel away from their duty station shall be provided written travel instructions. This notice shall state the reason for the travel, departure and anticipated return dates, type and mode of travel, T&amp;A transaction codes, and starting time of the assignment(s), physical address of the facilities, travel authorization code, name and contact information of the reporting supervisor. <del>When not possible to provide written instructions prior to start of the assignment, the written instructions will be provided as soon as possible thereafter.</del></p> <p>Employees will not be required to travel on an official Holiday unless there is an emergency that</p>	<p>Management is asserting its rights to assign work (travel). Adding a caveat of Union's rights has not bearing on management's rights. There is no need to add provisions how to be excluded from travel when these are covered in other areas and directives, i.e. OWCP, RA etc.</p>

**OFFICIAL TRAVEL**

		requires such travel.	
<b>Section 2. Time Spent in a Travel Status for Travel Compensatory Time Off</b>	Employee eligibility for compensatory time for travel is governed by the Federal Workforce Flexibility Act of 2004 (appendix to this Agreement) and any subsequent revisions effectuated throughout the terms of this Agreement.	Employee eligibility for compensatory time for travel is governed by the Federal Workforce Flexibility Act of 2004 (appendix to this Agreement) and any subsequent revisions effectuated throughout the terms of this Agreement.  Upon request, a BUE, can request a hard copy of Federal Workforce Flexibility Act of 2004 from their immediate Supervisor. The hard copy will be provided to the BUE.	The workforce flexibility act can be obtained via the Internet without a request to Management.
<b>Section 3. Per Diem</b>	Travel and per diem entitlements will be governed by the Federal Travel Rule, <a href="#">DR 2300-005, Agricultural Travel Regulation</a> . Per diem rates can also be found at the following GSA link: <a href="https://www.gsa.gov/travel/plan-book/per-diem-rates">https://www.gsa.gov/travel/plan-book/per-diem-rates</a> .	<b>Travel and per diem entitlements will be governed by the Federal Travel Rule.</b> <del>When there is a change to travel and per diem entitlements the Agency will provide this information to the Union.</del> <b>Upon the issuance of change the Agency will provide such information to the BUE's either electronically or hard copy.</b>  <b>NOTE: DR 2300-001 dated October 20, 2003 speaks to Government Travel Card Regulations.</b>	Per diem is covered by GSA. The Agency does not furnish this information to the employee initially so providing this at a later time is not necessary.
<b>Section 4. Travel Expenses</b>	A. Upon request, employees shall be provided assistance to properly complete vouchers where necessary (e.g. infrequent travelers).  Move to strike C & D.	A. Upon request, employees shall be provided assistance to properly complete vouchers where necessary <del>(e.g. infrequent travelers)</del> . All Labor Management codes utilized by Council Presidents will be placed in the favorite code	The Union desires the Agency to relocate coding which each individual already has the ability to do this. Further the other sections spells out the process and timeline for processing vouchers which

## OFFICIAL TRAVEL

	<p>Note: Travelers can add codes to their favorites.</p>	<p>portion <del>code</del> of Concur. This will be done annually when the new fiscal codes become available, by the appropriate District FATA.</p> <p>B. Employees shall complete all vouchers as well as all other administrative duties only during approved, compensable time. Employees shall request time from the supervisor, if needed, to complete vouchers and other administrative duties.</p> <p>C. A voucher for travel expenses shall be submitted by the employee within five (5) workdays of the conclusion of the official travel. Vouchers shall be done during a time of monetary compensable time and shall be paid as such. Employees on continuous travel assignment shall submit a travel claim every thirty (30) days (to avoid late reimbursements a claim should be submitted every two (2) weeks, when possible). Allowances will be made for late receipt of reimbursement to the employee following timely submission of travel vouchers.</p> <p>D. The Agency shall timely process travel vouchers to ensure that employees are promptly reimbursed for travel-related expenses.</p>	<p>is not needed as it is already included in the travel training offered by the Agency.</p>
<p><b>Section 5. Telephone</b></p>	<p>Employees traveling TDY may make a brief personal call from</p>	<p>Employees traveling TDY may make a brief personal call <del>from the</del></p>	<p>The key difference is the location of the call being</p>



## OFFICIAL TRAVEL

<p><b>Calls While On Official Travel</b></p>	<p>the hotel telephone each night to their residence or to a location within their regular commuting area of their official duty station to speak to members of their immediate family, such as spouse, minor children, or anyone sharing the same residence with the employee. Travelers will be reimbursed for these calls may not exceed limits established in the FTR or ATR. This does not change the reimbursement for official business calls.</p>	<p><del>hotel telephone</del> each night to their residence or to a location within their regular commuting area of their official duty station to speak to members of their immediate family, such as spouse, <del>minor</del> children, or anyone sharing the same residence with the employee. Travelers will be reimbursed for these calls may not exceed limits established in the FTR or ATR. This does not change the reimbursement for official business calls.</p>	<p>placed and the omission of “minor” in the delegation of which type of children one can call.</p>

