



**US Army Corps  
of Engineers**



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# **LABOR-MANAGEMENT AGREEMENT**

**U.S. Army Corps of Engineers,  
Los Angeles District**

**National Federation of  
Federal Employees,  
Local No. 777**



**2 March 2005 – 2 March 2008**

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## APPENDIX

A. Federal Service Labor-Management Relations Statute

## PREAMBLE

In accordance with the Title VII, Public Law 95-454, Civil Service Reform Act of 1978 (Chapter 71 of Title 5 of the U.S. Code) hereinafter referred to as the CSRA, this Agreement is entered into between the U. S. Army Corps of Engineers, Los Angeles District, and the National Federation of Federal Employees, Local 777, hereafter referred to as the Employer and the Union, respectively. Collectively, the Employer and the Union shall be known as the "Parties."

WHEREAS, it is the intent and purpose of the Parties hereto to promote and improve the efficiency of the administration of the U.S. Army Corps of Engineers, Los Angeles District by requiring high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency;

WHEREAS, it is the intent and purpose of the Parties to promote the well-being of the employees in consonance with the spirit and intent the CSRA by providing employees the means for amicable discussions and adjustment of matters of mutual interest relative to personnel policies, practices, procedures, and matters affecting conditions of their employment; and,

WHEREAS, the Employer and the Union agree that a constructive and cooperative working relationship between labor and management is essential to achieving the Employer's mission and to ensuring a quality work environment for all employees. The parties recognize that this relationship must be built on a solid foundation of trust, mutual respect, and a shared responsibility for organizational success.

NOW, THEREFORE, the Parties hereto, intending to be bound by this Labor-Management Agreement, hereby agree as follows:

ARTICLE 1  
RECOGNITION AND UNIT DESIGNATION

1.1 AUTHORITY. This Agreement is made under the authority contained in the Civil Service Reform Act of 1978 (Chapter 71 of Title 5 of the U.S. Code) hereinafter referred to as the CSRA and is based on the grant of Exclusive Recognition to the representation units by the U.S. Army Corps of Engineers, Los Angeles District, hereinafter referred to as the Employer, to Local 777, National Federation of Federal Employees, hereinafter referred to as the Union.

1.2 COVERAGE.

a. This Agreement is applicable to all eligible employees of the U.S. Army Corps of Engineers, Los Angeles District, employed in:

(1) Nonprofessional Unit accorded Exclusive Recognition by letter from the Employer dated 26 April 1967; this unit is identified as all employees of the U.S. Army Corps of Engineers, Los Angeles District, with the exception of management, supervisory and professional employees.

(2) Professional Unit, accorded Exclusive Recognition by letter from the Employer dated 29 March 1971; this unit is identified as all professional general schedule employees of the U.S. Army Corps of Engineers, Los Angeles District.

b. Excluded from the bargaining units are management officials, supervisors, guards, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering any provision of law relating to labor-management relations.

1.3 PURPOSE.

a. The statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them:

(1) safeguards the public interest,

(2) contributes to the effective conduct of public business, and

(3) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

b. The public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. Therefore, Labor organizations and collective bargaining in the civil service are in the public interest.

c. Therefore, it is the purpose of the CSRA and this Agreement to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of the CSRA should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

## ARTICLE 2 DEFINITIONS

### 2.1 Definitions:

- a. **AR:** Army Regulation.
- b. **Ad hoc:** For a specific purpose, case, or situation.
- c. **ADR:** Alternative Dispute Resolution. Any Procedure used in lieu of adjudication to resolve issues of controversy such as facilitation, mediation, ad-hoc committee, fact finding, mini trial, settlement negotiation, or non-binding arbitration.
- d. **Agreement:** Labor-Management contract between the parties. The collective-bargaining agreement entered into as a result of bargaining in accordance with the Federal Service Labor-Management Relations Statute.
- e. **Arbitration:** The process by which the parties to a dispute submit their differences to the judgment of an impartial person. The final step in a negotiated grievance procedure; the arbitrator's decision is binding on the Parties.
- f. **CFR:** Code of Federal Regulations.
- g. **CSRA:** Civil Service Reform Act of 1978.
- h. **Collective Bargaining:** Performance of mutual obligation of management and union/labor organization in an agency to meet, consult, and bargain in good faith to reach agreement on conditions of employment affecting such employees and to execute a written document incorporating the agreement reached.
- i. **Conditions of Employment:** Personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions.
- j. **Days:** All references to days mean calendar days unless otherwise stated.

k. **EEO**: Equal Employment Opportunity.

l. **Federal Labor Relations Authority**: (FLRA) An independent agency charged in section 7104 of the Statute with (among other things) determining appropriate bargaining units, resolving issues related to bargaining in good faith, conducting hearings and resolving complaints of ULPs, resolving exceptions to arbitrator's awards, and otherwise administer the Statute.

m. **Federal Services Impasses Panel (FSIP)**: An entity within FLRA charged in Section 7119 of the Statute with providing service and assistance to agencies and exclusive representatives in resolving negotiation issues/impasses.

n. **Federal Mediation and Conciliation Service (FMCS)**: An independent agency which provides services and assistance to agencies and exclusive representatives in the resolution of negotiation issues, including mediation services.

o. **Federal Service Labor-Management Relations Statute**: (Statute). Chapter 71 of Title 5 of the U.S. Code. (Appendix A)

p. **Grievance**: A complaint of an employee, a labor organization or an agency. The complaint may regard a management decision or some aspect of employment status or working condition; the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

q. **Impact and Implementation (I&I)**: Negotiation of the procedures management officials will observe in exercising their authority and appropriate arrangements for employees adversely affected by the exercise of such authority.

r. **Midterm Negotiations**: Negotiations between parties during the life of the agreement.

s. **Negotiated Grievance Procedure**: A system agreed to by the Parties, whereby the Parties, or employees, may receive consideration and resolution of grievances.

- t. **MSPB**: Merit Systems Protection Board.
- u. **Mediation**: A process in which a third party assists in the attempt to reach a peaceful settlement or compromise between disputing parties.
- v. **Mediator**: A third party from the Federal Mediation and Conciliation Service (FMCS) or from another source which assist in mediation.
- w. **Official Time**: The term used throughout the Federal Government to refer to the time used by a Union representative to represent a Union while still being paid by the Agency.
- x. **Office of Management and Budget (OMB)**: CFR Part 1300 address OMB Administrative Procedures and Directives.
- y. **OPM**: Office of Personnel Management.
- z. **Performance Improvement Plan (PIP)**: A written plan providing guidance and assistance for employees who fail to meet performance responsibilities/objectives.
- aa. **Parties**: Los Angeles District (Employer) and NFFE Local 777 (Union).
- bb. **Reduction in Force (RIF)**: A uniform, systematic, objective method to determine, which employees will retain their positions during workforce reduction(s).
- cc. **Supervisor**: An employee having authority in the interest of the agency to hire, transfer, furlough, suspend, layoff, recall, promote, remove, assign, reward, or discipline employees; or responsibly direct them; or to evaluate their performance; or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- dd. **Total Army Performance Evaluation System (TAPES)**: The Department of Army, Performance Management Program.



ee. **Unfair Labor Practice (ULP)**: An allegation by management, the Union or an individual, that some part of the Statute has been violated.

ff. **USC**: United States Code.

## ARTICLE 3 DURATION OF AGREEMENT

3.1 Term. This agreement shall be in full force and effect for a period of three (3) years from the date signed by the parties and shall automatically renew itself from year to year thereafter, unless written notice of a desire to terminate and renegotiate the Agreement is served by either party upon the other between the 105<sup>th</sup> and 60<sup>th</sup> day prior to the date of expiration.

3.2 Where no such termination notice is served and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in the Agreement, either party may serve upon the other a notice between the 105<sup>th</sup> and 60<sup>th</sup> day prior to the date of expiration, advising that such party desires to revise or change the terms or conditions of the Agreement. The renegotiation request will be in writing.

3.3 This Agreement shall terminate at any time it is determined the Union loses entitlement to exclusive recognition under applicable law.

3.4 Renegotiation. Normally, within 30 days after either party receives a timely renegotiation request as defined above in paragraphs 3.1 and 3.2, representatives of the Union and the Employer will meet and begin to renegotiate the Agreement. If a rival union has filed a challenge to the Union's status as exclusive representative, the Union and the Employer will not meet and begin to renegotiate the Agreement as long as the challenge remains unresolved. If the incumbent Union remains the exclusive representative for employees in the units upon disposition of the challenge, representatives of the Union and the Employer will meet and begin to renegotiate the Agreement as soon as possible after being informed of the outcome of the challenge.

## ARTICLE 4 EMPLOYEE RIGHTS

4.1 In accordance with the CSRA section 7102 (Appendix A), the Employer and the Union agree that each employee in the Unit has the right to form, join, or assist a labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

4.2 The Parties agree that in the treatment of employees, all provisions of this Agreement and the provisions of applicable laws, and regulations shall be applied fairly and equitably with due regard for each employee's personal dignity and right to privacy.

