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Contract Terms Handbook

Prepared by the AFGE Office of Labor Management Relations
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INTRODUCTION

This handbook provides guidance to AFGE locals and councils concerning the terms they negotiate into their contracts.

This is not a model contract, because on many subjects there are decisions that have to be made as to exactly what the union wants. No particular model fits every situation.

The reader will see that some articles are more deeply developed than others. We intend to make continuous improvements as we hear more of the priorities and problems of the AFGE activists.

The contract should be primarily a compilation of benefits and improvements that the employees have obtained through bargaining by their union. The union's bargaining priorities, therefore, should be set through a system of employee participation, as described in the AFGE Collective Bargaining Manual.

CONTRACT LANGUAGE

Your basic objective in drafting proposals is simply to say what you mean as clearly as possible. If there is anyone on the union team who does not understand a draft proposal, it must be re-written.

There are a couple of bad habits to avoid:

1. NEVER use "and/or". Instead, say exactly what you mean. There are three choices:
   A and B
   A or B
   A or B or both

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2. AVOID using "/"

If you mean, "he or she", just say "he or she". Similarly with any other connection you want to make. If it is difficult to describe the relationship in words, that may be an indication that it is important really think through what the relationship is.

3. NEVER repeat numbers unnecessarily. Say: "seven" or "7"; do not say "seven (7)".

4. NEVER use legalisms, such as "herein", "the said", "whereas", and so forth. Good lawyers never use that kind of language, and there is no reason for non-lawyers to use it. By using common English words you will be better able say what you mean, and your reader will be better able to understand what you mean.

5. AVOID beginning a provision with meaningless phrases:

"It is agreed . . . "
"It is agreed and understood . . . "
"the parties agree . . ."
"Management agrees . . ."

These are meaningless because, by definition, everything in the contract is by agreement of the parties. When you first draft a proposal, it is almost impossible to not use these introductory phrases. But go through your draft, and cross out any that do not really add anything.

6. ALMOST NEVER place a provision in two different parts of the contract.

For example, under the term "unlawful orders," one specific aspect of unlawful orders would be one which would, if followed, cause death or serious injury. In both private and federal sectors, it has been established that an employee is not insubordinate for refusing an order which would likely cause

death or serious injury. It can be a manner of contract "style," preference, or perceived need to perhaps include such a clause in both (or more) places when negotiating your contract. However, you the union team decides to attempt to include more than one reference to a subject in another article, then the utmost care must be taken to be sure that the intent of a clause is not changed by different wordings.

For example, a clear statement of a worker's right to refuse a dangerous task, stated clearly and unequivocally in the Health & Safety article, could be repeated in the workers' rights section subject to some qualifications. What this may do is to inject some ambiguity into one right, stated two different ways.

There have been problems caused by over repetition. For example, in one contract, the parties agreed to "reasonable time" for stewards to present grievances in the grievance procedure article. However, under a "laundry list" of "appropriate uses for official time," the parties listed a limitation of "8 hours of official time per grievance."

This not only left a question as to whether there was a "cap" of 8 hours on the term "reasonable," but also whether or not each steward received 8 hours per grievance even when two or more stewards worked on the same grievance.

These are only a couple of examples of the complexity of contract interpretation when the same subject is treated in different articles, in different ways. What is important to keep in mind is: be sure you coordinate the various references to a topic or right when you choose to (or must) address it in more than one place.

That may or may not be what the union wants to do, but what is important is to make an informed decision about what the purpose is and not just repeat something that is already gained.

7. MINIMIZE restatements of laws and regulations.

One of the biggest wastes of time in contract negotiations is arguing about how to paraphrase existing laws and regulations in

ways that will have no effect whatsoever. Try to avoid doing that.

Remember that the contract grievance procedure can be used to force compliance with laws and regulations even if they are not explicitly incorporated into the contract, and that it is usually easy to get management to agree to a broad clause incorporating laws and regulations. There is very little reason to then go on to quote or paraphrase individual laws and regulations in other parts of the contract.

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1. PARTIES TO THE AGREEMENT

The bargaining unit or units the union is certified to represent and which will be covered by the contract should be identified. It is useful to quote the exclusions from the unit as they are stated in the FLRA certification letter.

The union party or parties should be identified. Normally this will be a particular local. Sometimes, especially for nation-wide units, it will be the AFGE.

The management party should be identified. The management party is the agency, not some sub-unit of the agency. In all cases involving the Department of Defense, for example, the management party is the Department of Defense.

This contract is between the American Federation of Government Employees [or AFGE Local ___] and the U.S. Department of _____.

This contract covers the bargaining unit certified by the FLRA in case no. _____, defined as follows:

included:

excluded:

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2. GOVERNING LAWS AND REGULATIONS

The following points are already established by law:

- If the contract conflicts with a law, or with a government-wide regulation in force when the contract went into a effect, the law or regulation governs.

- If the contract conflicts with an agency regulation, regardless of the level of the agency that issued it, the contract governs.

- Agency regulations issued during the life of the contract are ineffective to the extent they conflict with the contract. Again, this is true no matter how few employees the union represents or how high up in the chain of command the regulation was issued.

- The union and the employees have the right to obtain remedy through the contract grievance procedure for any "violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment."

There is nothing to be gained, only lost, by trying to paraphrase these requirements in the contract itself.

Relationship to Laws and Regulations
In the administration of all matters covered by this agreement, officials and employees shall be governed by applicable Federal Statutes; and government-wide regulations in existence at the time this agreement was approved.

Agency's Regulations
Where any agency regulations conflict with this agreement or a supplemental agreement, the agreement shall govern.

Past Practices
Any prior benefits, practices, and understandings which were in effect on the effective date of this agreement and which are not specifically covered by this agreement and do not detract from it shall not be changed except by agreement of the parties.

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3. BARGAINING DURING THE TERM OF THE AGREEMENT

At least as important as negotiating an overall collective bargaining agreement every three or four years is the bargaining that occurs during the term of that agreement.

Mid-term bargaining can come up in a number of ways. First, and foremost, management may take actions, such as reducing the total number of employees, which necessarily affect working conditions. Second, there might be changes in laws or government-wide regulations which have to be implemented. Third, there may be subjects which were not addressed in the contract negotiations, but which one side or the other now wishes to deal with. Fourth, the parties may simply agree to revisit certain subjects before the overall contract expires.

Other important issues that arise during the term of an agreement can include meetings that management has with the employees. See FLRA General Counsel Meetings Guidance

Waiver of bargaining rights and obligations

The main reason for a duration clause in a contract is that the parties want to leave unchanged the terms of that contract for a set period of time. Both parties know they will not have to deal with those particular issues again until the contact expires. In effect, both parties are waiving some of the rights they would otherwise have to make on insist on changes.

These waivers are seldom set out expressly, in understandable English, and in many cases management has falsely but successfully argued that the parties had agreed to a completely one-sided waiver.

If the union and management sign an agreement on some subject, without specifying any duration, then they do not waive any rights and obligations to bargain about that subject at any time in the future. The agreement, however, remains in effect and governs the subject until and unless the parties agree to amend or discard it. Either party can force the other party to the bargaining table and to the Federal Service Impasses Panel.

It is, therefore, imperative that your contract plainly state what can and what cannot happen during the term of the agreement. First, the parties must choose what they mean by "covered by the contract." The two basic choices are these:

A condition of employment is covered by this agreement only to the extent that changing that condition would require changing an express provision of this agreement.	A condition of employment is covered by this agreement if the general subject area is addressed or if either party had unsuccessfully proposed a provision within the general subject area.

Both these definitions are possible, and each has its own benefits and drawbacks. The critical thing is that the parties expressly adopt one or the other. The obvious drawback to the second option is that it does not allow the reader of a contract to know what it covers and what it does not. An entire subject area which is not even hinted at in the contract might be deemed covered by the contract because the union had proposed provisions in that area but for whatever reason had withdrawn those proposals.

Once the parties tentatively agree on the meaning of "condition of employment covered by this agreement", they must turn to the actual waivers they intend. There seem to be three major options:

Conditions of employment not covered by this agreement will remain in effect throughout the term of the agreement. Both parties waive their rights to initiate changes on these matters.	Conditions of employment not covered by this agreement may be changed only by agreement of the parties. Neither party waives its right to initiate changes on these matters.	Conditions of employment not covered by this agreement may be changed unilaterally by management. The union waives all its bargaining rights on these matters. Management waives nothing.

The first two are both reasonable, and each has its own benefits and drawbacks for each of the parties, strongly affected by the definition of "condition of employment" that they agree to.

The third option is ridiculous, and should never be agreed to by the union. It is, however, precisely the option which the Federal Labor Relations Authority infers the parties did agree to if they have not expressly considered the waiver issue.

> It is important to consider the FLRA General Counsel's Impact of Collective Bargaining Agreements on the Duty to Bargain . . . Guidance, even though it is not always correct in its advice.

There is one other issue that needs to be expressly addressed, and that is the effect of the agency's own regulations that existed at the time the contract was agreed to. The two major options seem to be:

Agency policies and regulations consistent with this contract and in	Agency policies and regulations not covered by this contract can be changed

existence at the time the agreement was approved will remain in effect except to the extent changes are required by law or federal regulation. The terms of any such changes will be negotiated by the parties.	at the initiative of either party followed by the agreement of both parties.

Again, it cannot be said that either of these options is better or worse than the other. The critical thing is that the parties expressly agree on what they want to do with existing policies and regulations.

Other Typical Provisions

! Travel and per diem for union negotiators where the bargaining unit is spread over a large geographic area.

! Groundrules for negotiations (advance notice period, time frame for "demand to bargain" proposals, etc., number of negotiators, site of negotiations).

! Right to information needed to bargain intelligently on the subjects under discussion.

4. UNION RIGHTS

A strong employee orientation clause in the contract establishing the rights of the union and access to new employees during their orientation period will help to build strong locals. It is likely that most new employees have never been exposed to AFGE or, perhaps, any other union. The orientation may well be the first and best opportunity to make a favorable impression on these new workers. It is likely that only the union will provide the kind of information they will need about their rights.

Orientation for New Employees

The union will be afforded the opportunity to make a 20 minute presentation during each orientation session for new employees. Management will provide the union with notice of the date, time and place at the time the orientation is scheduled. The union official making the presentation will be allowed official time, if otherwise in a duty status, to make the presentation.

Each local union should inform the local personnel office in advance of the name of the union official who will make the presentation so necessary arrangements can be made for the union official's absence from duty. The union may leave its literature in a location where the employees leaving the orientation have access to the materials.