## BARGAINING DURING THE TERM AGREEMENT

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Management-Initiated Bargaining</b></p>	<p><b>a. Policy</b></p> <p>Where there is an obligation to bargain under the Statute or this Agreement, the Agency shall provide reasonable advance written notice of intended changes to the Council Chairperson/designee. Service will be by electronic mail, express/overnight mail, or hand delivery. If hand delivery is used, the notice will be documented immediately to show the receipt date. The notice will be considered received on the next work day when the service is by express/overnight mail.</p> <p>The advance written notice of the proposed change to the Union shall include a description of the proposed change, an explanation of how and why the change will be implemented, the proposed implementation date, and a point of contact for additional questions or information.</p> <p>If the Union elects to bargain over an Agency scheduled change, the Union shall submit a written request (via electronic submission or mail) to bargain to the Assistant Director, LERD within five (5) business days of receipt of the Agency’s notice. The request to bargain shall designate the Union’s Chief Spokesperson.</p>	<p><b>a. Policy</b></p> <p>The following applies to National Mid-Term Bargaining:</p> <p>Where there is an obligation to bargain under the Statute or this Agreement, the Agency or the Union shall provide reasonable advance written notice of intended changes to the LERD Director/designee or the Council Chairperson/designee. Service will be by <del>electronic mail</del>, express/overnight mail, or hand delivery. If hand delivery is used, the notice will be documented immediately to show the receipt date. The notice will be considered received on the next workday when the service is by express/overnight mail. In the event the Union proposes a change it will follow the same process as required by the Agency regarding service. When either party proposes a change the proposal shall be numbered by Fiscal year, the name of the party proposing the change and the number of the change proposed to date (For example 18-NJC-001 or 18-FSIS-001), be delivered during normal working hours of the recipient and</p>	<p>Union added “or the Union”</p> <p>Union added “LERD Director/designee or the.”</p> <p>Union moved to strike “electronic mail”</p> <p>Union added language pertaining to the Union following the same process as the Agency when proposing changes and have those changes should be identified and delivered. Language was also added that would require the Agency to bargaining over all issues related to 7106(b)(1).</p>

**BARGAINING DURING THE TERM AGREEMENT**

	<p align="center"><b>LERD Mailing Address: 1400 Independence Ave., SW, Room 3150 Mailstop 3730 Washington, DC 20250</b></p> <p>If the Union does not exercise its option to request bargaining as stated in this Article, the Agency may proceed to implement the change(s) on the proposed date.</p> <p><b>b. Bargaining Routine</b></p> <p>The following bargaining process shall be utilized during the term of this Agreement:</p> <ol style="list-style-type: none"> <li>1. After the Union’s request to bargain, the Union will then have five (5) additional business days to provide the Agency with proposals that are reasonably related to the proposed change and shall identify the adverse impact upon the employees which the proposal is intended to reduce or remedy.</li> <li>2. If the Union’s</li> </ol>	<p>on normal work days. Service will not be made on a Federal Holiday, when the receiving party is on pre-scheduled leave, or outside official working hours. If either party serves the other party with a proposal to bargain and decides to withdraw that proposal, the proposal will be withdrawn by one of the methods used for service. The agency agrees to bargain over all issues at it relates to 7106 (b) (1) permissive subjective of bargaining.</p> <p>In the event the parties are in DC at the time a request to bargain occurs, this request will be hand delivered at that time.</p> <p>The advance written notice of the proposed change to the Union <b>or Agency</b> shall include a description of the proposed change, an explanation of how and why the change will be implemented, the proposed implementation date, and a point of contact for additional questions or information.</p> <p>If <del>the Union</del> <b>either party</b> elect to bargain over <del>a an Agency scheduled</del> <b>proposed</b> change, the <del>Union</del> <b>responding party</b> shall submit a written request (via electronic submission or</p>	<p>Union added “or Agency”</p> <p>Union move to strike “Union, a, proposed, and Union.” Union replaced “f the Union, with “either party”, “a” with “an”, Union with “responding party.”</p>
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**BARGAINING DURING THE TERM AGREEMENT**