4.3 Employees in the Unit have these additional rights:

a. to present grievances directly to appropriate management officials of the Employer in an attempt to have them resolved, in accordance with Article 9 of this Agreement entitled "Grievance Procedures."

b. to present a grievance in accordance with Article 9 and if they so choose, to act as their own representative.

c. to be represented by the Union without regard to membership in the Union.

d. to examine and obtain copies of their own Official Personnel File (OPF) in accordance with CPAC/CPOC procedures.

4.4 Nothing in this Agreement shall require an employee to become or to remain a member of the Union, or to pay money to the Union except pursuant to a voluntary, written authorization for the payment of dues through payroll deductions.

4.5 The Employer shall annually post on all employee bulletin boards, a notice to employees of their right to be represented by the Union at any examination of the employee by a representative of management in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary

action against the employee and the employee requests representation.

ARTICLE 5  
MANAGEMENT RIGHTS

5.1 Subject to paragraph 5.2 of this Article, and in accordance with the Civil Service Reform Act (CSRA), nothing in this Agreement shall affect the authority of the Employer:

a. to determine the mission, budget, organization, number of employees, and internal security practices of the agency;

b. in accordance with applicable laws:

(1) to hire, assign, direct, lay off, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency operations shall be conducted;

(3) With respect to filling positions, to make selections for appointments from-

(a) among properly ranked and certified candidates for promotion; or

(b) from any other appropriate source; and

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

5.2 Nothing in this Article shall preclude the Employer and the Union from negotiating-

a. at the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or the technology, methods, and means of performing work;

b. procedures which management officials of the Employer will observe in exercising any authority under this section; or

c. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

ARTICLE 6  
UNION RIGHTS AND REPRESENTATION

6.1 In accordance with the CSRA Sections 7113 and 7114, the Union, as the exclusive representative of the employees in the Unit, is entitled to act for, and negotiate collective bargaining agreements covering all employees in the Unit and is responsible for representing the interests of all employees in the Unit without discrimination and without regard to labor organization membership.

6.2 Appointment/Selection of Stewards. The Union may designate a reasonable number of Unit members as stewards who shall be employees of the Employer and be responsible for representing employees within the Los Angeles District. The Union will make every reasonable effort to minimize budget impacts when making Steward assignment responsibilities. The Union will furnish to the Employer's Spokesperson, and keep current, a list of all stewards and Union officers who are employees of the Employer. No Union representative will be recognized whose name does not appear on the list furnished by the Union Spokesperson.

6.3 Duties Of The Steward. It is mutually agreed that the responsibilities of the Steward include representation and:

- a. Advising employees of the best way to seek expeditious resolution of problems or complaints, i.e., through discussion with their supervisor or appropriate management official;
- b. Obtaining verification of the facts concerning employee complaints; and
- c. Informing employees as to the merits and validity of complaints registered.

6.4 Union Officials and Stewards are encouraged to inform appropriate supervisors or managers of potential problems, with recommended solutions or actions.

6.5 In accordance with applicable law, and if otherwise in a duty status, Union officials and stewards shall be entitled to a reasonable amount of duty time to include time required to prepare and attend as a personal representative in MSPB and EEO.

## ARTICLE 7 OFFICIAL TIME

7.1 General. Union Officials and employees will be on official time as authorized by this Article only during the time the employee would otherwise be in a duty status. The Employer recognizes that official time used in support of union representation activities as authorized by this article is in the best interest of the Parties. It is agreed by the Union that all uses of official time will be reasonable, necessary, and in the public interest. It is further agreed that Union Representatives have the responsibility to request official time, and that supervisors have the responsibility to grant official time in accordance with this Agreement.

7.2 Exclusions. Any activities performed by any employee relating to the internal business of the Union (including the solicitation of membership, elections of Union officials, Union fundraising and collection of dues) shall not be performed on official time.

7.3 Scope. Official time shall only be granted to representatives of the Union named in writing by the Union President or his designee and who are employees of the Employer for the following purposes:

a. Negotiations. Union representatives shall be granted official time for time spent in mid-term negotiations with the Employer.

b. Unfair Labor Practices. Designated Union representatives shall be granted official time to investigate, prepare for, file and attend meetings with the Employer or the FLRA regarding alleged Unfair Labor Practices proposed or filed by either Party.

c. Arbitration Hearings. A reasonable amount of time shall be granted to prepare for and attend arbitration hearings. The Union representative who conducted the Union's case during arbitration shall be entitled to a reasonable amount of official time, for writing a brief, if written briefs will be accepted by the Arbitrator.

d. Representation of employees, at the employee's request, during an investigation, interview or examination under provisions of Chapter 71 of 5 U.S.C. Section 7114(a)(2)(B), (Weingarten).



e. To investigate, prepare for and attend grievance discussions with the aggrieved employee or the Employer.

f. Other Representation. If otherwise in a duty status, designated Union Officials and Stewards shall be granted a reasonable amount of official time for any other representational activities in any amount that the parties agree to be reasonable, necessary, and in the public interest, including time required to prepare for and attend FMCS, FSIP and FLRA proceedings.

7.4 Authorization and Reimbursement for Travel on Official Time. Official time for travel and reimbursement for travel and per diem expenses shall be authorized for Union Representatives on Official Time, as described in this article, when they are determined to be reasonable, necessary, and in the public interest.

a. Temporary Duty Travel. All TDY Travel Orders must be authorized in advance by the Employer's Spokesperson or designee as the Travel Approving Official.

b. Local Travel. Requests for use of Government vehicles by a Union Representative on Official Time must be made to the Employer's Spokesperson through the Union representative's immediate supervisor. Requests for use of a Privately Owned Vehicle (POV) must be made to the Employer's Spokesperson through the Union representative's immediate supervisor, using SPL Form 819.

c. All vouchers for reimbursement of TDY or Local Travel expenses, which have been authorized for Official Time, must be submitted to and approved by the Employer's Spokesperson or designee in accordance with applicable regulations.

7.5 Training.

a. A block of up to 216 hours of official time per contract year will be granted for Union officers and stewards to attend training sessions in Labor-Management relations provided that such sessions are primarily designed to orient and brief such employees in matters concerning basic statutes, regulations, policies, and negotiated

agreements affecting working conditions and local personnel policies, practices, and procedures, if mutually beneficial.

b. The Employer will, subject to budgetary constraints, incur cost not to exceed \$5,000 per fiscal year for per diem and travel expenses associated with training of Union representatives authorized in accordance with this Article. The Union Representative(s) will be reimbursed in accordance with the most current DoD Joint Travel Regulation (JTR). The \$5,000 amount is the maximum amount that will be reimbursed per fiscal year regardless of the number of Union representatives attending training. When the Employer invites the Union to attend training of mutual benefit, all costs will be borne by the Employer. With respect to budgetary constraints, under unusual circumstances which affect the training budget by higher authority above the Commander of the Los Angeles District, the Employer will supply to the Union President or designee, the higher authority directive(s) and supporting documentation to justify the reduced funds for training for that fiscal year.

c. The Union President or designee will submit a written request to the Employer's Spokesperson or designee in sufficient time to process the request and schedule the workload to enable the employee to attend the training. The request will normally be made thirty (30) days in advance of training. If the Union receives notice of the training whereby less than thirty (30) days notice is provided to the Employer, the Union recognizes that the shorter notice may prevent the workload from being rescheduled whereby the employee will not be able to attend the training. However, in all such cases, the Employer will endeavor to make a concerted effort to process such requests and reschedule the workload. At a minimum, the request should contain:

- 1) The name(s) and Union position(s) of those requesting official time for training,
- 2) Purpose of the training and why it is needed,
- 3) Copy of the agenda of the training session including the training source,
- 4) Number of hours of official time requested,

5) Dates for which each employee is to attend the training session, and

6) Location of the training.

7.6 Release for Official Time. Union representatives or unit employees requesting the use of official time shall request official time in accordance with this article. Supervisors shall grant official time in any amount that the supervisor and the Union representative or unit employee agree to be reasonable, necessary, and in the public interest. Should it become necessary to delay the release of the Union representative or unit employee due to workload requirements, the supervisor will grant official time within 24 hours. If the delay causes the missing of a contractual time limit, an extension of time equal to the delay will be given.

7.7 Official Time Procedure. In order to account for actual use of official time used by Union representatives, the following procedures will be used:

a. Union representatives will complete the “REQUEST FOR OFFICIAL TIME FORM” included in this Agreement and submit it to their supervisor for approval on or before the day they want to use official time.

b. Supervisors will use the form to indicate approval or disapproval of the official time and will provide a copy to the Union representative.

c. Upon completion of the representational duty, the Union representative will notify his or her supervisor of their return to duty, provided their return is prior to the end of their duty day.

d. Union representatives will record their actual use of official time on their office’s time and attendance log sheet in accordance with CESPL OM 37-1-28. Time used will be charged to the appropriate Union labor charge code.

**REQUEST FOR OFFICIAL TIME FORM**

The purpose of this form is to record the request and approval/disapproval of Official Time as authorized by Article 7 of the Labor-Management Agreement.