On the first day of work the employees should be introduced to the union steward.

Other Typical Provisions

! Right to communicate with new employees by various means.

! Means of communication with bargaining unit employees

5. OFFICIAL TIME

Building strong locals requires sufficient official time for local officers and stewards to perform representational duties. It is often better not to try to list in the contract all the functions for which stewards can use official time, but rather to state that official time can be used for all labor-management relations functions which do not constitute "internal union business."

FLRA case law defines internal union business as, solicitation of membership, internal union elections, etc., (See *AFGE and VA Regional Office, Cleveland*, OH, 2 FLRA No. 1).

Official time provisions can be negotiated two ways:

(1) "Blocks" or percentage of time;

(2) "Reasonable time" (defined as amount of time necessary to complete task).

If locals negotiate "blocks of time," they should insure additional time outside of the "blocks" for:

- Official time provided by the Statute for negotiations under 7131(a).
- ULP meetings, hearings when required by FLRA.
- Functions which can be controlled by management so as to eat up all of a steward's time; e.g., meeting with management, arbitrations, and grievance hearings.

Amounts to be proposed vary from contract to contract and should be based on:

past practice, size of unit, number of stewards, and amount of time for comparable bargaining units. The best justification for official time is an active local with big caseload. The lack of agency shop and the duty to represent all employees whether or not they are union members provide good rationale for the amount of official time.

General
In order to develop and maintain effective labor management relations, the employer agrees to grant official time as provided below to accomplish representational duties. Release of designated union representatives and employees from their official duties for the purpose of employee representation will enhance labor-management relations at all levels. Thus, official time will be authorized to authorized designated union officials to carry out representational activities as follows:
(2 options)

A. Reasonable Time
Consistent with 5 USC Chapter 71 and the terms of this agreement, union officers and stewards will be granted reasonable official time which is necessary for the performance of labor-management relations that do not constitute internal union activities such as membership recruitment and internal union elections.

B. Blocks or Percentages of Time
____% of time for Local President
____% of time for Officers
____% of time for Chief Steward
____% of time for Stewards

Release Procedures
Unless otherwise arranged, union representatives will be required to request and arrange with appropriate management officials in advance for their usage of official time. If an exigency of business would not permit the union representative to use the official time when requested, another occasion will be determined, keeping in mind the interests of the union and employees as well as the needs of the employer.

Designation and Recognition of Stewards. While orderly and efficient procedures or the release of union representatives is desirable for both parties, the appointment of stewards is a sole union right. In the same manner, the assignment of duties to a steward is also a sole, unilateral union right.

Although it is common for management to attempt to control or interfere with these union rights, the union does not have to negotiate on steward assignments or duties. We mention this because there is a disturbing practice in the federal sector for management to make the use of official time contingent on the union's agreement to assign a particular steward to particular union duties.

In the federal sector, the Federal Labor Relations Authority has held in a number of cases that an exclusive representative does not have to bargain on the designation, assignment of stewards of duties or to specific jurisdictions.

Many times the FLRA has held that official time is a mandatory subject for bargaining, and carves out an exception to the 5 USC 7106(a) management right to assign. Therefore, a tentative management agreement to afford official time to union stewards that is withheld based upon the union's agreement to assign stewards to certain jurisdictions, or to assign certain duties to specific stewards must be viewed as official time being held hostage until the union is forced to agree on a permissive subject.

Other typical subjects in official time articles are:

! Extensions of Official Time

! Official Time for Employees

! Release Procedures

! Official Time for Union-Sponsored Training

! Training on the Contract, jointly or unilaterally

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6. USE OF OFFICIAL FACILITIES

Building strong locals also requires the negotiation of broad use of the agency's facilities; such as:

! Office Space

! Meeting Space

! Bulletin Boards

! Membership Drives

! Distribution of Literature

! Access to Telephones, Computers, and Copying Machines

! Voter Education and Registration Drives

The prohibition that applies to official time use concerning "solely internal union business does not apply to the use of official facilities when conducted during the non-duty time of the employees involved.

Local Union Office Space

Option 1:
The union will be given a conveniently located, secure, furnished, office of approximately ____ square feet.

Option 2:
Space for a permanent office for union representational purposes will be provided to the Union. The size, location, and furnishings will permit effective completion of union business related to it's representational responsibilities.

Option 3:

In all cases, employees will be afforded a confidential and secure location to meet privately with union representatives.

Meeting-Space

At the request of the union, the employer will provide the union with use of suitable space for meetings during non-duty hours of employees.

Bulletin Boards

The union will be provided bulletin boards in areas normally used for communicating to employees.

Membership Drives

The agency will provide adequate facilities for membership drives at a location that will provide access to unit employees during break and lunch periods. Detailed arrangements will be negotiated.

Distribution of Union Publications

Official publications of the union may be distributed by union representatives during the non-duty time of the union representatives who are distributing and the employees receiving the materials.

Other Facilities and Services

The agency will furnish, where available, customary and routine services which are consistent with the best interest of the employer, employees and the union. Such services include

internal mail (for other than mass mailing), telephones, computer, photocopy equipment, shuttle and the like.

Other Typical Provisions

! Use of FTS and computer networks

! Furnishing of government-wide and Agency Regulations

! Access to Public Address System

! Printing and Furnishing Copies of Agreement

7. MANAGEMENT RIGHTS

There is no reason to have a management rights clause in the contract, but there will be seldom be a strong enough argument to keep it out.

If there is going to be such a clause, at least make it accurate. The safest thing to do is quote the law exactly as it is, with an appropriate introduction. For example,

> 5 U.S.C. § 7106, which is binding on the parties, reads as follows:
>
> (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—
>
> 1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
>
> (2) in accordance with applicable laws—
>
> (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
>
> (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
>
> (C) with respect to filling positions, to make selections for appointments from—
>
> (i) among properly ranked and certified candidates for promotion; or
>
> (ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—
(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
(2) procedures which management officials of the agency will observe in exercising any authority under this section; or
(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials

Under no circumstances should you simply quote or paraphrase § 7106(a) while ignoring § 7106(b).

8. MISCELLANEOUS EMPLOYEE RIGHTS

The "Employee Rights" article should contain broad general clauses providing criteria by which locals can challenge management, actions in grievances and arbitration. Locals should avoid attempts by management to include in the contract strong **responsibilities** of employees.

Fair and Equitable Treatment
All employees shall be treated fairly and equitably and with dignity in all aspects of personnel management, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age or handicapping condition, and with proper regard and protection of their privacy and constitutional rights.

Right to Union Representation
If the employee wishes to discuss a problem or potential grievance with a union representative, the employee shall have the right to contact and meet with the union representative on duty time. The employee will be released from duties to contact and meet with the union representative when he or she requests to exercise this right, unless there is a pressing operational exigency.

Information on Right to Representation in Connection with Investigations.
At least once a year the agency will inform every employee that he or she is entitled, upon request, to union representation at any examination by representative of the agency in connection with an investigation if the employee reasonably believes that

the examination may result in disciplinary action against him or her.

Personal Rights
Employees shall have the right to direct and fully pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the employer so long as such activities do not conflict with job responsibilities. The standard of nexus shall apply.

Other Typical Provisions

! Access to Personnel Records

! Prohibition against Secret Records

! Right to Timely Compensation and Paycheck at Worksite

9. EQUAL EMPLOYMENT OPPORTUNITY

Every agreement should have a strong EEO Article which:

(1) prohibits discrimination on the basis of race, color, religion, sex, national origin, mental or physical handicap, or age;

(2) mandates a positive results-oriented program of affirmative action; and

(3) upward mobility.

It should also provide for furnishing of necessary EEO information, so that discriminatory practices can be identified and challenged by the union.

Policy

The employer and the union affirm their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex, national origin, mental or physical handicap, or age. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of marital status or political affiliation. The employer will have a positive, continuing and results-oriented program of affirmative action. Equal employment opportunity shall be administered in accordance with Title 5 USC, Executive Order 11478, authorizing legislation, and applicable regulations.

Affirmative Action Plan

A. Establishment and implementation of the affirmative action plan is a fundamental agency objective. The employer will provide overall management support and budgetary planning to achieve affirmative action objectives throughout the agency.
B. Should adverse EEO impact be evidenced pursuant to the affirmative action plan, specific and measurable objectives shall be set to correct the conditions. Those objectives will include but not be limited to:
1. Validating existing selection procedures; or
2. Modifying or substituting selection procedures to alleviate adverse impact.

Information and Data
The employer will furnish the union the following EEO information on a yearly basis:
1. Workforce Profile by grade level according to sex and race. Should age and handicap data become available, it will be provided to the union.
2. Workforce Profile by selected occupations according to sex and race.
3. Promotion trend data for selected positions according to sex and race.
4. Outside hiring statistics for selected positions according to race and sex.

Upward Mobility Program
The agency will identify upward mobility positions, which will be specifically described and announced as upward mobility opportunities, and will be filled at a grade level which is lower than the target level and will permit the consideration of employee potential as a factor in evaluating candidates for selection. It is understood that upward mobility may also be achieved by:
(a) evaluating situations where vacant positions can be filled at lower grade trainee levels;
(b) identifying areas where bridge positions could be established in order to provide opportunities for employees to enhance their careers;

(c) skills upgrading to supplement the existing skills of employees so that they may fully qualify for positions in other career ladders.

Other Typical Provisions

! EEO Committees

! Procedures for Affirmative Action Plans

! Information and Data

! Counselors

! Complaints Procedure

10. STUDENT LOAN REPAYMENT

The National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510, Section 1206, amending subchapter V of the U.S.C. chapter 53 by adding a new section 5379), (codified at 5 U.S.C. 35379 authorized Federal agencies to repay all or part of an outstanding Federally insured student loan to facilitate the recruitment or retention of highly qualified employees.

The authorizing statute and regulations found at 5 C.F.R. Part 537 provide that each agency has discretion to establish a student loan repayment program which satisfies the recruitment and retention needs of that particular agency, while meeting the requirements of 5 C.F.R. Section 537.103 for the development of a plan.

Any agency and the union representing its employees can agree to establish a permanent student loan repayment program for federally insured loans, as defined by the Higher Education Act of 1965 and the Public Health Service Act, for highly qualified individuals who are now, or will be, employed by the agency.

Congress appropriates funds on an annual basis to federal agencies, and the availability of funds for the student loan repayment program is subject to appropriations for any given fiscal year.