	<p>proposals are not provided to the Agency within the five (5) business days as stated above, then the request to negotiate will be deemed waived and closed, and the Agency may proceed with implementation, unless an extension is requested and approved in advance.</p> <p>3. Bargaining shall commence as soon as possible, but no more than seven (7) business days after the Agency's receipt of the Union's proposals, unless the Parties mutually agree to extend the period. Parties will endeavor to reach an agreement and conclude bargaining within ten (10) business days from the start of negotiations, but that period may be</p>	<p>mail) to bargain to the Assistant Director, LERD or designee or NJC Chairperson or designee within fifteen (15) calendar days of receipt of the Agency's notice. The request to bargain shall designate the Union's Parties Chief Spokesperson.</p> <p align="center"><b>LERD Mailing Address:</b>  <b>1400 Independence Ave., SW, Room 3150 Mailstop 3730 Washington, DC 20250</b></p> <p align="center"><b>NJC Chairperson Mailing Address: Provided upon change or annually</b></p> <p>If the Union Responding Party does not exercise its option to request bargaining as stated in this Article, the Agency Submitting Party may proceed to implement the change(s) on the proposed date.</p> <p><b>b. Bargaining Routine</b></p> <p>The following bargaining process shall be utilized during the term of this Agreement:</p> <p>1. Bargaining shall commence as soon as possible, but no later than <del>ten</del> <b>twenty (20)</b></p>	<p>Union added "or designee or NJC Chairperson or designee."</p> <p>Union move to strike "Agency's and Union's" Union added "Parties."</p> <p>Union added language requiring that the NJC Chairperson be provided when changed and/or annually.</p> <p>Union move to strike "Union" and added "Responding Party."</p> <p>Union move to strike "Agency" and added "Submitting Party."</p> <p>b. (1) Union moved to strike ten (10) calendar days and Union's. Union added twenty (20) calendar days and Parties</p>
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**BARGAINING DURING THE TERM AGREEMENT**

	<p>extended by mutual agreement of the Parties.</p> <p>4. Bargaining sessions shall be held in an Agency designated office. The Agency agrees to pay for one Union representative's travel and per diem in accordance with government travel regulations.</p> <p>5. The Agency shall provide a meeting room for bargaining held at the Agency's facilities.</p>	<p>calendar days after the <del>Union's</del> <b>Parties</b> written request to bargain. Commencement of bargaining may be extended only by mutual agreement.</p> <p>2. Proposals by the <del>Union</del> <b>Requesting Party</b> shall be due no later than <del>five (5)</del> <b>seven (7)</b> calendar days prior to the actual commencement of bargaining. Proposals shall be reasonably related to the proposed change and, where applicable as an appropriate arrangement, shall identify the adverse impact upon the employees which the proposal is intended to reduce/remedy.</p> <p>3. Bargaining sessions shall be held in <del>an Agency</del> <b>mutually agreed location.</b> <del>designated office.</del> The Agency agrees to pay for <del>one</del> <b>like numbers of (equal Agency/Union representatives at the table)</b> Union representative's travel and per diem in accordance with government travel</p>	<p>b. (2) Union moved to strike Union and added "Requesting Party." Union moved to strike five (5) calendar days and added seven (7) calendar days.</p> <p>b. (3) Union move to strike "an Agency designated office" and added "Mutually agreed location."</p> <p>Union oved to strike "one" and added language pertaining to equal numbers.</p>
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**BARGAINING DURING THE TERM AGREEMENT**

		<p>regulations.</p> <p>4. The Agency <b>or the Union</b> shall provide a meeting room for bargaining. <del>held at the Agency's facilities.</del></p>	<p>b. (4) Union added "or the Union." Union moved to strike "held at the Agency's facilities."</p>
<p><b>Section 2. Union-Initiated Bargaining</b></p>	<p>A Union-initiated request for mid-term bargaining will address negotiable subjects of bargaining as defined by 5 U.S.C. Chapter 71 and applicable case law.</p> <p>b. The Union will provide the Agency with reasonable advance notice its desire to engage in Union-initiated bargaining.</p> <p>c. Union requests for bargaining must be filed with the Assistant Director, LERD. The Union's request for bargaining must include proposals and the name of the Union's Chief Spokesperson.</p> <p>d. If there is an obligation to bargain, the Parties' Chief Spokespersons will make appropriate arrangements for the bargaining session to occur normally within forty-five (45) calendar days from receipt of the Union's request to bargain.</p>	<p><b>Union Strikes all of Section 2 as it was incorporated into Section 1, 2-5-2020</b></p>	<p>Union moved to strike all of Section 2.</p>

**BARGAINING DURING THE TERM AGREEMENT**

	<p>e. Bargaining sessions shall be held in an Agency designated office. The Parties shall mutually agree on bargaining dates. Each Party shall bear their own cost. The Parties agree that any agreement to combine bargaining sessions must be by mutual agreement.</p>		
<p><b>Section 3. General Provisions for Bargaining</b></p>			