**Union Representative's Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Official Time Category:

Negotiations     ULP     Grievance     Other Representation

If other, explain:

\_\_\_\_\_

General location to be visited:

\_\_\_\_\_

Estimated period(s) of Official Time requested:

<u>Date</u>	<u>Starting Time</u>	<u>Ending Time</u>	<u>Total Hours</u>
_____	_____	_____	_____
_____	_____	_____	_____

Signature of Union Representative: \_\_\_\_\_

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Use of Official Time as requested above is hereby approved.

Use of Official Time as requested above cannot be granted at this time.  
Please see me to make other arrangements.

Name of Immediate Supervisor: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## ARTICLE 8 USE OF OFFICIAL FACILITIES AND SERVICES

8.1 Facilities. The Employer shall provide an office to the Union with a desk, file cabinet, computer, intranet page, and telephone. The Union shall not use any Employee work areas for conducting internal Union business, except that casual use of a work area of a Union representative or the representative's telephone for in-house calls will be permitted for representational activities. Outside telephone calls for representational activities will be reasonable in length and frequency. On a case-by-case basis, the Employer will cooperate with Union representatives/stewards to identify confidential settings for Union business/activities that cannot reasonably be conducted at formally designated Union sites. Upon request of the Union, the Employer shall make official District conference rooms available, when not otherwise in use, for meetings and appropriate representational activities. Copying machines may be used to reproduce a reasonable amount of material necessary for representational activities. If available, Employer office equipment may be used for representational activities.

8.2 Internal Mail Service. The Employer agrees to distribute at its discretion through its interoffice mail service circulars and newsletters sponsored by the Union to employees of the District and field offices to be sent along with regular distributions provided that they are delivered to the mail room and provided further that they: (a) be reasonable in size; (b) be properly identified as material sponsored by the Union; (c) contain nothing that would seem to identify them as official District material or imply that they are sponsored or endorsed by the District, unless such is the case, and (d) be limited to matters of direct concern to employees in relation to the Union or the District.

8.3 Bulletin Boards. A bulletin board limited to Union use shall continue to be made available. Space will be made available at project sites for the Union bulletin boards.

8.4 Lists. Employer agrees to furnish to the Union, at least quarterly, an alphabetized list of all employees in the District, showing name, position title and number, organization location, and bargaining unit or non-unit designation.

8.5 Regulations. The Employer agrees to make available to the Union and unit employees regulations of the Employer, Department of the Army, Office of Personnel Management, and the Merit Systems Protection Board, which are necessary for the Union to accomplish its representational responsibilities.

8.6 Parking. Due to the high cost of living in the Los Angeles area, both parties recognize the need to lessen the burden on the employees. The employer will avail itself of all allotted parking in the 915 Wilshire Building in accordance with the CFR regulations, CESPL-OM 1-1-23, and other applicable regulations. The Employer shall provide parking validation in the 915 Wilshire building for Union officials using Government vehicles while performing representational duties on official time.

## ARTICLE 9 GRIEVANCE PROCEDURES

### 9.1 General.

a. In accordance with the CSRA Section 7121, the Employer and the Union recognize the importance of settling grievances promptly and in an orderly and equitable manner consistent with principles of good management. Both parties are encouraged to conduct thorough investigations at each step of the grievance as it progresses. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest possible level of supervision.

b. An aggrieved employee affected by matters appealable to the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), or any other applicable statutory procedure, may choose to raise the matter under the applicable statutory procedure or file an employee grievance, but not both. An employee shall be deemed to have exercised his option to raise the matter under either a statutory procedure or the Employee Grievance Procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the Employee Grievance Procedure, whichever event occurs first.

9.2 Scope. The negotiated grievance procedures shall only apply to any complaint--

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

b. by any labor organization concerning any matter relating to the employment of any employee; or

c. by any employee, the Union, or the Employer concerning--

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

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

d. The following items are not grievable:

1) a violation relating to prohibited political activities;

2) retirement, life insurance, or health insurance;

3) a suspension or removal for national security reasons;

4) any examination, certification or appointment;

5) classification of any position that does not result in reduction in pay or grade for the employee;

6) nonselection from a properly constituted referral list or certificate of candidates, or any other appropriate source that is in accordance with applicable regulations;

7) actions taken and the method used to fill or not fill non-bargaining unit positions;

8) a written notice of any proposed disciplinary or any proposed adverse action;

9) an action which terminates a temporary promotion and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

10) adopting or not adopting suggestions or inventions;

11) termination of probationary and temporary employees in accordance with applicable regulations;

12) granting or not granting performance awards, quality increases, or honorary awards; and



13) the duties and responsibilities of any position description (if the position description is considered to be inaccurate, then Article 13, paragraph 13.2 applies).

9.3 Representation. Employees may exercise their right to present a grievance for resolution using the Employee Grievance Procedure, and act as their own representative. However, management will not discuss formal grievances with the employee without providing the opportunity for a Union representative to be present. If employees elect to be represented, the Union shall be deemed to be the exclusive representative.

9.4 Experts and Witnesses. Both parties may provide witnesses and/or subject matter experts at any step of the grievance procedure, as necessary.

9.5 Employee Grievance Procedure. In accordance with the CSRA Section 7121, this procedure shall be the exclusive procedure for resolving employee grievances that fall within its coverage. Employees and/or their representatives are encouraged to discuss issues of concern to them informally with their supervisors at anytime. Likewise employees and/or their representatives may request to talk with other appropriate officials about items of concern without filing a formal grievance if they choose.

a. Step 1 Grievance. The grievance shall first be taken up informally by the grievant (and/or a Union Representative if desired by the employee) with the grievant's immediate supervisor. The parties should meet and discuss the grievance in an attempt to resolve the matter. If not settled informally, the grievance must be submitted to the grievant's immediate supervisor in writing within 15 days of the day the incident occurred that gave rise to the grievance or within 15 days of the day the grievant should have reasonably been expected to be aware of the incident that gave rise to the grievance. An on-going event that may give rise to a grievance may be grieved any time, provided that at the time the grievance is filed the event complained of must have last occurred no more than 15 days before the grievance is filed. The written grievance and the remedy requested may not be altered in any subsequent step and arbitration. A decision will be issued to the grievant in writing within 7 days after presentation of the grievance.

b. Step 2 Grievance. If the grievant is dissatisfied with the decision given at Step 1, or if no decision is received within 7 days, and the grievant decides to advance the grievance, the grievant and/or Union representative, if any, shall present the Step 2 grievance to the next level supervisor within 10 days after receipt of the decision given at Step 1, or within 10 days after the deadline for the supervisor to issue a written decision, if none was issued. Upon receipt of the Step 2 grievance, the next level supervisor (or designee) will meet with the grievant and/or the grievant's Union representative, if any, discuss the grievance, and issue a written decision within 7 days.

c. Step 3 Grievance. If the grievant is dissatisfied with the decision given at Step 2 or if no decision is received within 7 days, the grievance may be elevated to Step 3. The grievance must be presented to the Employer's Spokesperson within 10 days after receipt of the decision at Step 2 or the deadline for issuing a decision, if none is issued. The Employer's Spokesperson, or designee, will be the Employer's final authority for review of the grievance. The Step 3 deciding official will meet with the grievant and/or the Union representative, if necessary, and issue a written decision within fourteen (14) days after receipt of the grievance.

d. Referral to Arbitration. If the grievance is not satisfactorily resolved at Step 3, the Union may refer the matter to arbitration in accordance with the requirements of Article 10, Arbitration.

9.6 Time Limits. Time is of the essence in processing grievances. An Employee grievance or an Employer decision that is delivered in person must be received no later than close of business on the day that it is due. If a grievance or Employer decision is sent by a commercial delivery service or by US Postal Service, it will be considered timely if it is given to the delivery service on the day that it is due, in sufficient time to ensure next business day delivery. If any aspect of the grievance procedure is due on a Saturday, Sunday or Federal Holiday (or a day that the office is closed by the Employer due to an emergency) and the offices of the Employer or Union are closed on that day, the Parties agree that the submission will be due on the next official administrative workday.

a. Failure of the Union/employee to meet the time limits provided herein shall forfeit the right of the Union/employee to further proceed with the grievance and it will be returned without action by the Employer.

b. Failure of the Employer to meet the time limits at the first or second step shall permit the Union/employee to proceed to the next step of the procedure. If the employer fails to issue a timely decision at the final step in the grievance procedure and the grievance is subsequently referred to arbitration, the employer will pay the full cost of the arbitration. At each step a copy of the grievance decision shall be provided to the Union.

9.7 Employee Grievance Documentation. All Employee grievances and the Employer's decisions must be presented in person or through the use of the US Postal Service or commercial delivery service. If either party issues a grievance or decision in the form of E-mail, voice mail or fax it will not be acted upon.

a. Employee Grievance Form. Formal Grievances filed under the employee grievance procedure will use the Employee Grievance Form provided in this Article, or other written format for that purpose, to ensure the orderly processing of the grievance. A grievance submitted in a written format other than the Employee Grievance Form should contain the information indicated by the Employee Grievance Form.

b. Employee Grievance Tracking Form. The original version of the Employee Grievance Tracking Form (as defined in this Article) will accompany each Employee Grievance Form through the steps of the grievance procedure.