1) The agency will commit $750,000 for the repayment of Federally insured student loans of current or future agency employees, as defined by 5 U.S.C. 2105 and 5 C.F.R. 537.104, for fiscal year 2003, subject to applicable laws and regulations;

2) Subject to the funding commitment, the loan repayment plan is based on the employee's qualified debt amount (hereafter "debt") as of the time of enrollment in the program and salary that determines the amount of the loan repayment for each recipient. "Qualified" debt amount means debts that qualify for repayment under the federal student loan repayment program, i.e. Federally insured student loans that are not delinquent The formula is as follows, based on the current maximum annual loan repayment of $6,000:

   a. Where debt = 100% or more of actual salary amount, loan payment will equal maximum authorized annual loan repayment ($6,000).
      i. Example: debt = $20,000 (or more) and salary = $20,000, loan repayment = $6,000;
   b. Where debt = 99% of actual salary amount, loan repayment will equal 99% of maximum annual loan repayment ($6,000).
      i. Example: debt = $19,800 and salary = $20,000, loan repayment = $5,940;
   c. Where debt = 98% of actual salary amount, loan repayment will equal 98% of maximum annual loan repayment ($6,000).
      i. Example: debt = $19,600 and salary = $20,000, loan repayment = $5,880;
   d. Thus, each program participant's debt must be determined as a percentage of salary. That percentage will then be used to determine the annual loan repayment amount for that individual, down to 1% of the maximum annual loan repayment amount.
      i. Example: debt = $200 and salary = $20,000, loan repayment = $60;
   e. Where funds allocated for the loan repayment program remain after an initial distribution according to the above formula, subsequent distributions shall be run more than once in order to fully distribute all funds allocated for that fiscal year;
   f. If program funds are insufficient to provide the full formula allocation to each participant, the amount distributed to each participant shall be

reduced by a percentage applied equally to all participants;

i. Example: in subsections a, b, and c, above, with a program fund shortfall of 10%, each individual will receive a 10% reduction in their loan repayment amount. Thus, in subsection a, above, the participant would receive $5,400; b, above, would receive $5,346; and c, above, would receive $5,292;

g. The annual loan repayment cap used by the agency shall be negotiated each year with the union, unless the agency caps individual payments at the maximum annual amount authorized by law (currently $6,000);

3) All current employees who receive a "fully satisfactory" or higher designation on their most recent EPPES evaluations are eligible to participate in the loan repayment program. Current employees who do not have an EPPES on file may substitute a statement of eligibility from a supervisor or manager within their office;

4) All new employees are eligible to participate in the loan repayment program from the date of their employment by HUD. HUD may offer the loan repayment program as part of any recruiting, advertising, posting, or other hiring activities;

5) Managers, supervisors or employees (on behalf of themselves) may request program participation for a particular employee. The agency may develop a standard application form. Unless or until such a form is developed, an application in the form of an e-mail message to the program coordinator is sufficient for a determination of eligibility and amount of assistance;

6) The agency and the union will to work in good faith to ensure the success of the loan repayment program. This Memorandum of Understanding will not terminate except by mutual agreement of the parties or repeal of the authorizing statute. Unless a new agreement is negotiated and reduced to writing, this Memorandum of Understanding will renew automatically each year. The

funds available to the student loan repayment program will increase yearly by the percentage increase granted to the federal civilian workforce;

7) Participating employees must commit to work for the agency for three years from the date of enrollment in the program, as required by 5 U.S.C. 5379(c)(1);

8) Where an employee does not complete the full three-year term, the employee must refund to the agency all money received as a program participant, including any tax withholdings. However, the agency may determine that recovery would be against equity and good conscience or against the public interest, and waive the right to recovery, as authorized by 5 U.S.C. 5379(c)(2);

9) Tax withholdings related to participation in the student loan repayment program will be determined in accordance with the authorizing statute or any relevant amendments.

11. GOVERNMENT TRAVEL CARDS

Following is the full text of a tentative agreement that has be reached with one agency to protect employees who are required to use government travel cards.

Section 1. Employees may be required to travel from their official duty station on official government business and that employees will be compensated for such travel expenses in accordance with law and then existing regulations.

Section 2 Travel Time

a. To the maximum practical extent, management will, subject to the "two day per diem rule" and then existing regulations, schedule the travel of employees for official government business to occur within the traveler's regularly scheduled administrative work week.

b. When travel on official government business results from an event that cannot be scheduled or controlled administratively, such travel shall be considered hours of work for pay purposes in accordance with law and then existing regulations.

Section 3 Travel Advances. Employees will be advanced travel expenses as follows:

a. Employees Who Have a Government Travel Charge Card (GTCC) (Frequent Travelers)

As used in this Article, the term "frequent travelers" means employees who are expected to travel on official government business three or more times per year. Frequent travelers

will be required to apply for a Government contractor-issued travel charge card.

Employees having a GTCC are expected to use the charge card to obtain a cash advance for actual out-of-pocket expenses related to official travel (e.g., meals, incidental expenses, parking, tolls, fuel, etc.). If the employee chooses to decline the charge card or chooses not to use it, the employee will not be issued a travel advance by the activity. Only allowable expenses for official travel will be reimbursed. The GTCC is to be used only for expenses directly related to travel on official Government business.

Employees having a GTCC are expected to use the charge card to obtain a cash advance for actual out-of-pocket expenses related to official travel (e.g., meals, incidental expenses, parking, tolls, fuel, etc.). If the employee chooses to decline the charge card or chooses not to use it, the employee will not be issued a travel advance by the activity. Only allowable expenses for official travel will be reimbursed. The GTCC is to be used only for expenses directly related to travel on official Government business.

Employees who are required to travel for extended periods, or on recurring trips of short duration shall have their ATM limit raised to allow the employee access to a minimum of 80% of the estimated meals and incidental expense rate by the APC at the time the orders are issued.

b. Employees Who Do Not Have a GTCC.

Travel advances will be provided by the activity at the standard rate (normally 80% of the estimated per diem and miscellaneous expenses and 100% of the estimated transportation costs) provided that the request for the advance is made sufficiently in advance to permit the advance to be processed. Travel advances will be deposited directly to the employee's designated account by electronic funds transfer (EFT). Normally, travel advances will not be made for travel expenses of less than fifty

(50) dollars unless a specific request with supporting justification is made.

Section 4 Credit Checks

a. Where an employee is required to use the GTCC, and the employer requires a check of the employee's credit history, the results of the inquiry will not adversely affect the employee's performance evaluation or desirability for employment. Information obtained will be considered highly confidential and will be safeguarded from improper use. Access to information obtained will be limited to authorized individuals on a "need to know" basis.

b. All access to any employee's credit history, or credit information maintained by the activity shall be recorded. Recorded information will include the name of the person accessing the record, the date, and the purpose of the inquiry. Employees, or their representative designated in writing, shall have reasonable access to matters covered by this article.

Section 5 Reimbursement for Official Travel Expenses

a. Travel reimbursement claims must be submitted to the servicing disbursing office within three (3) workdays after completion of travel. All reimbursements for travel expenses will be made by means of Electronic Funds Transfer (EFT) to an account at a financial institution designated by the employee.

b. Overpayment of travel advances must be repaid within 15 days from the date of the disbursing officer's letter of notification. Failure to comply with these requirements will result in travel advances received being deducted from the employee's pay. Absent extenuating circumstances, no travel advances on subsequent travel orders will be authorized if a claim has not been submitted for a previous travel period.

Section 6 Extended Travel (Temporary Additional Duty)

a. If a temporary duty assignment requires a traveler to be away for more than 35 consecutive calendar days on official government business, the activity will, upon request by the

employee, allow the traveler to voluntarily return to his or her official duty station during non-work days after the traveler has been away 30 days. The employee will be allowed round-trip travel and transportation expenses not to exceed the travel expense that would have been allowed had the employee remained at the temporary duty station. Authorization for such a return trip will be obtained by the employee in advance of the temporary duty assignment.

b. Except for circumstances beyond management's reasonable control or ability to anticipate, employees who are assigned to work away from their present official duty station for extended (30 days or more) temporary additional duty elsewhere will be notified at least 2 weeks in advance.

Section 7 Travel Orders for Union Representatives

a. Union representatives who are employees of the activity will be issued official travel orders by the activity for travel related to official representational functions authorized by this MLA. Requests for travel orders under this Section will be initiated by the Union president or designee by contacting the servicing Human Resources Office for each occasion on which the Union wants to travel under official travel orders.

b. All expenses incurred as Union representatives while traveling under official orders will be the sole responsibility of the Union to pay unless the parties agree otherwise.

Section 8. Government Travel Credit Card Program. (GTCC)

a. **Legal Requirement to Use Government Travel Credit Card**. The Travel and Transportation Reform Act of 1998, "TTRA" (Public Law 105-264) imposes the requirement that most official travel will be charged on the GTCC and that the employer must have certain procedures in place regarding travel.

b. The GTCC is an employer tool to be used in carrying out official travel. It is a government_issued card for official business only and is not a personal credit card of the employee, much the same as a "company credit card" is used in private industry. The government shall own the credit card and

employees' personal credit histories obtained by the GTCC vendor shall be used for the sole purpose of determining what type of travel card will be issued.

c. Employees will not be held responsible for any travel card not within his or her control.

d. The negotiated grievance procedure shall be the exclusive process for resolving disputes relating to issuance and use of the travel charge card.

e. Employees shall not be required to apply for or subject themselves to any credit card or credit card conditions, or to sign or become a party to a third party agreement containing new or changed conditions of employment until such matters have been fully negotiated between the parties under the procedures contained in Article 4 of this Agreement.

f. Employees will not be required to use their personal credit cards or advance their personal funds for government business.

g. No employees shall be contacted at home or required to use their homes for storage of business records relating to the GTCC.

h. Credit card debts will be paid by split disbursement with the government forwarding the amount indicated by the employee on the claim form directly to the vendor. At a minimum, the amount forwarded to the vendor will include the cost of lodging and transportation. Any amount of reimbursement due in excess of that paid to the vendor will be remitted to the employee via electronic funds transfer. Employees will be responsible for paying all travel card charges not covered by the government's remittance to the vendor under the split disbursement process, including any charges made by persons the employee allows to use the card. Employees will not be responsible for charges made to a lost or stolen government travel charge card more than 24 hours after the loss is reported.

i. Dispute Resolution

1. In the event of a billing dispute or other disagreement with the terms and conditions governing use of the card, the employee is responsible for notifying the vendor of the nature of the dispute. The employee may request the assistance of the employer's local travel card program coordinator in filing a dispute. Should it become necessary, the employee may dispose of the card by whatever method is appropriate, including turning in it to the employer for appropriate disposition. Employees are obligated to cooperate fully in pursuing resolution to disputes.