## DURARATION OF AGREEMENT

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 2. Duration of Agreement</b></p>	<p>A. This Agreement shall remain in full force and effect until three (3) years from its effective date. Following the 3<sup>rd</sup> anniversary, the parties will begin negotiations on a new Agreement no later than six months prior to the 4<sup>th</sup> anniversary date.</p> <p>B. Negotiations shall begin no later than thirty (30) calendar days after the written notice of intent to renegotiate is issued. Such written notice concerning the above shall also be accompanied by initial written proposals, which may be supplemented during renegotiations. If renegotiations of an agreement are in progress, but not completed upon the termination date of this Agreement, this Agreement shall be automatically extended until a</p>	<p>A. This Agreement shall remain in full force and effect until three (3) years from its effective date. Following the 3<sup>rd</sup> anniversary, the parties will begin <b>ground rule</b> negotiations <del>on</del> for a new Agreement no later than six months prior to the 4<sup>th</sup> anniversary date.</p> <p>B. <b>If neither party serves written notice of intent to renegotiate, this Agreement shall be automatically renewed for one (1) year periods after the third year described above; it will be renegotiated if either party serves written</b></p>	<p>A. The Union wants to spell out that ground rules must happen before contract negotiations. The Agency is aware that ground rules must happen prior since it is outlined in the statue and does not think it needs to be written out.</p> <p>B. Agency wants 30 days, the Union wants 60 days.</p> <p>C. The Agency wants to reopen the contract at 24 months; the union wants to reopen at 18 months.</p>



## DURARATION OF AGREEMENT

	<p>new agreement is in effect.</p> <p>C. Either Party may reopen three (3) articles of this contract during the thirty (30) calendar days surrounding the 24<sup>th</sup> month anniversary of this Agreement. The parties agree that a maximum of six (6) articles of this agreement may be re-opened during the 24<sup>th</sup> month anniversary of the execution of this agreement.</p>	<p>notice on the other of intent to renegotiate no less than sixty (60) days, prior to the termination of the extension year.</p> <p>If renegotiations of an agreement are in progress, but not completed upon the termination date of this Agreement, this Agreement shall be automatically extended until a new agreement is in effect.</p> <p>C. Either <del>and/or each</del> Party may reopen <del>three (3)</del> up to four (4) articles of this contract during the thirty (30) calendar days surrounding the <del>24<sup>th</sup></del> 18<sup>th</sup> month anniversary of this Agreement.</p>	
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## DURARATION OF AGREEMENT

		The parties agree that a maximum of <del>six (6)</del> eight (8) articles of this agreement may be re-opened during the 24 <sup>th</sup> 18 <sup>th</sup> month anniversary of the execution of this agreement	

## TRAINING AND CAREER DEVELOPEMENT

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p><b>**Insert Hyperlinks</b></p> <p>The parties agree that the primary function of training is to assure the optimum use of human resources in attaining organizational needs and, when feasible, to provide career development opportunities to employees. The parties further recognize that development of employee’s knowledge, skills, and abilities through effective training and education is an important factor in maintaining efficient operations. It is the Agency’s intent to utilize multiple means and methods as appropriate to facilitate training, which include, but are not limited to, on-the-job, computerized, and cross-training.</p>	<p>The parties agree that the primary function of training is to assure the optimum use of human resources in attaining organizational needs and, when feasible, to provide career development opportunities to employees. The parties further recognize that development of employee’s knowledge, skills, and abilities through effective training and education is an important factor in maintaining efficient operations.</p> <p>The Agency agrees to comply with all laws, rules, regulations, and FSIS Directive 4338.1 amendment 2 <del>dated March 1, 2013</del>, regarding training. <b>Bargaining unit employees will receive proper training before being assigned work.</b></p> <p>The Agency shall train employees in those appropriate inspection phases of the Program to the maximum extent practicable. A concerted effort will be made to provide specialized technical training through job-related courses for eligible employees.</p> <p>Pursuant to 5 U.S.C. 7106 (a) (Management Rights), the Agency shall determine employee training and education needed to meet workforce needs. The Agency shall provide training and education subject to the availability of funds and shall determine the methods and means to provide the training. Management is responsible for</p>	<p>The Agency prefers to streamline the contract to include hyperlinks where the language is already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines. Whereas the Union prefers to keep and copy the language already covered by USDA Departmental Regulations, FSIS policies and directives, the current Labor-Management Agreement, applicable CFR references, statues, and OPM guidelines.</p>