9.8 Grievability/Arbitrability/Timeliness Disputes. In the event the Employer or the Union should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. Either Party may raise a question of grievability or arbitrability at any step of the grievance procedure up to and including arbitration. All disputes of grievability or arbitrability shall be referred to the arbitrator as a threshold issue in the related grievance.

9.9 Union-Management Grievance Procedure. This procedure shall be the exclusive procedure for resolving Union or Employer grievances which fall within the scope defined in paragraph 9.2. Failure of the grieving party to adhere to the time requirements of this Section shall constitute withdrawal of the grievance.

a. All Union or Employer grievances shall be provided to the other party (to the Employer's Spokesperson or designee, or to the Union President or designee), in writing. Such grievances shall be initiated within 30 days of the time the party initiating the grievance could reasonably have been expected to be aware of the incident giving rise to said grievance. The written grievance shall contain the time, date, place, event, the Article and Section of this Agreement, regulation, or policy violated, if applicable, supporting documentation, and the specific remedy desired. Failure to meet this time frame will forfeit the right of an aggrieved party to proceed with the grievance.

b. The Parties shall meet within fourteen (14) days following receipt of the grievance to discuss the grievance in an effort to resolve the matter. If the grievance is not resolved within thirty (30) days following receipt of the grievance, the party receiving the grievance will provide a written response within fourteen (14) days. Failure of the responding party to observe the time limits shall entitle the initiating party to advance the grievance to arbitration.

c. If the grievance has not been resolved within the timeframe stated in paragraph b, either the Union or the Employer may invoke arbitration.

US Army Corps of Engineers, Los Angeles District  
Employee Grievance Form

This form is to be used when preparing a formal written grievance in accordance with the Employee Grievance Procedure as described in Article 9 of the Labor-Management Agreement.

Employee's Name \_\_\_\_\_ Date \_\_\_\_\_

Union Representative's Name (if any) \_\_\_\_\_

Date of the incident giving rise to the grievance \_\_\_\_\_

or the date the grievant should have reasonably been expected to be aware of the incident that gave rise to the grievance \_\_\_\_\_

Statement of the Employee's grievance including a description of the incident that gave rise to the grievance:

Statement of the remedy desired by the employee:

List of supporting documentation attached to this grievance (if applicable):

### EMPLOYEE GRIEVANCE TRACKING FORM

Name of Grievant: \_\_\_\_\_ Date of Incident (s) giving rise to the grievance: \_\_\_\_\_  
First     MI     Last     (month-day-year)

Name of Union Representative (if applicable) \_\_\_\_\_

STEP	ACTION	DATE ACTION COMPLETED	RECIPIENT OR RESPONSIBLE PARTY	SIGNATURE ACKNOWLEDGING RECEIPT/COMPLETION OF ACTION	DATE
<b>- 1 - First (1<sup>st</sup>) Step Grievance Processing</b>	1 <sup>st</sup> step grievance is submitted to grievant's immediate supervisor.  Note: grievance must be filed within 15 days of date giving rise to the grievance or within 15 days of the day the grievant should have reasonably been expected to be aware of the incident that gave rise to the grievance.	1 <sup>st</sup> Step grievance received in writing on:  ____ - ____ - ____ month    day    year	Immediate Supervisor		
<b>- 1 - First (1<sup>st</sup>) Step Grievance Processing (cont'd)</b>	Immediate supervisor issues 1 <sup>st</sup> step decision within seven (7) days.	1 <sup>st</sup> Step decision issued on:  ____ - ____ - ____ month    day    year  *Note: Extension granted until  ____ - ____ - ____ month    day    year	Immediate Supervisor  Grievant  Union Representative		

### EMPLOYEE GRIEVANCE TRACKING FORM

STEP	ACTION	DATE ACTION COMPLETED	RECIPIENT OR RESPONSIBLE PARTY	SIGNATURE ACKNOWLEDGING RECEIPT/COMPLETION OF ACTION	DATE
<p style="text-align: center;"><b>- 2 - Second (2<sup>nd</sup>) Step Grievance Processing</b></p>	<p>2<sup>nd</sup> step grievance is submitted to the next level supervisor within ten (10) days after receipt of the decision at Step 1 or 10 days after the deadline for the immediate supervisor to issue a written decision, if none was issued.</p>	<p>2<sup>nd</sup> Step grievance received in writing on:            ____ - ____ - ____            month    day    year</p> <p>*Note: Extension granted until            ____ - ____ - ____            month    day    year</p>	<p>Next level Supervisor</p>		
<p style="text-align: center;"><b>- 2 - Second (2<sup>nd</sup>) Step Grievance Processing (cont'd)</b></p>	<p>Next level supervisor meets with the grievant and/or the grievant's Union representative, if any, to discuss the grievance and issue a written decision within seven (7) days of receipt of the Step 2 grievance.</p>	<p>2<sup>nd</sup> Step meeting held on:            ____ - ____ - ____            month    day    year</p> <p>2<sup>nd</sup> Step decision issued on:            ____ - ____ - ____            month    day    year</p>	<p>Next level Supervisor</p> <p>Grievant</p> <p>Union Representative</p>		

### EMPLOYEE GRIEVANCE TRACKING FORM

STEP	ACTION	DATE ACTION COMPLETED	RECIPIENT OR RESPONSIBLE PARTY	SIGNATURE ACKNOWLEDGING RECEIPT/COMPLETION OF ACTION	DATE
<b>- 3 - Third (3<sup>rd</sup>) Step Grievance Processing</b>	3rd step grievance is submitted to the Employer Spokesperson within ten (10) days after receipt of the decision at Step 2 or 10 days after the deadline for the next level supervisor to issue a written decision, if none was issued.	3 <sup>rd</sup> Step grievance received in writing on:  ____ - ____ - ____ month    day    year  *Note: Extension granted until  ____ - ____ - ____ month    day    year	Employer Spokesperson or designee		
<b>- 3 - Third (3<sup>rd</sup>) Step Grievance Processing (cont'd)</b>	Employer Spokesperson meets, if necessary, with the grievant and/or the grievant's Union representative, if any, to discuss the grievance and issue a written decision within fourteen (14) days of receipt of grievance at 3 <sup>rd</sup> step.	3 <sup>rd</sup> Step meeting held on:  ____ - ____ - ____ month    day    year  *Note: Extension granted until  ____ - ____ - ____ month    day    year  3 <sup>rd</sup> Step decision issued on:  ____ - ____ - ____ month    day    year	Employer Spokesperson or designee  Grievant  Union Representative		

\*Note: Extensions may be granted by mutual agreement.



## ARTICLE 10 ARBITRATION

### 10.1 Invoking Arbitration.

a. Arbitration may be invoked by written notice from the Union to the Employer within fifteen (15) days after a written response is received by the Union under step 3 of the Employee Grievance Procedure unless the remedy requested by the employee has been granted. Only issues in the written Formal Grievance can be arbitrated.

b. Arbitration may be invoked by written notice from the Union or Employer to the other Party within fifteen (15) days after receipt of the other Party's written response pursuant to the Union-Management Grievance Procedure. Only issues in the written Formal Grievance can be arbitrated.

c. Failure to meet the time limits stated above shall forfeit the right of the invoking Party to proceed with arbitration.

d. An employee may not invoke arbitration.

e. The notice invoking arbitration as defined above must include a written request to the Federal Mediation and Conciliation Service (FMCS) for a list of seven (7) arbitrators qualified in Federal Sector Labor Relations and a completed and signed FMCS Form R-43, *Request for Arbitration Panel*. The notice must also include a check or credit card authorization to pay the FMCS fees. The party receiving said notice will then have five (5) days to sign the FMCS Form 43 and forward it to the FMCS, or return it to the initiating party without signature. When the receiving party refuses to join in such a request, the other party may proceed.

10.2 Mediation. After the request for an arbitrator has been forwarded to the FMCS, the parties may, by mutual agreement, jointly request mediation to resolve the grievance. The parties would then contact the FMCS within 10 days to request a mediator and to schedule mediation as soon as possible. The parties will then attempt to resolve the grievance through mediation. If the parties fail

to come to an agreement during mediation, the invoking party may continue with formal arbitration.

10.3 Selecting the Arbitrator. Within fifteen (15) days after both parties receive the list of arbitrators from the FMCS, the parties will meet to select an arbitrator. If either party is unable to meet within 15 days, the parties agree to meet as soon as possible thereafter. If the parties cannot agree on an arbitrator, the Employer and the Union will strike one (1) arbitrator's name from the list alternately until one (1) name remains. The first strike will be decided by the flip of a coin.

#### 10.4 Fees and Expenses.

a. The Parties agree that any fees charged by the FMCS in return for a panel of Arbitrators will be shared equally by the parties when submitting the R-43 form to the FMCS.

b. The full cost of any fees and expenses charged by the arbitrator and/or reporter will be shared equally by the parties. In the case that one party decides to withdraw from the arbitration process and an arbitrator and/or reporter has been selected, the party withdrawing will be responsible for paying all costs including any and all cancellation fees. If the withdrawal from arbitration is a mutual decision, the full cost of any fees and expenses charged by the arbitrator and/or reporter will be shared equally by the parties.