2. The resolution of any disputes with the travel card vendor or contractor, acting as the employer's agent, will be conducted during the employee's normal duty hours and at the employee's normal place of duty. If an employee is contacted at home, he or she will refer the agent to the duty station and provide the duty phone number and normal hours of work. Employees may have a union representative present during conversations and meetings regarding such disputes.

j. It is understood that by activating, signing or using the government card and/or the account, or signing the individually-billed card account setup or application form of the Department of Defense Travel Card Program, the employee will not be personally bound by the terms and conditions of any vendor agreement between the employer and the vendor. It is understood that the employee is responsible for, and bound by, the terms and conditions of his or her employment with respect to the use of the GTCC.

k. Employees are subject to discipline or other appropriate measures to ensure compliance with the proper use of the credit card.

1. Employees will be assigned an account either as a restricted or a standard account. Restricted accounts generally have lower credit limits are subject to more restrictions on their use. Circumstances wherein a restricted account may be established include, but are not limited to:

(1) cases where the cardholder has instructed the vendor not to obtain credit reports; and,

(2) cases where the program coordinator has requested or approved a restricted card.

j. **Privacy Act**

(1) Employees will not be required to waive any legal rights under the Privacy Act or to disclose any personal information to any third party vendor or contractor, or the vendor's agents or attorneys except as required by applicable law, rule, regulation, or the terms of any card agreement entered into by the employee.

(2) Should the vendor require any account information, the employee may be contacted directly at the work site. To the extent the Privacy Act is implicated by travel card use or administration, the employer will comply with the provisions of the Privacy Act.

j. No vendor attorney shall interview, or otherwise have contact with employees without the union being provided an opportunity to be present during such occasions.

12. HEALTH AND SAFETY

Why should you include health and safety protection in your collective bargaining agreement? Doesn't the Occupational Safety and Health Act (OSH Act) provide on-the-job protection? Doesn't OSHA cover federal employees?

Federal employees are indeed protected by OSHA regulations through Executive Order 12196, and by 29 CFR 1960, "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters." However, OSHA does not inspect federal workplaces routinely. OSHA usually conducts inspections in federal agencies in response to worker complaints, when there is a fatality, or when it is focusing or targeting a specific type of injury or illness.

Even when OSHA does conduct an inspection and finds violations, OSHA cannot fine federal agencies. In its "Notices of Unsafe or Unhealthy Working Conditions," OSHA gives the agency dates by which the violations have to be abated. Employing agencies that do not want to correct problems are not obligated to do so. Sometimes compliance depends on how effective the OSHA office that issued the citations is in its follow up. A strong local union can also work to ensure that problems are fixed and that workers are protected. The local can contact OSHA if the agency is not making progress, and it can raise the lack of compliance at a particular facility up the chain of command to the agency head. OSHA citations are part of the agency's annual report to the White House.

When there is little recourse for employees to get help with health and safety problems, it may be helpful to have health and safety provisions in collective bargaining agreements. The union can negotiate the provisions of the contract and use the grievance procedure as a way to enforce health and safety

protections. Negotiate for items that will strengthen your health and safety program. It is not necessary to rewrite the OSH Act into your contract.

The bargaining agreement should focus on protections that are **not** provided by the OSH Act or 29 CFR 1960. It can include items such as full-time union health and safety representatives, how much training union health and safety representatives can receive per year, and union participation in federal field health and safety councils. Field councils are groups of health and safety managers and union representatives that meet with OSHA to discuss problems, workable solutions and to receive training. They are a good resource, but according to an OSHA survey done a couple of years ago, many do not include union participation. We have heard that this is due to lack of management support for union participation.

Under 29 CFR 1960, employee representatives have the right to participate in an OSHA inspection and in the annual inspections agencies are required to do themselves. However, if the agency has not been cooperative on this issue in the past, you may want to negotiate to include it in the collective bargaining agreement.

What should the contract include?

- General health and safety protection for recognized hazards and assessment of other hazards
- Labor-management cooperation or partnership, i.e., joint health and safety committees
- Union participation in developing, implementing and evaluating the program
- Agency compliance with OSHA regulations, e.g., hearing protection in high-noise areas
- Developing programs for hazards for which there is no OSHA standard
- Personal protective equipment provided at no cost to the employee
- Employee right to refuse hazardous work (outline circumstances)

- Employee compliance with requirements and discipline for non-compliance
- Return to work policy for injured employees, i.e., restricted/limited duty
- Procedures/mechanism for evaluating "new" hazards (i.e., ones that were not addressed in the existing program) and developing preventive measures. For example, violence in the workplace
- Accident reporting and early medical intervention
- Emergency procedures

Specific provisions

- Eye examinations for employees who work with computer VDTs
- Ergonomics program, including hazard analysis and workstation redesign
- Indoor air quality evaluations
- Union access to records, e.g., OSHA injury and illness records, medical surveillance records, employee exposure and training records
- Right to conduct employee surveys
- Union authority to stop dangerous work
- Health promotion programs, such as smoking cessation, diet and nutrition, and other lifestyle health issues.

Committees
The parties agree to establish a health and safety committee in accordance with E.0. 12196 and Department of Labor implementing regulations.

Other Typical Provisions

! Health and Safety Standards

! Protective Clothing, Equipment and Tools

! Repair of Operating Equipment

! Safety Training

! Exposure to Hazardous Conditions

! Work in Remote Areas

! Imminent Danger Situations

! Inspections and Accident Investigations

! Training for Union Members of Safety Committee

! Employee Reports of Hazardous Conditions

! Reports to Union of Dangerous Conditions, Abatement, Serious Injury, Illness

13. HOURS OF WORK AND OVERTIME

The contract should contain a strong hours-of-work clause which sets forth, by contract, the administrative workweek, basic workweeks of five (5) consecutive days (Monday through Friday for most units), and a flextime or same 8 hour day. This is usually a reiteration of the regulatory work day and work week.

It should also provide for advance notice when emergencies necessitate changes in tours of duty. The FLRA (relying on OPM opinion) had originally declared such proposals nonnegotiable. The basis for ruling such proposals nonnegotiable is that, by regulation, management must change an employees work schedule *whenever* it forsees an increase in cost, where the change would amount to substantial savings. Incorporating the regulatory language should solve any negotiability problems under these FLRA decisions.

The effect of the FPM "sunsetting" of many chapters of the Federal Personnel Manual has not yet been assessed on the negotiability of the proposals and contract clauses that have been stricken down in the past. Once the chapters of the FPM have been designated for elimination. more will be known on this matter.

Overtime provisions should provide for fair and equitable distribution of overtime among qualified employees, the use of volunteers over non-volunteers, and the prohibition of assigning overtime as reward or penalty. The procedures for distributing overtime can include the use of rosters, limited to person normally doing the job, etc.

Examples

A. The administrative workweek shall be a period of seven (7) consecutive calendar days beginning on Sunday.
B. The basic workweek for full-time employees shall be five (5) consecutive 8-hour workdays, Monday through Friday; however, installations operating on some other weekly schedule as of the effective date of this agreement may continue such operation.
C. The basic workweek for part-time employees shall be in accordance with applicable laws and regulations.
D. Unless flextime or compressed work schedules apply, the basic non-overtime workday for full-time employees shall be the same 8 hours each day.
E. The occurrence of holidays shall not affect the designation of the basic workweek.
F. Except in situations where the organization would be seriously handicapped in carrying out its functions or where costs would be substantially increased, notice of changes in tours of duty will be given to employees two weeks in advance of the change.

Overtime will be assigned fairly and equitably among qualified employees on the basis of seniority.

When the agency decides to use overtime, qualified volunteers will be used before using non-volunteers.

Overtime shall not be distributed or withheld as a reward or a penalty.

Other Typical Provisions

! Shift changes

! Call back overtime

! On-call and Standby

! Computation of overtime

! Rest periods and breaks

14. ANNUAL LEAVE

The annual leave article should:

! Establish annual leave as a right, subject to the approval of the supervisor.

! Not allow management to put arbitrary restrictions on minimum or maximum length of leave, except for legimate job-related reasons.

! Make disapproval or cancellation subject to impairment of mission of the agency.

! Provide for emergency annual leave.

General
The use of annual leave is the right of the employee subject to workload requirements. In addition to workload considerations, the supervisor's decision to approve or disapprove all annual leave will involve consideration of employees' expressed desires and personal convenience.

Scheduling
A. Employees may request leave without interference or coercion for any duration, for any time and in any pattern they desire. Approval or disapproval will be dependent on staffing and/or workload requirements. No arbitrary or capricious restraints will be established to restrict when leave may be requested.

B. Approved leave will not be canceled except in rare and unusual circumstances when the mission of the agency would be impaired.

Other Typical Provisions

! Scheduling Procedures

! Requests for Unscheduled Leave

! Vacation Schedule Conflicts

! Canceling/Rescheduling

! Emergency Annual Leave

! Leave for Death in the Immediate Family

! Leave for Religious Holidays

! Accrual - Availability of Leave

! Leave for Internal Union Functions

15. SICK LEAVE

According to federal regulations governing the use of sick leave, an employee's request for sick leave ***must be granted if the employee is incapacitated for work by reason of illness or injury***. Supervisors or any other management official have no discretion but to allow the use of sick leave when an employee is incapacitated by a non-on-the-job-injury.

The sick leave article should clearly establish the right of employees to use sick leave for illness, doctor's appointments, etc., and make approval mandatory. It should restrict the requirement of doctor's certificates to instances where there is documented reason to believe an employee is abusing sick leave.

General
This article sets forth comprehensive policies and procedures pertaining to the approval and use of sick leave by bargaining unit employees. Employees shall earn and be granted sick leave in accordance with applicable regulations and the provisions of this article. Sick leave requests shall be approved for employees when they are incapacitated for performance of their duties by sickness, injury, pregnancy, confinement, medical, dental, or optical treatment or examination, or when a member of the employee's immediate family is afflicted with a contagious disease and the employee's presence at work would jeopardize the health of others.

Use of Doctor's Certificates
Employees will not be required to furnish a doctor's certificate unless there is documented reason to believe that the employee is abusing sick leave. Employees will not be required to provide doctor's certificates for sick leave requests solely on

the basis of a mechanized leave usage report that indicates the employee's use of sick leave is abnormal.