## TRAINING AND CAREER DEVELOPEMENT

	<p>The Agency agrees to comply with all laws, rules, regulations, and <b>FSIS Directive 4338.1</b>, regarding training.</p> <p>The Agency shall train employees in those appropriate inspection phases of the Program to the maximum extent practicable. A concerted effort will be made to provide specialized technical training through job-related courses for eligible employees.</p> <p>Pursuant to <b>5 U.S.C. 7106 (a)</b> (Management Rights), the Agency shall determine employee training and education needed to meet workforce needs. The Agency shall provide training and</p>	<p>determining when training will be conducted and the employees to be trained. The Union will be provided a schedule of training annually or upon scheduling of less frequently scheduled courses. (such as but not limited to: Import, Thermo processing) Prior to the start of each training sessions, a listing of attendees will be provided to the NJC Chairperson or designee.</p> <p>The following approaches to employee training and career development will be utilized when determined by the Agency to be in its best interest:</p> <ol style="list-style-type: none"> <li>a. In-service and on-the-job training to improve capabilities to perform their current duties. Such training may include programs, such as computer-based training, some of which may be completed at the work site.</li> <li>b. Cross-training whenever feasible.</li> <li>c. There is no requirement for an employee to sign a form stating they have taken training, required or otherwise. There will be on requirement to provide a certificate of completion for computer based training.</li> <li>d. Inspectors are not required to train co-workers or managers as</li> </ol>	
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## TRAINING AND CAREER DEVELOPEMENT

	<p>education subject to the availability of funds and shall determine the methods and means to provide the training. Management is responsible for determining when training will be conducted and the employees to be trained. Upon request, employees will be provided access to the Agency training schedule and/or a listing of available training DVDs and CDs.</p> <p>The Agency agrees to advise the Council Chairman (or designee) of the training activities which have taken place within FSIS during the preceding year, upon request. Such information shall enumerate training received by employees by grade level and organizational</p>	<p>part of their position description, performance standards or any other responsibility. Training is a management right and responsibility.</p> <p>When changes are discovered by either party, this agreement does not waive either parties rights to discuss or bargain to the fullest extent of the law the changes of the Department Regulations/Policies or FSIS Directives</p>	
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## TRAINING AND CAREER DEVELOPEMENT

	unit for those employees in the recognized unit only.		
<b>Section 2. Employee Initiative</b>		The parties recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value to the Agency through self-development, training, and education. Employees are encouraged to take advantage of training and educational opportunities that will enhance skills and qualifications needed to increase efficiency in the performance of their duties and responsibilities and for possible advancement within the Agency. Employees will be granted duty time, when appropriate, to participate in approved programs or courses.	
<b>Section 3. Individual Development</b>		The parties recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his/her potential value to the Agency through self-development, training, and education. Employees are encouraged to take advantage of training and educational opportunities that will enhance skills and qualifications needed to increase efficiency in the performance of their duties and responsibilities and for possible advancement within the Agency. Employees will be granted duty	

## TRAINING AND CAREER DEVELOPEMENT

		time, when appropriate, to participate in approved programs or courses.	
<b>Section 4. Announcements</b>		The Agency agrees to provide all employees with information on training, educational, and career enhancement opportunities. Employees will be advised of the requirements to enter such training programs and will be assisted in applying. Employees applying for a course will be notified prior to the start of the course of their selection or non-selection. Reasons for non-selection will be given to an employee.	
<b>Section 5. Record of Training</b>		<p>A record of satisfactorily completed training, if known, will be maintained by the Agency. The employee is responsible for furnishing information to the Human Resource Department on outside training courses that were completed if he/she wants the information included with their file, (college, technical courses, etc.).</p> <p>When training is documented in the employee's record, employees without access to a government computer will receive written verification of such documentation for non-CFL courses.</p>	
<b>Section 6. Training Costs</b>		The Agency will support approved training courses that	

## TRAINING AND CAREER DEVELOPEMENT

		<p>would be beneficial, such as but not limited to Continuing Education Program, as determined by the Agency. However, the amount it will pay for each approved training course will be limited by such factors as the measure of the program benefit and the availability of training funds.</p>	
<p><b>Section 8. Training as a Condition of Employment</b></p>		<p><b>a.</b> All employees in covered positions are to begin mandatory training within ninety (90) calendar days of entrance into a covered position. Any delay in beginning training by the employee must be fully documented and for good cause and approved by the appropriate program official.</p> <p><b>b.</b> All covered employees in that assignment shall be provided a copy of the Directive 4338.1 amendment 2, dated March 1, 2013 and must meet the validated course/academic standards specified for each training program for continued employment in that assignment. Course validation ensures a passing score is attainable. Covered employees will be provided reasonable time to review the Directive. Arrangements regarding reviewing the Directive</p>	



## TRAINING AND CAREER DEVELOPEMENT

		<p>will be made through the employee's supervisor or designee. Employees who are attending Training as a Condition of Employment (TCOE) training will continue to contact their immediate supervisor, or designee, regarding leave requests, unless they are provided other contact information.</p> <p>c. Employees must sign a Training Agreement that outlines the mutual obligation of the Agency and the trainee. The employee agrees to begin the training program within ninety (90) calendar days and satisfactorily complete the mandatory training within twelve (12) months of the effective date of assignment to the covered position. In accordance with the Directive, where the Agency fails to schedule a non-probationary employee to allow attendance within these timeframes, the timeframe will be extended for a reasonable period of time to allow for scheduling and attendance.</p> <p>Probationary employees terminated through no fault of their own due to the Agency not</p>	
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## TRAINING AND CAREER DEVELOPEMENT