#### 10.5 Arbitration Hearing.

a. Arbitration hearings will be held on the Employer's premises between 0900 and 1500 hours, Tuesday, Wednesday, or Thursday. Either party may request a change in the date of the hearing up to 14 days prior to the established hearing date. The party requesting such change may do so only for good cause and shall bear any cancellation fee or any other charges levied by the arbitrator.

b. If the Parties fail to agree on a joint submission of the issue(s) for arbitration, each party shall submit a separate statement to the arbitrator of the issue(s). In this case, the Parties may request that the arbitrator determine the issue(s) to be heard prior to scheduling a hearing date.

c. A reporter will be used if the either party requests it or if required by the arbitrator.

d. After filing written briefs, the arbitrator will serve a written decision on the parties.

10.6 Time Limit. The arbitrator will render a decision to the parties no later than thirty (30) days after the closing of the record, or thirty (30) days after the date set by the arbitrator for filing of written briefs, if any.

10.7 Arbitrator's Decision. Except as provided in 10.8 below, the arbitrator's decision will be final and binding on the parties and the remedy (if any rendered) implemented without undue delay unless an exception to the arbitrator's decision is filed with the Federal Labor Relations Authority (FLRA).

10.8 Arbitrator's Authority.

a. The arbitrator shall not consider any issues other than those set forth in the written Formal Grievance and a decision to the contrary will not be binding on the parties.

b. The arbitrator's authority will be limited to interpretation and application of the provisions of this Agreement. A decision by the arbitrator to change, modify, alter, delete, or add to the provisions of this Agreement will not be binding on the Parties. Such right is the prerogative of the Parties only.

c. The arbitrator may decide questions concerning the application of agency policies, provisions of law, regulations of the Department of the Army or Corps of Engineers, or regulations of appropriate authorities outside the Department of the Army. Any necessary interpretation of these items will be provided by both Parties. The arbitrator's decision will contain findings of the facts and interpretation of the law.

10.9 Exceptions. Either party may file an exception to the arbitrator's award with the Federal Labor Relations Authority (FLRA) in accordance with the FLRA's procedures. If no exception is filed within 30 days (the time limit prescribed by the FLRA), the arbitrator's

decision will be final and any award will be implemented without undue delay.

10.10 Witnesses. Witnesses who are employees of the Employer and who are otherwise in a duty status, shall be excused from duty to provide testimony in arbitration hearings arising under this article. The grievant and any employee listed on witnesses lists will be excused from duty to the extent necessary to participate in the official proceedings. In addition, the Employer will rearrange necessary witnesses' schedules and place them on duty during the arbitration hearing. The arbitrator will resolve questions raised as to whether a witness is necessary. The hearing process shall be informal and there shall be no rules of evidence. The Parties shall exchange written lists no later than fourteen days prior to the scheduled date of the hearing.

ARTICLE 11  
DISCIPLINARY AND ADVERSE ACTIONS

11.1 Coverage. The disciplinary actions covered by the provisions of this Article are removals, suspensions, and reductions in grade of employees. The provisions of this Article apply to employees specifically covered by this agreement who are in the competitive service or the excepted service who are not serving a probationary or trial period under an initial appointment or who have completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less. The provisions do not apply to (1) a suspension or removal in the interests of national security initiated under Section 7532 of Title 5, U.S.C.; (2) a reduction in force action; (3) a reduction in grade or removal based upon unacceptable performance; or (4) any disciplinary action that does not result in a permanent record being placed in the Official Personnel Folder.

11.2 Preliminary Investigation. The employee will be given an opportunity to be represented by the Union during any examination by a supervisor or other representative of the Employer in connection with an investigation if the employee reasonably believes that disciplinary action may result from the examination, and if the employee requests representation. In this case, the supervisor or other representative of the Employer will:

a. Notify the Union's Chief Steward or designee that a meeting to examine a bargaining unit employee is going to take place and that the employee has requested union representation. (The Union accepts the responsibility to provide a union representative as soon as possible, but not later than 1 workday from the day the Union representative was notified verbally. An extension shall be granted by the supervisor or other representative of the Employer, where appropriate.); or

b. Discontinue the interview and rely on evidence already available or information obtained from other sources.

11.2 Notice. A notice of proposed disciplinary or adverse action against an employee shall be in writing and shall inform the employee:

a. Of the specific reasons for the proposed action;

b. Of the name of the official other than the proposing official to whom the employee may respond;

c. That the employee may answer orally and/or in writing or both and may submit affidavits or other written statements in support of their answer;

d. That the employee's response will be considered by the deciding official;

e. That the employee may be represented by a Union representative or personal representative if the action is not covered by the Grievance Procedure in Article 9;

f. Of the employee's status during the notice period;

g. That the employee shall be granted upon request a reasonable amount of official duty time to review evidence files, investigate and prepare an answer to the notice and attend meetings with the deciding official. If the employee is represented by the Union, the Union representative will be given official time in accordance with Article 7, to assist the employee in these activities.

h. An employee will be provided at least 30 days advance written notice of the proposed discipline, except for the personnel actions listed in 5 U.S.C. Section 7503, or for crimes pursuant to 5 U.S.C. Section 7513.

11.4 Employee's Answer. The employee will have 14 days from receipt of the proposal to reply to the deciding official. This period may be extended by the deciding official upon written request of the employee or the employee's representative.

11.5 Action By The Deciding Official.

a. The deciding official, is the individual who makes the final decision to effect a disciplinary or adverse action covered by this Article. The deciding official shall be at a higher level in the organization than the proposing official.

b. The deciding official will consider the evidence and the employee's response. The decision will be provided to the employee in writing. The action taken will be no greater than the proposed action.

c. In the event an unfavorable final decision is issued, the employee shall be advised of his or her rights to file a grievance on the decision with the Employer, appeal the decision to the Merit System Protection Board, or file an EEO complaint.

ARTICLE 12  
ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

12.1 In accordance with the Department of the Army regulations and subject to the provisions of 5 USC 4303, an employee may be reduced in grade or removed for unacceptable performance.

12.2 Opportunity to Improve. Employees will be granted an opportunity to improve before a reduction in grade or removal can be proposed. An opportunity to improve will begin with a written notification and issuance of a written Performance Improvement Plan (PIP) to the employee. An opportunity to improve will be for a specific period of time that is defined in a PIP.

a. The contents of the Notice of Unacceptable Performance and Performance Improvement Plan (PIP) will:

(1) identify specific area(s) of performance deficiency and will provide guidance on what the employee should do to improve performance to an acceptable level; and

(2) contain a special or interim performance rating, for the period immediately preceding the PIP; and

(3) contain detailed performance objectives that reflect the general duties of the position and the employee's performance standards; and

(4) state that the duration of the PIP will be one hundred and twenty (120) days; and

(5) spell out the responsibilities of both the employee and the supervisor to achieve the objectives of the PIP as well as the consequences of failure to improve performance; and

(6) provide information regarding additional avenues of support available to the employee, e.g. the Union, EEO Office and Civilian Personnel Advisory Center (CPAC).



b. Implementation of the PIP.

(1) During the PIP period, the supervisor will conduct and document performance evaluation/counseling meetings with the employee once every two weeks.

(2) The PIP may include on-the-job training and guidance and assistance by the supervisor, or designee,

(3) Issuance of a PIP does not release an employee from the responsibility to perform other duties.

(4) At the conclusion of the PIP, a formal evaluation of the employee's performance, with specific details, will be issued in writing to the employee.

(5) Issuance of a PIP is confidential among the employee, supervisor and those who have a formal need to know.

(6) Leave granted to the employee during the PIP may be added to extend the scheduled completion date. Granting of leave should not be unduly constrained by PIP requirements.

12.3. Unacceptable Performance Following an Opportunity to Improve. Employees who fail to improve or who improve but fail to sustain the improvements at a satisfactory level in the objective(s) identified in the PIP for at least a year from the beginning of the PIP may be reassigned, reduced in grade or removed.

12.4. Notice of Proposed Action. If the Employer intends to propose a reduction in grade or removal due to unacceptable performance, a written Notice of Proposed Action will be given to the employee.

a. The Notice of Proposed Action will be given to the employee thirty (30) days in advance of the proposed action.

b. The Notice will identify specific instances of unacceptable performance by the employee on which the proposed action is based; and the objectives of the employee's position involved in each instance of unacceptable performance.

c. The notice will state that the employee may be represented by a representative of his/her choice, i.e., a Union representative, or by an attorney or other representative. If the employee chooses to be represented, the employee must provide written notification to the employer.

d. The employee will be given a reasonable time (at least 14 days) to answer orally and/or in writing.