Other Typical Provisions

! Procedures for requesting sick leave

! Identification and criteria of sick leave abuse

! Privacy of records

! Advance sick leave

! Maternity/Paternity leave

! No requirement to use annual leave prior to advancement of sick leave

16. MERIT PROMOTION

The important provisions of the merit promotion article are:

! Commitment to merit principles.

! Commitment to use skills and abilities of bargaining unit employees to the maximum extent possible.

! Mandatory career ladder promotion when employee meets promotion criteria.

! System for post audit by union of promotion actions.

It should be noted that management's right under 5 USC 7106(a)(2)(C) to select from any appropriate source has severely limited what can be negotiated in the merit promotion area.

The purpose and intent of the provisions contained in this article are to ensure that merit promotion principles are applied in a consistent manner with equity to all employees and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, non-disqualifying physical handicap, or age, and shall be based solely on job-related criteria.

It is agreed that the employer will use the skills and abilities of bargaining unit employees to the maximum extent possible consistent with mission requirements, merit principles, and applicable laws and regulations.

Career Ladder Promotions

A. The employer will ensure that procedures for administration of career ladders will be consistent with published policy. Career ladder plans must show the promotion criteria at each grade level of the plan which employees must meet to be promoted. A copy of the plan will be given to employees as they enter each level of the plan.

B. When career ladder plans are established or revised, the employer will notify the union prior to implementation.

C. At the time an employee meets time-in-grade and any other legal promotion requirements, the employer will make a decision to promote or not promote.

1. If an employee is meeting the promotion criteria in the career or ladder plan, the employer will certify the promotion which will be effective at the beginning of the first pay period after the pay period in which the requirements are met.

2. If the employee is not meeting the promotion criteria in the career or ladder plan, he/she will be given written notices which will reflect the tasks which must be successfully performed and skills which must be demonstrated before promotion can be effected.

Post Audit of Records

A. The union will be permitted to conduct audits of promotion packages for all bargaining unit positions, when it has reason to believe a discrepancy exists or when requested to do so by an employee.

B. The union will provide the employer with the names of the union representatives who are responsible for conducting audits. Any changes to the list of designated representatives will be sent to the employer in writing. The representative designated to conduct the audit will not have been an applicant for the promotion package being audited.

C. The designated official responsible for the package will make the pertinent records from that package available to the union auditor within 7 working days of the receipt of the audit request. An auditor shall treat information confidentially.

Other Typical Provisions

! Applicability of Competitive Procedures

! Applicability of Non-Competitive Actions

! Vacancy Announcements

! Areas of Consideration

! Employee Applications

! Priority Consideration

! Promotion Panels

! Establishing the Best Qualified List

! Union Review of Competitive Actions

17. DETAILS AND TEMPORARY PROMOTIONS

Fair and equitable distribution is the key issue in negotiations of details and temporary promotions. This can be accomplished by rosters, volunteers, record keeping, etc.

In order for employees to receive pay, under the Back Pay Act, it is necessary to negotiate mandatory temporary promotions for employees who are detailed to or perform the duties of a higher graded position.

Details
A detail is the temporary assignment of an employee to a different position for a specified period of time with the employee returning to his regular duties at the end of the detail. Details are intended only for meeting temporary needs of the agency's work requirements, when necessary services cannot be obtained by other desirable or practicable means.

Details shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Temporary Promotions
Employees detailed to a higher grade position for a period of more than 10 consecutive work days must be temporarily promoted. The temporary promotion should be initiated at the earliest date it is known by management that the detail is expected to exceed ten consecutive work days.

Temporary promotions in excess of 120 calendar days shall be filled through competitive procedures. Temporary promotions of

less than 120 calendar days shall be rotated equitably among those employees who have been determined by management to have the capacity and requisite skills for assuming the responsibilities of the assignment unless competitive procedures are used.

Other Typical Provisions

! Details to lower graded positions

! Details to higher graded positions

! Details outside the bargaining unit

! Duration

! Reassignments

! Assignment of duties for medical reasons

18. PERFORMANCE APPRAISAL SYSTEM

Since the FLRA has determined that the determination of critical elements and performance standards is a management right under 5 USC 7106(a)(2), it is imperative that the contract provide criteria by which the standards, elements and their application can be challenged by the union in arbitration. The contract should also contain procedures for notification of a counselor for performance improvement plans with sufficient time to improve when management determines an employee's performance is unsatisfactory.

Policy
The purpose of this article is to provide a system for evaluating employees' performance based on objective criteria related to the employee's position while enhancing the efficiency of agency operations by motivating employees to perform their jobs effectively.

The performance appraisal system and the parts that make up the system as applied to the bargaining unit employees will permit the accurate evaluation of job performance on the basis of objective criteria and will be fair, reasonable, equitable and job-related.

The results of performance appraisals will be used as a basis for other personnel management actions including training, promotions, rewards, reassignments, reductions-in-grade, retaining and removing employees.

Appraising Employee

When rating employees or otherwise applying performance standards, the employer shall consider factors which affect performance that are beyond the control of the employee.

An employee will be held accountable only for those job elements and performance standards for which the employee is officially responsible.

Other Typical Provisions

! Coverage and Definitions

! Employee Participation

! Appraisal System Principles

! Measuring Performance/Audit of Work

! Appraisal Rating

! Application of Appraisal

! Counseling Progress Reviews and Performance Improvement Plans

! Procedures for Removal or Demotion

! Within-Grade Increases

! Appraisals for Union Officials

19. REDUCTION-IN-FORCE

There are two ways to handle negotiations of RIF's. The procedures can be fully set forth in the contract or negotiated on a midterm basis at the time of notification from the agency. In either event, it is important to negotiate up front in the contract a sufficient notification period for the union and employees, and the requirement in the contract to provide necessary information. It should also include for strong procedures and arrangements for minimizing the impact; such as, out-placement programs, use of vacancies, training, reassignments, etc.

Notification to Union

In the event of a reduction-in-force or transfer of function, the agency will notify the union and fulfill its obligation to bargain consistent with 5 USC Chapter 71.

A. Written notification shall be made at the earliest possible date prior to the general notice to employees. The notification will include:
1. The reason for the action to be taken;
2. The approximate number of employees who may be affected initially;
3. The types of positions anticipated to be affected initially; and
4. The anticipated effective date that action will be taken.

B. The agency shall provide the union, upon request, with information in accordance with 5 USC 7114(b)4.

Notice to Employees

A. The agency will give an advance general notice of 60 calendar days to employees who may be affected by a reduction-in-force action.

B. The agency will provide a specific notice of 30 calendar days to individual employees who will be affected by a reduction-in-force action.

Other Typical Provisions

! Definitions

! Reducing the Impact

! RIF Placement

! RIF Notices

! Employee Information

! Salary Retention

! Competitive Areas

! Competition Levels

! Outplacement Programs

! Transfer of Function

! Relocation

! Performance Appraisals

20. CONTRACTING OUT

The contracting out article must ensure that the union gets sufficient advance notification and that they be provided all the relevant information, consisting of:

! Schedules or Milestone Charts

! Invitation for Bids (IFB) or Request for Proposal (RFP)

! Performance Work Statement (PWS)

The article should also provide that contracting out decisions and procedures are in accordance with OMB Circular A-76.

Prior Notification to Union
When the agency anticipates contracting out of work presently being performed by bargaining unit employees, the union will be notified prior to the invitation for bids and at the earliest possible date. The notice will include relevant and pertinent data and information as requested by the union to include schedules or milestone charts, the invitation for bid (TFB) or request for proposal (RFP), and the performance work statement (PWS).

Management Decisions
The decision by the agency to contract out work presently being performed by bargaining unit employees and procedures used will be made in accordance with OMB Circular A-76 and applicable rules and regulations.

Other Typical Provisions

! Minimize Adverse Impact on Employees

- Briefing
- Retraining of Employees
- Union Invitation to "Walk Through"
- Periodic Briefing to Employees during Cost Comparison Process

21. A-76 STUDIES

The following is based on the May 2002 agreement between NTEU and the Food and Drug Administration.

The parties have a mutual interest in ensuring constructive employee involvement in implementing Commercial Activities (A-76) Studies initiated by the Agency. Therefore:

1. A representative designated by the union will participate as a non-voting member on the agency steering committee responsible for overseeing the A-76 Studies process, except when that committee reviews or discusses the management study, including the most efficient organization (MEO).

2. The union will appoint a bargaining unit employee (and an alternate) as the union's representative on each Performance Work Statement (PWS) team and to each MEO team. Additionally, employees may serve on the PWS, MEO or source evaluation panel, but, if they participate on one, they cannot participate on another (with the exception of the Union MEO Development Team (discussed below) on which there are no restrictions). The parties will consult concerning assignment of additional bargaining unit employees to the PWS and MEO teams. Any bargaining unit employees participating on the PWS or MEO Teams or source evaluation panels will be provided relevant training.

3. The union may also appoint up to three bargaining unit employees each to participate on a Union MEO Development Team. These teams will be limited to employees appointed by the union and will develop proposed MEOs for each agency function impacted by the A- 76 studies. Each Union MEO Development Team will be provided with a copy of the second draft of the associated PWS team from which they will develop their MEO. The management MEO team for each function will review and consider the final product of the corresponding Union MEO Development Team. The A-76 contractor will invite members of the Union MEO Development Team to attend the same training offered to Management MEO Teams

or equivalent training. The contractor will inform the teams of all relevant deadlines in a timely manner.

4. The union shall have the right to designate a representative (and alternate) to each source evaluation panel convened to evaluate contractor bids submitted in connection with each study. The union representative may observe the proceedings and participate in discussions but will not submit "scores" for the contractor bids. Union designees to source evaluation panels shall be subject to the requirements and restrictions of the Federal Acquisition Regulation and other applicable laws, rules, and regulations and shall be informed of such requirements and restrictions.

5. In accordance with OMB Circular A- 76 and in order to preserve the right-of-first-refusal or opportunity for future employment with the contractor, all employees who participate on the PWS or MEO Teams and the source evaluation panels (but not those who participate on the Union MEO Development Teams, to which the prohibitions do not apply) should be aware of the general restrictions *set* forth in the Circular which state that they should "not review, approve, or have direct knowledge of the final performance estimates."

In order to protect their right of first refusal, employees on the PWS Teams will cease participation in the PWS development process after providing their comments on the second draft PWS to the FDA's A-76 Study contractor. Because they will not be involved in finalization or approval of the PWS, PWS team members have no other restrictions or impacts. However, different restrictions apply to employees participating on the MEO teams. Consequently, the level of participation in the PWS and MEO teams in which employees can engage without jeopardizing their rights of first refusal varies and will be described in detail in the employee acknowledgment form (or attachment to it) provided to each participating employee by the FDA prior to his or her participation on any of these teams (other than for data collection).