		<p>scheduling required training will be notified that they may reapply for future vacancies.</p> <p>d. Upon request, assistance, as appropriate, will be provided to employees where needed to facilitate successful completion of training, such as coaching, tutoring, or mentoring. During the period of training, employees may request assistance and guidance from the training staff. When possible, such assistance will be provided during the regular duty hours of the student.</p> <p>e. Covered employees who have successfully completed required training (i.e., attained a passing grade) in the past and are rehired may be required to retake all or selected components of the training at the discretion of the Agency. Rehires into covered positions that previously attended and successfully completed the required training for the position encumbered may request that the Center For Learning (CFL) or designee consider a waiver for attending the required training a second time.</p>	
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## TRAINING AND CAREER DEVELOPEMENT

		<p>f. Test results will be made available to students normally within seven (7) calendar days after completing the class.</p> <p>g. An employee who departs from required training for emergency reasons or extenuating circumstances, where approved by the Agency official, will be rescheduled to attend at a later date provided the training can be completed within twelve (12) months from the effective date of assignment to the covered position. The twelve month time limit will be extended for non-probationary employees.</p> <p>h. Employees who fail to successfully complete the training for their position by failing to attain a passing grade will be given one (1) opportunity to retest. However, probationary periods for new hires will not be extended for purposes of retesting. Such employees will be notified of their retesting date.</p> <p>i. It is the Agency's policy to promote those selected for higher graded positions within a reasonable timeframe, generally within two pay periods from the date the</p>	
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## TRAINING AND CAREER DEVELOPEMENT

		<p>employee accepts the position.</p> <p>j. In addition to the successful completion of mandatory training, all employees entering a covered position must:</p> <ol style="list-style-type: none"> <li>1. Demonstrate satisfactory job performance.</li> <li>2. Submit to a required background investigation.</li> <li>3. Meet other conditions of employment indicated in the vacancy announcement (e.g., travel availability, etc.).</li> </ol>	
<b>Section 9. Training Materials</b>		The Agency, on an annual basis, will provide a listing of available training DVDs and CDs to all employees.	

## UNION REPRESENTATIVES, RIGHTS, AND RESPONSIBILITIES

Article/Section	Agency Proposal	Union Proposal	Key Difference
<p><b>Section 1. Policy</b></p>	<p>The Agency recognizes the Union as the exclusive bargaining representative under the provisions of Title 5 U.S.C., Chapter 71 of the Statute.</p> <p>In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by Title 5, U.S.C., Chapter 71 of the Statute, modifications thereto, and this Agreement.</p> <p>The Agency shall remain neutral in regard to a labor organization seeking recognition for unit employees.</p> <p>The National Joint Council (NJC) shall include (1) the Chairman of the National Joint Council or an individual(s) to act on his/her behalf; and (2) all Council Presidents or individuals designated to act on their behalf.</p>	<p>The Agency recognizes the Union as the exclusive bargaining representative under the provisions of Title 5 U.S.C., Chapter 71 of the Statute (The Federal Labor Management Relations Statute), which outlines Union Rights, involving but not limited to an outline of potential Unfair Labor Practices under 5 U.S.C. 7116.</p> <p>In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by Title 5, U.S.C., Chapter 71 of the Statute, modifications thereto, and this Agreement.</p> <p>The Agency shall remain neutral in regard to a labor organization seeking recognition for unit employees.</p> <p>The National Joint Council (NJC) shall include (1) the Chairman of the National Joint Council or an individual(s) to act on his/her behalf; and (2) all Council Presidents or individuals designated to act on their behalf.</p>	<p>This section already reflects and acknowledges the Union rights. ULP's don't belong solely to the Union but the agency and others.</p>
<p><b>Section 2. Employee Representation</b></p>	<p>Agency moves to strike as it is addressed in Mgmt proposed Article, Employee Rights and Responsibilities.</p>	<p>Prior to meeting with an employee, the Union representative, if an Agency employee or designee, will contact the employee's</p>	<p>The Agency wishes to streamline the contract and removing redundancy helps to ensure this.</p>