12.5. Decision. The written decision to retain, reassign, reduce in grade, or remove an employee will:

a. be made within 30 days after the date of expiration of the notice period, and

b. in the case of a reduction in grade or removal:

(1) specify the instances of unacceptable performance on which the action is based; and

(2) be based only on instances of unacceptable performance which occurred in the 1 year period immediately preceding the date of the advance notice to support the decision; and

(3) only rely on those instances included in the advance notice to support the final decision; and

c. unless proposed by the District Commander, be issued by a Supervisor who is in a higher position than the Supervisor who proposed the action, and

d. include all applicable employee's rights.

12.6 Employee Record. If, because of performance improvement by the employee during the notice period, the employee is not reassigned, reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the written notice provided under Section 12.2 of this Article, any entry or other notation of the unacceptable performance for which the

action was proposed under this Article shall be removed from any Employer record relating to the employee.

12.7. Applicability. This Article does not apply to:

a. The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

b. The reduction in grade or removal of a employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

ARTICLE 13  
POSITION DESCRIPTIONS AND POSITION CLASSIFICATION

13.1. General.

a. Position descriptions will be based upon the principal duties and responsibilities assigned to each position. Each employee will be informed of changes in the official position description and will be furnished with a copy of the current position description.

b. The Employer, through its supervisory representatives, shall exercise the right to assign or revise any major duties to any employee in their position description, and also the right to assign any other duties to any employee in addition to major duty assignments.

13.2. Position Descriptions. Any employee who believes that the position description does not accurately describe the duties assigned to the employee may consult with their immediate supervisor for clarification. If the supervisor agrees that the position description is inaccurate, appropriate action will be initiated to ensure that a correct position description or correct duties are assigned to the employee. If the employee believes the supervisor has failed to take such appropriate action, the employee may file a grievance under the negotiated grievance procedure.

13.3. Classification Appeals. If the employee believes that his position is improperly classified, the basis for the classification determination may be requested from the appropriate supervisor. Should the supervisor be unable to resolve the employee's questions regarding the basis for classification of the position within 30 days, the employee may file a classification appeal in accordance with provisions of 5 U.S.C. 5112 and applicable regulations.

ARTICLE 14  
PERFORMANCE STANDARDS AND EVALUATION

14.1 The Parties agree to continue to use AR 690-400, Chapter 4302, "Total Army Performance Evaluation System", effective 16 November 1998, as may be amended or changed. The Parties will conduct Impact and Implementation Negotiations (I&I) prior to implementation of any changes to the AR 690-400, Chapter 4302.

14.2 Rating Periods. The rating period for all employees GS-8 and below will be 1 March through the end of February. The rating period for all employees GS-9 through GS-12 will be 1 November through 31 October and for GS-13s will be 1 October through 30 September.

14.3 A link to [AR 690-400](#) will be included in the electronic version of this Agreement that will be available via the District's Intranet. It can be found at [http://www.usapa.army.mil/pdffiles/r690\\_400.pdf](http://www.usapa.army.mil/pdffiles/r690_400.pdf). AR-690-400, Chapter 4302, will be distributed to new employees at the New Employee Orientation.

Article 15  
INCENTIVE AWARDS PROGRAM

15.1 The goal of the Incentive Awards Program is to foster mission accomplishment by recognizing excellence of its employees and motivating them to high levels of performance and service. The Incentive Awards Program will be administered in accordance with applicable regulations and District policy.

15.2 The Incentive Awards Committee will consist of members appointed by the Employer and one Union Representative appointed by the Union. The Union's representative will participate in the deliberations of the committee with respect to committee functions related to the implementation and operation of the Incentive Awards Program. The Union representative will be a non-voting member.

15.3 The Employer will provide access to the applicable regulations and policy governing the Incentive Awards Program through its Intranet home page. The Employer will publicize quarterly the granting of all honorary, team and special act awards, through a medium accessible to all District Employees.

15.4 The Employer will furnish to the Union a report of all awards granted to all bargaining unit members. This report will include information on the awards granted by grade group (WG, GS-01-08, GS-09-12, GS-13), with comparisons of on-board strength, number of performance awards granted, total amount of performance awards granted, average amount of performance awards granted, number of Quality Step Increases (QSI) granted, and the number of honorary awards granted, by Division or Office. This report will be delivered to the Union at the end of third quarter of each fiscal year.

## ARTICLE 16 MERIT PROMOTION AND INTERNAL PLACEMENT

16.1 General. It is agreed that the Employer will use the skills and abilities of employees to the maximum extent possible consistent with mission requirements, merit principles, and applicable laws and regulations. All actions under this article shall be made without regard to political or religious affiliation, marital status, race, color, sex, national origin, age, or non-disqualifying handicap as required by applicable law.

16.2 Merit Promotion and Internal Placement. Merit promotion and internal placement will be in compliance with 5 CFR 335, the applicable Merit Promotion and Internal Placement Plan and all other applicable regulations in effect at the time of the placement action. Merit promotion and internal placement affecting positions outside of the bargaining unit are not within the scope of this agreement. Any Employer decision that changes the Merit Promotion and Internal Placement Plan and applicable regulations will be supplied to the Union. Upon receipt the Union may take such action as they deem appropriate, in accordance with the article on Midterm Negotiations.

16.3 Details. A detail is a temporary assignment to a different position or set of duties, for a specified period, when the employee is expected to return to his or her regular duties at the end of the assignment. The detail of an employee for more than 30 days will be documented by a Request for Personnel Action (RPA). A copy of the RPA will be provided to the employee for his/her records. A copy of the RPA will be placed in the employee's Official Personnel Folder (OPF).

16.4 Details to Higher Graded Positions. If the employee is to be temporarily assigned to a higher graded bargaining unit position for more than 30 days and if the employee meets the qualifications and other regulatory requirements, the employee will be temporarily promoted after 30 days. A Notice of Personnel Action (NPA) will be provided to the employee and will be placed in the employee's Official Personnel Folder (OPF).

16.5 Internal Referral. For Bargaining Unit positions, the referral list will be evaluated, based on the information provided to the Selecting Official, to identify Los Angeles District employees. The Selecting Official will first consider the identified candidates for selection. This does not preclude statutory referral entitlements, nor does it apply to the career referral programs.

16.6 Non-Selection. Selecting officials, or designee, will promptly notify non-selected District employees of their non-selection and offer the opportunity to discuss suggestions to enhance their competitiveness for future career opportunities.



ARTICLE 17  
EMPLOYEE TRAINING AND DEVELOPMENT

17.1 General. The Parties recognize the value of a well-trained work force and the need for a well-planned and conducted training effort to meet the short and long-term challenges facing the Los Angeles District of the Corps of Engineers. Training (from Government and/or non-Government sources) will be aimed at improving job performance, meeting the needs of the organization as determined by the Employer, and providing for employee career development. The Parties recognize that each employee is responsible for applying effort, time, and initiative in increasing his potential value through self-development and training.

17.2 Career Development. Employees are encouraged to discuss training and development needs with their supervisors and/or their Career Program Manager, where applicable. Employees will meet with their supervisors to discuss and prepare an Individual Development Plan (IDP).

17.3 Self-Development. The primary responsibility for self-development (i.e. not essential for performance of employees' assigned duties) rests with each individual employee. The Employer and the Union agree to encourage employees to follow a plan for self-development consistent with this Article.

17.4 Employee Commitment. Prior to an employee receiving in excess of 80 hours of training in one training program through non-Government facilities, the employee must sign an agreement to continue in employment with the Department of the Army for a period three times the actual amount of time spent in training in accordance with applicable regulations.

17.5 Completion Obligation. An employee who fails to complete authorized training shall reimburse the Employer for any and all tuition, per diem and other training-related expenses incurred by the Employer for that portion of the training not completed. The employee may offer evidence of circumstances that allegedly prevented the employee from completing the authorized training for consideration by the Employer. If the Employer determines that the

failure to complete training is for reasons beyond the employee's control, reimbursement will not be required.

17.6 Cross Training. Cross training may be utilized to assist employees to advance or to enter new career fields. Employees should discuss this training option with their supervisor.

17.7 Training Committee. The Parties agree that there is merit to continuing the Training Committee. The committee shall include representatives of the major organizational subdivisions as designated by the Employer. The Union may appoint a non-voting observer. The committee shall meet as required. The Union will be notified of all committee meetings, except where issues to be considered do not affect the bargaining unit. The committee shall review annual training budgets, plans and accomplishments, and shall submit recommendations concerning District training needs and programs to the District Commander. A copy of the recommendations will be provided to the Union.

## ARTICLE 18 REDUCTION IN FORCE

18.1 General. The Union agrees that the decision to initiate any reduction in force (RIF) rests solely with the Employer. The Employer will notify the Union of its intention to conduct a RIF at least 15 days prior to the issuance of the initial Reduction in Force Notice to affected employees. It is understood that a RIF action is a matter affecting working conditions and therefore subject to the provisions of Article 27, Midterm Negotiations. The Employer will use Office of Personnel Management (OPM), Department of Defense (DoD), and Department of the Army (DA) regulations covering RIF procedures. The Union and Employer will meet as frequently as necessary, at mutually agreed times, to ensure accomplishment of mutual obligations under this Article.