6. Pursuant to OMB Circular A- 76, any bargaining unit employee has the right to elect not to participate in the study as a team member at any time, regardless of whether appointed by the union

or assigned by the agency. This should not be interpreted to mean that employees may decline to furnish information concerning their duties and responsibilities or other factual matters related to their employment to the A-76 study contractor in connection with the studies.

7. All union representatives (including alternates) on PWS Teams, MEO Teams, source evaluation panels, or Union MEO Development teams will receive a reasonable amount of official time to prepare for and participate in team activities. If there are any disputes about how much time is reasonable under the circumstances they will be referred to the Union's National Office and the Agency's Office of Human Resources and Management Services. Representatives of those offices will meet to resolve the disputes. Any disputes which cannot be amicably resolved at the national level will be resolved through the negotiated grievance procedure.

8. If any management members of the PWS, Management MEO teams, or source evaluation panels are required or allowed to travel in order to participate on the teams, a similar number of bargaining unit employees may do so as well.

9. The agency will hold all employee meetings concerning the A-76 studies for affected personnel, including bargaining unit employees, at least quarterly. These meetings may be held by video teleconference or teleconference when necessary and will be coordinated with the appropriate union representatives. The union will be provided thirty minutes at the end of each meeting to meet separately with bargaining unit employees.

10. The agency will provide a website on which employee or union questions about the studies and the agency's answers to those questions will be posted.

11. The union reserves the right to negotiate unresolved issues which may arise at a later date.

12. The union reserves any appeal or protest rights it may have under law, rule, or regulation in connection with the results of agency A-76 studies.

This printing of this manual reflects changes through 7/12/02. Check the OLMR portion of the AFGE website to ensure that this is the most recent version.

22. DISCIPLINARY AND ADVERSE ACTIONS

Discipline is one of the most important subjects that can be controlled by your contract. A discipline article that protects employees from unwarranted punishment, while at the same time ensuring that order conducive to a good working environment is maintained, is a large step forward in most work places.

A note on terminology. Many agencies insist on using the term "discipline" only for suspensions of 14 days or less and for reprimands, and they insist on using the term "adverse action" for discharges and suspensions of more than 14 days. Since all reprimands, suspensions, and discharges are both disciplinary actions and actions adverse to the employee, this attempted distinction is confusing and unnecessary.

Usually, if you are going to use different procedures depending on the severity of the proposed penalty, you might as well describe the distinction in clear and express language, rather than by using obscure shorthand phrase.

Finally, the whole subject of discipline has to be considered in a context that also includes the performance article and the grievance and arbitration procedures, not in isolation.

A. BASIC PROCEDURES

Federal law establishes the basic minimum procedures that must be followed in any discharge or suspension for more than 14 days:

> An employee against whom an action is proposed is entitled to—
> (1) at least 30 days' advance written notice, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment has been imposed, stating the specific reasons for the proposed action;'
> (2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
> (3) be represented by an attorney or other representative;
> (4) a written decision and the specific reasons therefor at the earliest practicable date.

Contracts typically repeat these requirements, either verbatim or in paraphrase. That provides useful information to employees and supervisors. You should be careful, though, that in the process of summarizing or paraphrasing the statute, you don't agree to standards that are less than those already provided by law.

SUGGESTED LANGUAGE

An employee against whom an action is proposed is entitled to— (1) at least 30 days' advance written notice(2) a reasonable time, but not less than 21 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer; (3) be represented by an attorney or other representative;(4) a written decision and the specific reasons therefor at the earliest practicable date.

Actions under this Article can be taken to grievance and arbitration in accordance with this Agreement. Disciplinary actions in which the Employer has committed a procedural or substantive error are subject to being reversed at the discretion of the arbitrator. If the arbitrator finds the

Employer has committed a procedural or substantive error in an adverse action case, the adverse action must be reversed.

SAMPLE LANGUAGE

An employee against whom a suspension, adverse action, or major adverse action is proposed is entitled to 30 days advance written notice, except when the crime provisions have been invoked. The notice will state specific reasons for the proposed action. Management agrees that the employee shall be given the opportunity to use up to 8 hours of time to review the evidence on which the notice is based and that is being relied on to support the proposed action. Additional time may be granted on a case by case basis. Upon request, one copy of any documents in the evidence file will be provided to the employee and his or her designated representative.

The employee or representative may respond orally and in writing as soon as practical but no later that 14 calendar days from receipt of the proposed action notice. The response may include written statements of persons having relevant information or other appropriate evidence. Management has the right to restrict the response time to 7 days when invoking the crime provision. [SSA]

B. PRE-TERMINATION HEARINGS

The purpose of a disciplinary system is to allow bad employees to be removed, or otherwise punished, while ensuring that good employees are not. Thus, one major interest is minimizing the chance that innocent employees will be erroneously found guilty of misconduct.

Federal law, and the United States Constitution, already impose certain major protections. Under these authorities, the employee must be given advance written notice of the charges, an

opportunity to rebut the charges before any action is taken, and a timely fair hearing at which to challenge the action. The hearing can either be before the Merit Systems Protection Board or before an arbitrator under the parties' grievance procedure.

The most important benefit that can be bargained is requiring that the fair hearing (and the decision based on the hearing record) take place before the employee leaves the payroll.

SUGGESTED LANGUAGE

ALTERNATIVE 1.

If the employee timely grieves the decision under the expedited grievance procedure, the effective date shall be stayed until the issuance of the grievance decision. The grievance decision shall set the new effective date, if applicable.

ALTERNATIVE 2.

A decision suspending or terminating an employee will be automatically stayed until a decision on his or her appeal is made by an arbitrator or the Merit Systems Protection Board.

SAMPLE LANGUAGE

If the employee timely grieves the decision under the expedited grievance procedure, the effective date shall be stayed until the issuance of the grievance decision. The grievance decision shall set the new effective date, if applicable.

In instances where public or employee health, safety, or welfare may be impaired or endangered, other there may be a serious breach of applicable standards of conduct, or it is necessary to invoke the "crime provision" of 5 United States Code $7513(b)(3), the Employer reserves the right to take appropriate action immediately and before the procedures set forth herein are initiated or exhausted. {Dept. of Ed.]

In exceptional circumstances, the President, Council of Prison Locals, may immediately request that the appropriate Regional Director or designated official consider a stay of a removal or suspension in excess of fourteen days until a decision under Article 32, or an initial decision of the Merit Systems Protection Board is issued. Such requests must be made prior to the effective date of the contested action. Stay of actions will not apply to: probationary actions; or actions taken under 5 USC 7513, where there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed. [BoP]

DISCUSSION

Alternative 1 in the suggested language provides for a stay, but only if the employee and the union opt to use the

expedited grievance procedure. Alternative 2 in the suggested language provides for a stay as long as the employee appeals, whether to arbitration or the MSPB.

The benefit of alternative 1 is that it makes the union-negotiated grievance procedure obviously superior to the statutory procedure. The drawback is that it may create a pressure on the union to spend money on non-members' non-meritorious cases. That drawback is reduced by the second alternative.

Notice that alternative 1 (which is taken verbatim from the Department of Education contract) incorporates an expedited grievance procedure. That makes sense under the circumstances, as well as demonstrating more generally that arbitration need not be dragged out forever. This also demonstrates the need to consider discipline in light of the grievance and arbitration procedure.

The concept underlying the suggested language has been held to be within the mandatory scope of bargaining. Ironically, management's main negotiability argument has been that the management-created delays in appeals and grievance procedures means that a stay effectively eliminates management's ability to take effective discipline. However, the government may deny an employee a pre-termination hearing only if the post-termination hearing comes reasonably soon after the agency firing decision. If the MSPB appeals procedure, or the standard arbitration procedure, is too slow to meet management rights standards, it is too slow to meet the constitutional requirement of a timely post-termination hearing when there is no pre-termination hearing.

In any event, the discipline article must be considered in tandem with the grievance and arbitration article.

C. PROGRESSIVE DISCIPLINE.

Arbitrators and the MSPB have consistently found that violating a contract requirement of progressive discipline is grounds for overturning or mitigating a disciplinary action.

SUGGESTED LANGUAGE

Since the objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service, the principle of progressive discipline will be followed. Normally, discipline will be preceded by counseling and assistance, including oral warnings which are informal in nature and not recorded. Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassing the employee.

SAMPLE PROVISIONS

Since the objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service, the principle of progressive discipline will be followed. Normally, discipline will be preceded by counseling and assistance, including oral warnings which are informal in nature and not recorded. Counseling and warnings will be conducted privately and in such a manner as to avoid embarrassing the employee. [SSA]

In keeping with the concept of progressive discipline, actions imposed should be the minimum, in the judgment of the disciplining official, that one can reasonably be expected to correct and improve employee behavior and maintain discipline and morale among other employees. [AAFES]

Disciplinary and adverse actions shall be constructive and for just cause, promote the efficiency of the service, and assure due process. [DeCA]

The parties endorse the concept of progressive discipline designed primarily to correct and improve employee behavior, except that the parties recognize that there are offenses so

egregious as to warrant severe sanctions for the first offense up to and including removal.

D. EXTENSION OF TIME LIMITS.

The amount of time an employee needs in order to respond to a proposed discharge will vary immensely depending on the circumstances. This fact can be best approached by establishing a reasonable basic timetable, but providing for additional time in appropriate cases.

SUGGESTED LANGUAGE

The employee shall have two weeks in which to file a response to proposed discipline, plus an additional two weeks if the employee deems it necessary. Requests for further extensions of time will be granted if reasonable.

SAMPLE PROVISIONS

Management will not unreasonably deny a request for extension of time to respond to proposals.

An employee who has been issued an advance written notice of adverse action may request an extension of time in which to reply to the notice. The official designated to receive the reply will make a decision on such a request. [AAFES]

Extensions of this time period will be granted for a demonstrated and valid reason if requested orally or in writing by an employee or designated representative. [DeCA]

E. NOTICE TO UNION.

The union has two inherent roles related to discipline. First, it has the right to defend an employee who has been improperly targeted with discipline. Second, it has the right to defend the interests of the workforce as a whole. To carry out both these rules effectively, the union must know as much as possible, as soon as possible, about disciplinary efforts.

SUGGESTED LANGUAGE

ALTERNATIVE 1.

Management will serve the union with a copy of any proposed disciplinary action and with any subsequent documents submitted by management or the employee.