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		<p>supervisor concerning arrangements for the meeting.  <del>provided the employee is on official time.</del></p>	
<p><b>Section 3. Designation of Union Officials</b></p>	<p>a. The NJC Chairman and/or appropriate Council President shall within forty-five (45) calendar days of the date of this Agreement, and annually on January 10<sup>th</sup> thereafter, provide the LERD Assistant Director or their designee with an updated written list of the names, titles, email addresses and telephone numbers of all Union officials to include: location, duty station, and AFGE Council or Local affiliation. Current employees will utilize the Agency email system, the Union shall provide email addresses for union officials</p>	<p>a. The <del>NJC Chairman and/or appropriate</del> Council Presidents shall within forty-five (45) calendar days of the effective date of this Agreement, <del>and annually on January 10<sup>th</sup> thereafter,</del> and upon changes provide the LERD Assistant Director or their designee with an updated written list of the names, titles, email addresses and telephone numbers of all Union officials to include: location, duty station, and AFGE Council or Local affiliation. Current employees <del>will</del> may utilize the Agency email system, the Union shall provide email addresses for union officials whom are not employed by the Agency.</p> <p>b. The NJC Chairperson shall on or about October 1<sup>st</sup> and each subsequent year, submit to LERD Director, or designee, the names and contact information for the Executive Council.</p>	<p>The key difference is the specificity of who is providing the information. This is internal Union business and does not need to be spelled out in the Section. The Union is adding language concerning addressing issues at the lowest level which is already understood.</p>

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	<p>whom are not employed by the Agency.</p> <p>b. The Union shall provide written notice to the LERD Assistant Director and appropriate District Managers or designee(s), of any changes in representatives normally five (5) workdays in advance of performing representational duties; however, less notice may be provided in unusual situations if the Union has less notice.</p>	<p>d. <del>The Union may contact the Agency official at the lowest possible level to resolve day-to-day matters concerning issues</del> The parties mutually agree they may resolve issues at the lowest possible level, pursuant to this Agreement. For example:</p> <p>Plant representative/plant stewards- Plant supervisors only</p> <p>Local Presidents, or designee- Circuit supervisors/FLS and District Offices</p> <p>Council Presidents, or designee: All aspects of the District within his/her jurisdiction</p> <p>National Joint Council Chairperson, or designee - Office of the administrator, Headquarter Point of Contacts, FSIS Management Council</p>	
<p><b>Section 4. Communications with Bargaining Unit Employees and Other</b></p>	<p>Consistent with Title 5, U.S.C., Chapter 71 of the Statute, the Agency will not communicate directly with employees regarding conditions of employment in a</p>	<p>Consistent with Title 5, U.S.C., Chapter 71 of the Statute, the Agency will not communicate directly with employees regarding conditions of employment in a manner that would bypass the Union.</p>	<p>The additional language describes notification procedures already in place with reference to changes to conditions of employment.</p>

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	<p>manner that would bypass the Union.</p> <p>Consistent with Title 5, U.S.C., Chapter 71, Section 7114 (a)(2)(A) of the Statute, the Union shall be given the opportunity to be represented in any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees or their representatives concerning any grievance, personnel policy, practices, or other general condition of employment. The Agency shall provide the Union with the intended time, place, and purpose of the formal discussion.</p>	<p>Consistent with Title 5, U.S.C., Chapter 71, Section 7114 (a)(2)(A) of the Statute, the Union shall be given the opportunity to be represented in any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees or their representatives concerning any grievance, personnel policy, practices, or other general condition of employment. The Agency shall provide the Union with the intended time, place, and purpose of the formal discussion.</p> <p>Communications at the level of exclusive recognition will be between the Chairman, or designee, of the National Joint Council of Food Inspectors Local and the Administrator, or designee, of the Food Safety Inspection Service (FSIS).</p> <p>FSIS will notify the Union in writing of Agency initiated changes to conditions of employment. For changes initiated by an authority other than FSIS, FSIS will make a concerted effort to assure the Union is notified as promptly as possible, and will provide notice and opportunity as per 5 U.S.C 7117.</p>	
<p><b>Section 5. Information</b></p>	<p>Upon establishment of the particularized need, the Agency agrees, pursuant to Title 5,</p>	<p>Pursuant to Title 5, U.S.C., Section 7114 (b)(4) of the Statute, the Agency agrees to provide the Union with</p>	<p>The Union omitted the premise of the statement of the establishment of the particularized need.</p>



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	<p>U.S.C., Section 7114 (b)(4) of the Statute, to provide the Union with information that is reasonably available, normally maintained by the Agency in the regular course of business, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Union requests for information can be made either orally or in writing, including a statement of the particularized need. Requests meeting the requirements of this Section shall be provided in a reasonable time, and at no cost to the Union.</p>	<p>information that is reasonably available, normally maintained by the Agency in the regular course of business, and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Union requests for information can be made either orally or in writing. Requests meeting the requirements of this Section shall be provided in a reasonable time, and at no cost to the Union.</p>	
<p><b>Section 6. Statutory Appeals</b></p>	<p>Union Business; move to strike</p>	<p>The Union has the right to refuse to represent non-dues paying members only in matters outside this Agreement (e.g., statutory appeals of adverse actions, EEO complaints, etc.).</p>	<p>This is internal Union Business and therefore not needed to be articulated here.</p>