18.2 Competitive Area. The competitive area for RIF activities will be district wide or as otherwise mutually agreed between the Employer and the Union, and in accordance with applicable OPM regulations.

18.3 Review Of Retention Registers. The Employer agrees to make the applicable retention register available for the Union's review at least 10 days prior to the issuance of the initial Reduction in Force Notice to affected employees.

18.4 Information To Employees. During the RIF, the Union agrees to cooperate with the Employer in communicating to employees the basis and reasons for the reduction. The Employer will notify all affected employees in writing of their rights in a RIF situation. Such notice will be given at the earliest possible time after determination of such rights and within any time limitations set forth in the above-cited regulations.

18.5 Assistance to Employees. Placement assistance will be provided for employees affected by RIF through placement programs available to the Los Angeles District at the time of the RIF. Employees who feel they have been reached incorrectly in a RIF, may appeal under the appropriate statutory appeals process. If a unit employee is to be separated through RIF procedures, said employee may be considered for any pending Los Angeles District vacancy for which the employee is qualified. Employees who contemplate retiring under discontinued service retirement provisions, should contact the Army

Benefits Center for a statement of eligibility for an immediate annuity and the approximate amount of that annuity.

## ARTICLE 19 HOURS OF WORK

19.1 General. Alternative work schedules are intended to enhance the quality of life of Los Angeles District employees, to improve the productivity of the District and to enhance our service to the public. The Employer and the Union recognize the potential benefits that Alternative Work Schedules (AWS) provide to employees of the Los Angeles District. Some examples of those benefits are: to improve the ability to recruit and retain employees; to allow greater flexibility to carpool or to use public transportation at off peak periods; and to reduce short term absences for, and allow employees more freedom in scheduling of, family, community, social, professional, educational, recreational, medical and child care activities.

### 19.2 Definitions.

a. Basic Work Requirement. The number of hours, excluding overtime hours, that an employee is required to work or to account for, by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. The basic work requirement for all full-time employees is 80 hours per biweekly pay period.

b. Compressed Work Schedule. A compressed schedule is a fixed schedule which enables a full-time employee to complete the basic work requirement of 80 hours in fewer than 10 full workdays.

c. Flexible Work Schedule. An 80-hour biweekly basic work requirement that allows an employee to determine his or her own schedule within the limits set by this agreement.

d. Alternative Work Schedules (AWS). Flexible work schedules and compressed work schedules are jointly referred to as Alternative Work Schedules. AWS are described in Title 5, U.S.C., Chapter 61, Subchapter II.

e. Core Hours. The term “core hours” applies to flexible work schedules. Core hours are that portion of the workday during which all employees covered by a flexible work schedule must be present for work.

f. Flexible Hours. Flexible hours are the times during the workday during which an employee covered by a flexible work schedule, arrives at and departs from the work site.

19.3 Alternative Work Schedules (AWS). Flexible Work Schedules and Compressed Work Schedules are jointly referred to as Alternative Work Schedules. The basic work requirement for all full-time employees is 80 hours per biweekly pay period. The following alternative work schedules are available to employees of the Los Angeles District in accordance with this agreement.

a. Flexible Work Schedule. The Flexible Work Schedule is a work schedule of eighty hours per biweekly pay period, eight (8) hours of work per day (not including the lunch period), Monday through Friday. The employee may select a starting time and a corresponding stopping time each day, and may change starting and stopping times daily within the established flexible hours, consistent with the duties and requirements of the position as determined by the supervisor. The following terms and conditions apply to the Flexible Work Schedule.

1) Core Hours. The term “core hours” applies to flexible work schedules. Core hours are that portion of the workday during which all employees covered by a flexible work schedule must be present for work. The Core Hours are 0900 - 1130 and 1300 - 1500, Monday through Friday.

2) Flexible Hours. Flexible hours are the times during the workday during which an employee covered by a flexible work schedule may choose to vary his or her times of arrival to and corresponding departure from the work site consistent with the duties and requirements of the position as determined by the supervisor. The morning flexible hours are 0630 to 0900, and the afternoon flexible hours are 1500 to 1730.

3) Schedule. Employees on the Flexible Work Schedule may arrive at their work site during the morning flexible hours, and depart from their work site during the afternoon flexible hours. Employees may schedule their lunch period during the period

between 1130 and 1300. Employees must schedule their arrival time, lunch period and departure time to ensure 8 hours of work each day.

b. 5-4/9 Compressed Work Schedule. The 5-4/9 Compressed Work Schedule is a work schedule established by the Employer of eight nine-hour days and one eight-hour day, and one day off which will normally be on a Friday. However, the employee and the immediate supervisor may agree on a day off different than Friday, to satisfy operational requirements. Only full-time employees may work on a Compressed Work Schedule. The employee's starting time will be between the hours of 0600 and 0830, and the corresponding stopping time will be between the hours of 1530 and 1800. The employee's starting time will be the same every workday. Employees will schedule their lunch period during the period between 1130 and 1300.

c. 4/10 Compressed Work Schedule. The 4/10 Compressed Work Schedule is a work schedule established by the Employer of four ten-hour days, normally Monday through Thursday of each week, with Fridays off. However, the employee and the immediate supervisor may agree on a day off different than Friday, to satisfy operational requirements. The employee's starting time will be between the hours of 0600 and 0730, and the corresponding stopping time will be between the hours of 1630 and 1800. The employee's starting time will be the same every workday. Employees on a 4/10 Compressed Work Schedule will schedule their lunch period for one half-hour between 1130 and 1300. Only full-time employees may work on a 4/10 Compressed Work Schedule.

#### 19.4 Procedures.

a. All full-time employees will work eighty hours per pay period. Each employee will select a work schedule. The selected schedule will be recorded on the Employee Work Schedule Form (enclosed with this Article). Work schedules are subject to supervisory approval. Employees and supervisors will work together to meet employee/Employer needs. All work schedule changes requested by the employee must be approved by the employee's supervisor in writing at least one pay period prior to implementation.

b. Employees who choose the 5/8 Flexible Work Schedule will do so by using the Employee Work Schedule Form (enclosed with

this Article). The form will then be submitted to the supervisor for approval. Employees may thereafter request a change to their 5/8 Flexible Work Schedule by using the Employee Work Schedule Form.

c. Employees who choose the 5-4/9 or 4/10 Compressed Work Schedule will use the Employee Work Schedule Form to indicate their preferred schedule for consideration by their supervisor. Employees may thereafter request a change to their Compressed Work Schedule by using the Employee Work Schedule Form.

d. All employees are required to sign in and out and record their time daily in accordance with CESPL OM 37-1-28, Financial Administration, TIMEKEEPING PROCEDURES, as may be amended or rescinded.

e. An employee working a Compressed Work Schedule who attends training or a conference away from his/her duty station for 3 days or more, or who uses any Court Leave or Military Leave, will be changed to a 5/8 Flexible Work Schedule for the pay period(s) during which the employee is in training, a conference, on Court Leave or Military Leave.

f. Annual and sick leave will be charged according to the number of hours that would normally have been worked, e.g., an employee taking a full day's leave on a day that he/she would normally have worked nine (9) hours will be charged nine (9) hours in the appropriate leave category.

g. Holidays falling on a scheduled workday will be charged the number of hours regularly scheduled for that day. When a holiday falls on a scheduled day off, the employee's preceding workday will be the designated "in-lieu-of" holiday.

h. The regular workday for part-time employees may not exceed 8 hours. Any hours in excess of 8 hours per day for a part-time employee should be considered as overtime and must have prior approval by the part-time employee's supervisor.

i. If an employee is required to work on a Compressed Work Schedule day off, time will be recorded as overtime or compensatory time.



19.5 Exemptions From Alternate Work Schedule Programs. Prior to permanently or temporarily exempting any bargaining unit employee and/or position(s) from participating in any of the Alternate Work Schedules, the following actions must be accomplished:

a. The immediate supervisor or designee will furnish to the Union the following:

- (1) Name(s) of the employees affected
- (2) Title, series and grade of employee(s)
- (3) Written justification for exemption; and
- (4) The work schedule to which the employee(s) will be assigned
- (5) a copy of the written approval by the Division Chief, or his designee,

b. The Union will negotiated to the full extent of the law any changes in the work schedule.

c. In the case of an emergency situation, the Employer may temporarily change the hours of duty for the period of the emergency. The Union will be notified of the action and the estimated period of the temporary change. An emergency is defined as an unexpected serious occurrence or situation urgently requiring prompt action.

19.6 Lunch Period. Each employee working more than 6 hours per day will take at least a thirty (30) minute lunch break during the period beginning no sooner than 1130 and ending no later than 1300. Lunch Periods will not be credited as hours of work, even if the employee remains at his or her workstation during the lunch period. No employee will be required to remain on duty during their lunch period unless compensated.