ALTERNATIVE 2.

The union shall be notified in writing by an appropriate management official of proposed action at the time it is proposed.

SAMPLE PROVISIONS

Notices will be given to employees in duplicate so that they may give one copy to their representative or the union if they desire. [AFMC]

F. INFORMATION TO EMPLOYEE

An employee facing serious discipline has constitutional and statutory rights to information needed for his or her defense, particularly information that makes clear the reason for the discipline or for its proposed severity. In addition, sometimes useful information can be obtained through the Privacy Act, the Freedom of Information Act, and 5 U.S.C. § 7114.

For these reasons, we do not feel it is normally useful to propose any specific right to information in connection with disciplinary actions.

SAMPLE PROVISIONS

Upon request, the Employer will furnish the employee, or the designated representative, a copy of all pertinent information, both for and against the employee. [DeCA]

G. TIMELINESS OF DISCIPLINE.

SUGGESTED LANGUAGE

Disciplinary action will be initiated timely after the offense was committed or made known to management.

SAMPLE PROVISIONS

The Employer further agrees to effect disciplinary actions in an efficient and timely manner. In this respect, when an employee is subject to discipline, the Employer will strive to effect disciplinary action within either 45 days of the offense, the Employer's awareness of the offense, or the completion of an investigation of the matter by other than the supervisor, whichever occurs later. If for reasons of significantly changed circumstances, further delay in taking the action is anticipated, a notice from the Employer to the employee advising that disciplinary action is being considered, the general basis for the action, and that the employee will be informed when a decision has been made that satisfies the requirements of this section. [AFMC]

Disciplinary and adverse action will be timely . . . Normally, disciplinary and adverse actions will be initiated within 30 calendar days after being made aware of the facts and circumstances of an offense that warrants such action. If there is a delay in making a determination whether or not to take an

action, the concerned employee will be advised in writing that action is being considered and an estimated date by which such determination will be made. Absent unusual circumstances, such as an ongoing investigation, such a date will not be more than 30 calendar days after the official became aware of the facts and circumstances of the offense. [AAFES]

23. GRIEVANCE PROCEDURE

The labor relations law requires that every collective bargaining agreement have a grievance procedure. It does not have to be labeled, "Negotiated Grievance Procedure."

A. PURPOSE OF THE GRIEVANCE PROCEDURE

A grievance procedure exists as a mechanism to resolve problems quickly and fairly. It is an alternative dispute resolution procedure.

B. SCOPE OF THE GRIEVANCE PROCEDURE

The following suggested language repeats verbatim the applicable law. It is useful to provide this language because the parties can, if they wish, define grievance more narrowly.

Section ___. Coverage and exclusions

(A) For the purpose of this contract, the term "grievance" means any complaint:

1. by any bargaining unit employee for personal relief concerning any matter not excluded by the terms of this Agreement relating to the employment of the employee;
2. by the Union for personal relief for any bargaining unit employee concerning any matter not excluded by the terms of this Agreement relating to the employment of that employee; or
3. by any bargaining unit employee, the Union or the Agency concerning a violation, the interpretation or claim of a breach of this Agreement, or any law, rule or regulation relating to conditions of employment.

(B) The following subjects are excluded from the coverage of this grievance procedure:

1. Any claimed violation of Subchapter III of Chapter 73 of Title 5, United States Code, relating to prohibited political activity;
2. Retirement, life insurance or health insurance;
3. A suspension or removal under Section 7532 of Title 5, United States Code, concerning national security;
4. Any examination, certification, or appointment;
5. The classification of any position which does not result in the reduction in grade or pay of an employee.

There is absolutely no reason to change any of this language. Any changes will only extend the exclusions, and never for any good reason.

NEGOTIATED EXCLUSIONS

The parties may negotiate any exclusions they wish. For example, some contracts provide that all matters appealable to the MSPB are excluded from the grievance procedure. That reflects a determination by the union party that it does not have the resources or capacity to use arbitration in these cases.

Some contracts exclude specific other matters. A common example is grievances over non-selection from a properly ranked and rated . .. " In practice, that exclusion may be meaningless, as the grievance would presumably charge that the list was not properly ranked and rated. Or, the purpose of the exclusion is bar a victim of race or sex discrimination from obtaining remedy through the grievance procedure.

The notion of barring people from filing frivolous grievances is odd. Anyone can file any piece of paper he or she wishes. If the person's claim is frivolous, that is, if it has absolutely zero chance of winning, the union will not pursue it, and there is no chance of management being hurt by it.

If, on the other hand, management is concerned that the employee will win the grievance, then frivolity is not the issue. The place for management to protect its interests is in the substantive portion of the contract, not in scope of the grievance procedure.

OPTION OF MSPB APPEAL OR GRIEVANCE PROCEDURE

> C. An aggrieved bargaining unit employee affected by a prohibited personnel practice under Section 2303 (b) (1) of Title 5, United States Code, may raise the matter under the appropriate statutory appeal procedure or this Agreement, but not both. A bargaining unit employee shall be deemed to have exercise his/her option under this provision at such time as the bargaining unit employee either initiates an action under the applicable statutory appeal procedure, or files a grievance in writing under this Agreement, whichever comes first.

OPTION OF EEO APPEAL OR GRIEVANCE PROCEDURE

> D. An aggrieved bargaining unit employee affected by matters covered under sections 4303 and 7512 of Title 5, United States Code, may raise the matter under the appropriate statutory appeal procedure or this Agreement, but not both. A bargaining unit employee shall be deemed to have exercise his/her option under this provision at such time as the bargaining unit employee either initiates an action under the applicable statutory appeal procedure, or files a grievance in writing under this Agreement, whichever comes first.

REPRESENTATI0N

The Union shall be the only representative used by a bargaining unit employee or group of employees, except that a bargaining unit employee may represent himself or herself.

INDIVIDUAL GRIEVANCES—STEPS

Have as many steps in the grievance procedure as there are managers who make independent judgements. If all grievances are handled at all steps by the labor relations office, have only one step in the grievance procedure. If your experience is that division directors overrule branch chiefs, or that office heads overrule division directors, etc., put those levels into the procedure. Otherwise, leave them out.

The contract should say with absolute clarity where a first step grievance must be filed. Providing anything other than the employee's immediate supervisor (e.g., saying the grievance will be filed with "the lowest level Agency official with authority to resolve the grievance") is an invitation to wasteful and distracting disputes. The immediate supervisor is a representative of management and must be delegated authority to resolve any grievances.

Step One. A grievance must be filed in writing with the employee's immediate supervisor within 30 calendar days of the act or occurrence giving rise to the grievance or from the date on which the bargaining unit employee knew, or had reason to know, of the act or occurrence.

The grievance will be signed by the employee and the representative, if any. The supervisor will respond in writing within 14 calendar days from receipt of the grievance.

The response will set forth the reasons the supervisor reached his or her conclusions.

Step Two. If the grievant is not satisfied with the step one decision, he or she may submit the grievance to the next higher level of management.

The Step Two grievance must be submitted in writing within 14 calendar days from receipt of the Step One decision.

Prior to issuing his or her decision and, if requested by the Union or the grieving bargaining unit employee, the step two manager will meet with the grievant and his or her Union representative to discuss the grievance.

The step two manager will render a written decision within fourteen 14 calendar days from receipt of the grievance, or within 7 work days from the conclusion of the meeting, whichever is later.

You can provide for further steps, following the example for the second step.

FAILURE TO MEET TIME LIMITS

There is no logical reason to have a double-standard, to say that if the employee misses a deadline he or she forfeits the claim, while management can miss any deadline with impunity. If deadlines are sacred, they should be sacred for both parties.

C. Failure to meet time limits

The failure of either party to meet a time limit concedes the grievance and the remedy.

INSTITUTIONAL GRIEVANCES

D. Procedure for Grievances by the Union or the Agency

A grievance by the Union must be filed with the Agency's Labor Relations Officer within thirty (30) calendar days of the act or occurrence giving rise to the grievance or from the date on which the Union knew, or had reason to know, of the act or occurrence.

A grievance by the Agency must be filed with the Union's President within thirty (30) calendar days of the act or occurrence giving rise to the grievance or from the date on which the Agency knew, or had reason to know, of the act or occurrence.

If the grieving party requests, the parties shall meet to discuss the grievance. The responding party will render a written decision within 14 calendar days from receipt of the grievance, or within 7 calendar days from the conclusion of the meeting, whichever is later.

Arbitrability Questions
In the event either party should claim a grievance outside the scope of the grievance procedure, the original grievance shall be considered amended to include this issue.

Any questions whether the grievance is outside the scope of the grievance procedure will be raised prior to the final step of the grievance procedure.

Other Typical Provisions

! Extension of Time

! Union Observer when Employee is Self-Represented

! Protection from Reprisal

! Procedures for Employee Grievances

! Procedures for Union Grievances

! Witnesses

24. ARBITRATION

Section 1. Applicability
Any grievance under the terms of this Agreement which is not resolved may be subject to binding arbitration. Arbitration may be invoked only by the Union or the Agency.

Section 2. Either the Union or the Agency may invoke arbitration by sending written notice to the other party within 30 calendar days following the receipt of the final decision under the grievance procedure. The notice shall identify the grievance and be signed and dated by an authorized representative on behalf of the party submitting the matter to arbitration.

Failure to invoke arbitration within the time specified shall waive the right to seek arbitration.

_____, _____, and _____ will serve as a permanent panel of arbitrators for grievances under this Agreement. The arbitrators will be selected in alphabetical order on a rotating basis to hear arbitration cases. The parties may agree to remove an arbitrator from the panel and then will jointly select a replacement.

The arbitrator's fees and expenses shall be borne equally by the parties to the arbitration. If prior to the arbitration hearing, the parties resolve the grievance, any cancellation fee shall be borne equally by the parties. If a party requests arbitration, and later withdraws the request for any reason other than resolution, that party shall bear the full cost of any cancellation fee imposed by the arbitrator.

Upon selection of the arbitrator, the parties shall jointly communicate with the arbitrator to select an agreeable date and

time for the hearing. Hearings will be held at the Agency's premises.

Examples

Invoking-Arbitration
Only the union or management may refer any grievance that remains unresolved after the final step under the procedures of Article to arbitration. A notice to invoke arbitration shall be in writing to the opposite party. Such notice shall be made within 30 calendar days after receipt of the written decision rendered in the final step of the grievance procedure.