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<p><b>Section 7. Surveys and Questionnaires</b></p>	<p>The Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires without first coordinating with the Union. However, the Agency agrees to provide the Union notice of the survey. This provision extends to all known questionnaires and surveys from all other agencies.</p> <p>In the event the Agency intends to survey BUEs regarding conditions of employment, the Agency shall notify and share the survey with the Union prior to distribution. Should the Agency decide to effect changes as a result of any survey or questionnaire, and such changes affect conditions of employment, the Union will be given notice and opportunity to bargain.</p>	<p>The Agency may solicit feedback from bargaining unit employees through verbal or written surveys and questionnaires and will provide this information to the Union prior to conducting the survey/questionnaire. This provision extends to all known questionnaires and surveys from all other agencies.</p> <p>In the event the Agency intends to survey BUEs regarding conditions of employment, the Agency shall notify and share the survey with the Union prior to distribution. Should the Agency decide to effect changes as a result of any survey or questionnaire, and such changes affect conditions of employment, the Union will be given notice and opportunity to bargain.</p> <p>The results of all survey(s) conducted will be shared with the Union as soon as they can be tabulated. The Union will be provided with the corresponding question to each response(s). If a third party conducts a survey and results are obtained by the Agency, the results will be shared with the Union upon receipt by the Agency.</p>	<p>This is encroaching upon Management's Rights. Not all information is pertinent to and/or necessary for the Union to have. There is a procedure for obtaining documentation through FOIA.</p>
<p><b>Section 8. New Employee Orientation/Meeting</b></p>	<p>a. The Union will be afforded the opportunity to make up to a thirty (30)</p>	<p>a. The Union will be afforded the opportunity to make up to a thirty (30) minute presentation and time for the Union</p>	<p>The Union is adding a numerical marker to the mileage whereas the Agency omits the number. The second addition is the Union</p>

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	<p>minute presentation and time for the Union to brief new employee(s) on the Union's role in the workplace and membership benefits the Union has to offer. Reasonable notice of the date, time, and location of the orientation session will be provided by the Agency to the appropriate Council President or designee. A Union representative within the local commuting area will be reimbursed mileage for travel to make a presentation at new employee orientation meetings.</p>	<p>to brief new employee(s) on the Union's role in the workplace and membership benefits the Union has to offer. Reasonable notice of the date, time, and location of the orientation session will be provided by the Agency to the appropriate Council President or designee. A Union representative will be reimbursed up to 100 miles for travel to make a presentation at new employee orientation meetings.</p> <p>In the event the Union is not available to meet with the New Employee during orientation a designated Union Representative will be permitted to meet for thirty (30) minutes when they report to their headquarter plant. A Union Representative will be compensated up to 100 miles to attend this meeting.</p>	<p>inserting an addition time to meet with new employees should they miss their previously announced date and time. This interferes with the Agency's mission and potentially increases the travel money for more travel to different locations when the employees disperse to their assignments.</p>

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<p><b>Section 9. Freedom from Interference</b></p>	<p>Move to strike</p>	<p>The Agency shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under Title 5, U.S.C., Chapter 71 of the Statute and this Agreement.</p> <p>Unless specifically required by law or government-wide regulation, Union representatives shall not be required to disclose communications with bargaining unit employees which occurred during the performance of representational duties.</p>	<p>This is already in place and there is a mechanism to address this should it happen in the ULP.</p>
<p><b>Section 11. Right to Communicate With Other Organizations</b></p>	<p>Move to strike</p>	<p>The Union shall not be precluded from consulting with religious, social, fraternal, professional, or any other groups/associations with respect to matters or policies which involve individual members of the association or are of specific applicability to it or its members.</p>	<p>There is no prohibition for the Union to do this as it is on their own time.</p>
<p><b>Section 13. Devices and Supplies for Union Officials</b></p>	<p>Move to strike</p>	<p>The agency will supply a computer and email account to all Council and Local Presidents. If a Union official has a computer assigned to them associated with their employee position the Union official can use the computer to conduct Union representation.</p> <p>The agency will also furnish all Council Presidents, examples</p>	<p>This encroaches upon Management's Rights. It also mandates the Agency to furnish the Union with office equipment and transportation.</p>

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		<p>of but not limited to; printer, scanner, fax machine, paper, Ink, and internet.</p> <p>The agency will furnish, upon request, all Council and Local Presidents with GSA vehicles to use for Union representational duties.</p>	