Conventional Arbitration Procedure
A. On or after the date of the notice to invoke arbitration, the moving party will request the Federal Mediation and Conciliation Service to provide a list of seven (7), impartial persons to act as an arbitrator.
B. The parties shall meet within ten (10) calendar days after receipt of such list to select an arbitrator. If they cannot mutually agree on one of the listed arbitrators, then management and the union will alternately strike one arbitrator's name from the list of seven (7) and will then repeat this procedure. The remaining person shall be the duly selected arbitrator. The procedure to determine who strikes the first name will be determined by lot.
C. If either party refuses to participate in the selection process, the other party will make a selection of an arbitrator from the list.
D. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator.
E. Both parties shall be entitled to call and cross-examine witnesses before the arbitrator.
F. All witnesses necessary for fair representation at the arbitration will be excused on official time if otherwise in a duty status. On sufficient advance notice from the union, management will rearrange necessary witnesses' schedules and place them on duty during the arbitration hearing. Such schedule

changes may be made without regard to contract provisions on Hours of Duty.
G. A reasonable amount of preparation time for arbitration will be granted in accordance with the provisions of Article on official time.

Other Typical Provisions

! Invoking Arbitration

! Selection of Arbitrator

! Date/Site of Arbitration

! Arbitrator's Fees and Expenses

! Proceedings

! Witnesses

! Arbitration Panels

! Travel and Per Diem for Union Representatives and Witnesses

25. DURATION

This is not as simple a subject as first appears.

This is one area of federal sector labor law which is radically different from private sector labor law. In the private sector, one of the key, standard contract provisions is a no-strike pledge. As soon as the contract expires, the union is legally free to strike (unless the parties voluntarily agree to extend the contract pending completion of bargaining).

A. EFFECTIVE DATE

Typically, contracts provide a term of three years from the effective date. Measuring the years is not difficult.

Sometimes it is difficult to know the effective date. It is extremely important, therefore, for the contract to expressly state its effective date.

Under the law, a contract becomes effective on either the date it is approved by the head of the agency or, if the agency head has not acted on it, on the 31st day after it was executed by the parties at the bargaining table.

There are two ways to approach this. One is to identify those conditions; the other is to leave a blank, which will be filled in with the appropriate date when the contract is printed. The drawback to the second option is that malicious management might want to quibble about the exact date, and use this as an excuse to delay printing the contract.

SUGGESTED LANGUAGE

This agreement becomes effective on the date the head of the agency approves it, or 31 days after execution if there is not agency head disapproval. The effective date will be stated on the cover of the printed agreement.

SAMPLE LANGUAGE

A. This agreement shall take effect October 1, 1999,

B. This agreement shall become effective on the day approved by the Department of Defense (DoD) or if neither approved nor disapproved by DoD on the 31 st day after its execution.

C. This Agreement will take effect upon completion of the Union ratification and Agency head review process in accordance with 5 USC, Section 7114(c).

D. This new Agreement shall take effect on the date that it is signed by the Commissioner and the President of the American Federation of Government Employees (or their respective designees) and shall remain in effect for three (3) years from that date.

Example A is totally clear. As noted above, however, the October 1 date could not have been actually agreed to at the bargaining table, because the negotiators have no control over when the head of the agency approves the contract (or whehter the agency head will fail to act). Presumably, the tentative agreement had left a blank for the date, and the actual date was added later.

Example B states the law accurately. It would help immensely, however, if the printed contract expressly stated the actual effective date, either at the very beginning of the contract or the very end.

Example C also allows the discovery of a particular date. But, as with B, the printed contract should expressly state what that date is.

Example D does not seem to allow for the contingency of the passage of 31 days without signature by the head of the agency. That could cause unnecessary problems.

B. TERM OF CONTRACT

This is relatively easy. The parties decide how long they want the contract to last, and they state it. Any of the sample language will work.

SAMPLE LANGUAGE

> This Agreement will be in full force and effective for three (3) years from the effective date . . .

> This agreement shall remain in effect for a period of three years.

> This new Agreement shall take effect on the date that it is signed by the Commissioner and the President of the American Federation of Government Employees (or their respective designees) and shall remain in effect for three (3) years from that date.

> This agreement shall take effect October 1, 1999, and shall in full force and effect for a period of 3 years after effective date

C. ROLL-OVER

What happens at the end of a three year contract neither party wants to go back into full scale negotiations? Look at the following four samples:

SAMPLE LANGUAGE

A. This agreement shall remain in effect for a period of three years. Thereafter, this agreement shall remain in effect from year-to-year unless either party shall notify the other in writing not more than 120 days nor less than 45 days before the expiration date of the agreement of its desire to terminate or renegotiate this agreement.

B. This agreement shall take effect October 1, 1999, and shall in full force and effect for a period of 3 years after effective date. It shall be automatically renewed for periods thereafter unless either Party gives the other of its intention to renegotiate this Agreement no more 105 nor less than 60 days prior to the termination date.

C. This Agreement shall be automatically renewed for equivalent three-year periods, subject to applicable law and regulation, unless either party gives written notice to the other party of its intention to change this Agreement. Such notice must be given and received not more than 120 nor less than 90 calendar days prior to the expiration date of this Agreement.

D. If either party subsequently desires to renegotiate this contract, it will furnish written notice to the other party containing the proposed changes not less than one hundred and eighty (180) days but not more than two hundred and ten (210) days prior to the termination of this Contract. If neither party desires to renegotiate the Agreement, the parties shall execute new signatures and dates, and the

> Agreement shall be renewed for a one (1) year period.

Examples A, B and C say, in slightly different ways, that if neither party does anything, then the contract automatically extended either for one year or three years.

Example D says that if neither party does anything, then both parties are obligated to sign an agreement extending the contract for a year.

D. OPEN PERIOD

Typically, contracts provide that a desire (or demand) to reopen must be communicated in some specific way during the period 105 to 60 days before the termination date.

Almost always, the notice has to be given in writing.
Sometimes, the notice must identify the articles that the party wants to renegotiate.
Sometimes, the notice has to be accompanied by the party's proposals.

The examples given in the previous section demonstrate different possibilities.

ARTICLE 42 - EFFECTIVE DATE AND DURATION OF THIS AGREEMENT
Section a. This Agreement will take effect upon completion of the Union ratification and Agency head review process in accordance with 5 USC, Section 7114(c).amendments will remain in force for the remainder of the Agreement. Local supplemental agreements may be reopened by mutual agreement of the parties at the local level.
Section b. This Agreement will be in full force and effective for three (3) years from the effective date, but may be extended in one (1) year increments thereafter by mutual consent of the parties. Written notice may be given by either party to the other not less than sixty (60) days but not more than ninety (90) days prior to the expiration date that it desires to amend the Agreement. In the event notice is given, the parties will begin negotiating within thirty (30) days. If negotiations are not completed by the expiration date, the Agreement will be automatically extended until a new Agreement is mutually agreed upon/approved.

Section c. If neither party desires to renegotiate this Agreement, the parties will execute new signatures and date.

Section d. Amendments to this Agreement may be negotiated at any time by mutual agreement of the parties. The Agreement will be reopened upon the request of either party to revise or amend as required by new laws or regulations of appropriate higher authorities.
At the end of the eighteenth month following enactment of this Agreement, either party may request to reopen the Agreement at which time each party may select no more than two (2) articles for renegotiation. Any revisions or
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Article 40: Duration
Section 1 This agreement shall become effective on the day approved by the Department of Defense (DoD) or if neither approved nor disapproved by DoD on the 31 st day after its execution. This agreement shall remain in effect for a period of three years. Thereafter, this agreement shall remain in effect from year-to-year unless either party shall notify the other in writing not more than 120 days nor less than 45 days before the expiration date of the agreement of its desire to terminate or renegotiate this agreement.

Section 2 If, pursuant to a negotiability appeal filed by the council, any unresolved issue of negotiability raised by the employer in the course of the negotiations on this MLA is resolved and determined to be mandatorily negotiable, the parties will reopen negotiations on such issue at the request of the council.

Section 3 If portions of this agreement are found to be unworkable, this agreement may be opened for modification provided that any such request is submitted in writing, along with the new language being proposed, and both the employer and the council consent to opening the agreement for the purpose requested. A written notice of desire to modify the agreement during the term of the agreement will not have the effect of terminating or modifying the agreement.

ARTICLE 35 DURATION
SECTION 35.01: EFFECTIVE DATE
a. The Master Labor Agreement (MLA) shall become effective upon approval of HQ USAF and ratification by AFGE Council 214.

b. The MLA shall remain in effect for 36 months from the date of execution by the parties.

SECTION 35.02: RENEWAL
This Agreement shall be automatically renewed for equivalent three-year periods, subject to applicable law and regulation, unless either party gives written notice to the other party of its intention to change this Agreement. Such notice must be given and received not more than 120 nor less than 90 calendar days prior to the expiration date of this Agreement.

SECTION 35.03: GROUND RULES FOR NEW AGREEMENT
a. Ground rules negotiations shall commence no later than 30 calendar days after receipt of the request to bargain provided for in Section 35.02 by the parties exchanging their ground rules negotiation proposals.
b. If re-negotiations fail to achieve a settlement by the expiration date, provisions of the Agreement consistent with applicable law and this Article remain in full force and effect until a new agreement becomes effective.

Section 1. This Agreement will become implemented and become effective when it has been signed by the parties, submitted to the Agency Head and approved including review pursuant to Section 7114 (c) of Title 5, United States Code. The effective date will be stated clearly on its cover page.

Section 2. This Agreement shall remain in full force and effect for a period of one (1) year after its effective date. During the term of this agreement, additional matters may be proposed for inclusion in it. In such case, the additional matters will be considered and labeled as additional Articles of this agreement.

Section 3. The parties agree that they will commence negotiations to amend and supplement the Agreement at the end of one year. The provisions of the Agreement will remain in effect pending the conclusion of those negotiations. The parties will meet to discuss procedures for those negotiations sixty (60) days prior to the anniversary date of this Agreement.

26. DUES WITHHOLDING

A. The Employer will process authorizations to withhold amounts for union dues and union member programs when such authorizations are submitted by employees who are in the bargaining unit. The withholding amounts will be implemented within the first pay periods after the pay period in which they are submitted. Aggregate remission of dues authorized will be made to the union.

B. If an employee wishes to cancel such authorizations, the employee will be directed to obtain the necessary form from the union, provided the employee submits the form during the window 7 days before to 7 days after the anniversary of the date the initial authorization was submitted.

This printing of this manual reflects changes through 7/12/02. Check the OLMR portion of the AFGE website to ensure that this is the most recent version.