19.7 Rest Periods. Employees will be allowed no more than two fifteen minute rest periods each working day; one to be taken no earlier than one hour after the employee's starting time nor later than one hour before the employee's lunch period begins and a second rest period, if necessary, to be taken not earlier than one hour after the employee's lunch period ends but not later than one hour prior to the end of the employee's work day. Nothing herein may be deemed to restrict a supervisor's right to adjust an employee's rest period to meet changing

operational needs. Rest periods may not exceed 15 minutes. Employees shall be allowed to take the rest period away from the work site, subject to operational needs and applicable laws.

19.8 Cleanup Time. When a supervisor determines that cleanup time is required, a reasonable amount of time will be permitted prior to the end of the workday.

19.9 Overtime.

a. Voluntary Overtime. Voluntary overtime offered to employees may be accepted at the employee's discretion.

b. Ordered Overtime. Employees may be ordered to perform a reasonable amount of overtime within an administrative workweek. However, an employee will be excused from ordered overtime upon the presentation of sufficient justification acceptable to the Employer.

c. Employees will not be ordered to perform overtime when on an approved scheduled vacation, except in emergencies.

19.10 Credit Hours. Credit hours will be administered in accordance with CESPL OM 690-1-26, Civilian Personnel, CREDIT HOURS PROCEDURES, as may be amended or rescinded or as replaced by a successor procedure. The Employer will meet its bargaining obligations.

CESPL-\_\_\_\_\_

Date\_\_\_\_\_

MEMORANDUM FOR: \_\_\_\_\_

SUBJECT: Employee Work Schedule Request

1. I request that my work schedule be established as follows and become effective on the pay period beginning \_\_\_\_\_.

\_\_\_\_\_ a. Flexible Work Schedule. Starting time between 0630 and 0900, lunch period between 1130 and 1300, and quitting time not earlier than 1500 nor later than 1730.

\_\_\_\_\_ b. 5-4/9 Compressed Work Schedule.

Starting time \_\_\_\_\_ a.m. (between 0600 and 0830)

Lunch period \_\_\_\_\_ to \_\_\_\_\_ (between 1130 and 1300)

Quitting time \_\_\_\_\_ p.m. (between 1530 and 1800)

The scheduled day off will normally be on a Friday. However, the employee and the immediate supervisor may agree on a day off different than Friday, to satisfy operational requirements. The day off will be \_\_\_\_\_.

\_\_\_\_\_ c. 4/10 Compressed Work Schedule.

Starting time \_\_\_\_\_ a.m. (between 0600 and 0730)

Lunch period \_\_\_\_\_ to \_\_\_\_\_ (between 1130 and 1300)

Quitting time \_\_\_\_\_ p.m. (between 1630 and 1800)

The scheduled day off will normally be on a Friday. However, the employee and the immediate supervisor may agree on a day off different than Friday, to satisfy operational requirements. The day off will be \_\_\_\_\_.

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_ Your work schedule is established and approved as requested above.

\_\_\_ Your work schedule is established with the changes indicated above.

\_\_\_ Please meet with me to discuss your work schedule.

Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

## ARTICLE 20 LEAVE PROVISIONS

### 20.1 Annual Leave.

a. Annual leave shall be earned according to appropriate statutes and regulations. The granting of annual leave is subject to the needs of the Employer, and requires the approval of the employee's immediate supervisor or designee. When employees can be spared from their duties, annual leave will be granted for emergency purposes. Employees have the responsibility of coordinating with their supervisor in scheduling vacation periods by requesting leave for periods when their service can best be spared.

b. Requests for unscheduled annual leave will be held to a minimum to prevent disruption of work schedules. Employees who request unscheduled annual leave will do so as far in advance as possible. When unforeseen circumstances necessitate an employee's absence from duty, the employee will personally attempt to contact his immediate supervisor as soon as possible but not later than 0900 hours. Failure to reach the immediate supervisor will require the employee to leave a message on their supervisor's voice mail and then contact the supervisor's designee. If the designee is also unavailable the employee will leave a message on the designee's voice mail. The messages will describe the reason for the unscheduled leave and the amount of leave requested. If possible, the employee will leave a telephone number where the employee can be reached. In such cases the employee will be required to request approval from their supervisor after the fact. The supervisor reserves the right to approve the request retroactively, or to disapprove the request for annual leave and place the employee in an unauthorized leave status.

c. Subject to the needs of the Employer, employees will not be denied the use of annual leave where they may otherwise be required to forfeit their accruals by reason of maximum accumulation or forfeiture rules.

d. Advanced Annual Leave may be granted and will be administered in accordance with applicable laws and regulations.

20.2 Court Leave. Court leave is leave of absence from duty without loss of pay or charge to annual leave to perform jury duty in a Federal, state or municipal court or to serve as a witness in a judicial proceeding to which the United States, the District of Columbia or state or local government is a party. Court leave will be administered in accordance with applicable regulations. Employees summoned by a court for jury duty shall be recorded as court leave. An employee serving as a witness for the U.S. Government in an official capacity will be on official duty status and will be entitled to travel expenses, per diem, and/or overtime in accordance with applicable regulations.

20.3 Jury Duty. An employee excused or released by the court for a day or a substantial portion of a day is expected to return to duty that day, provided the return would not cause the employee hardship because of distance between home, duty stations, and the court. When only an hour or two remains in the daily tour, the employee should not be expected to return to duty. Failure to return to duty as described above could result in Absent without Leave (AWOL) unless appropriate leave is requested and approved.

20.4 Sick Leave. The Employer and the Union agree that sick leave is intended to ensure against a loss of income when eligible employees are incapacitated by illness/injury. The Parties further agree that sick leave is not intended to supplement annual leave. Employees will accrue sick leave in accordance with applicable laws and regulations. The granting of sick leave is subject to supervisory approval.

a. Employees not reporting for work because of illness will attempt to contact their supervisor by telephone not later than 0900 hours to request approval of sick leave and to state when they expect to return to duty. Failure to reach the immediate supervisor will require the employee to leave a message on their supervisor's voice mail and then contact the supervisor's designee. If the designee is also unavailable the employee will leave a message on the designee's voice mail. The messages will describe the reason for the sick leave and to state when they expect to return to duty. If possible, the employee will leave a telephone number where the employee can be reached. If the employee needs additional sick leave beyond the expected return to duty date, the employee will contact his supervisor using the procedure described above. The supervisor reserves the right to approve the request retroactively, or to disapprove the

request for sick leave and place the employee in an unauthorized leave status. Medical certification stating that the employee was incapacitated for duty will be required for sick leave periods in excess of 3 days and as provided in Section 20.4(d).

b. Sick leave will normally be granted for the purpose of visiting physicians, dentists, opticians, chiropractors, and other practitioners for the purpose of obtaining treatment, diagnostic examinations or X-rays. The amount of sick leave granted for this purpose will be based on the hour and length of the appointment and travel time involved. However, employees will exert every effort to arrange for such appointments during non-duty hours.

c. Sick leave may be used for Family Friendly Leave and will be administered in accordance with applicable laws (Family and Medical Leave Act) and regulations.

d. When there is reasonable evidence that an employee has been abusing sick leave, the Employer has the right to require a medical certification signed by a qualified medical practitioner for any sick leave absence, regardless of length, provided that the employee has been previously counseled on the use of sick leave and issued a leave restriction letter. The certification shall state that the employee was incapacitated for duty and the length of time such incapacitation existed. The sick leave record, of each employee issued a leave restriction letter, will be reviewed at 90-day intervals. If clear improvement is shown, the restriction will be removed.

e. Advanced sick leave may be granted if the following requirements are met:

- (1) All accrued sick leave has been exhausted;
- (2) All annual leave which otherwise would be subject to forfeiture has been used;
- (3) Application is supported by medical evidence;
- (4) Request is not for more than 30 days; and

(5) There is reasonable medical assurance as evidenced by a physician's medical certification that the employee will return to work and that the advanced credit will be repaid.

(6) The request for advanced sick leave is made through the supervisor to the Director of the Civilian Personnel Advisory Center at least five days before the requested effective date.

#### 20.5 Leave Without Pay (LWOP).

a. LWOP is a temporary non-pay status and absence from duty requested by the employee and approved by the employee's supervisor.

b. LWOP will be administered in accordance with applicable laws and regulations.

ARTICLE 21  
UNFAIR LABOR PRACTICES

21.1 General. The Employer and the Union agree that prior to formally filing an unfair labor practice (ULP) charge with the Federal Labor Relations Authority (FLRA), the charging party will advise the charged party of the allegation and offer to discuss the issues(s) and allow for resolution if possible. The following procedures will apply:

21.2 Procedures.

a. Prior to the filing of a ULP with the FLRA, the charging party will provide a copy of the proposed charge to the charged party alleged to have violated the Federal Service Labor-Management Relations Statute. This informal charge shall indicate the basis of the alleged violation and the specific provisions of the 5 U.S.C. Section 7116 alleged to have been violated. The advance copy of the informal ULP shall be provided to the charged party at least 15 days prior to the filing of a formal ULP with the FLRA.

b. When the Union is the charging party, they are to provide a copy of the informal charge to the Employer's Spokesperson. The 15-day period shall begin upon receipt of the informal charge by the Employer. When the Employer is the charging party, they are to provide a copy of the informal charge to the Union's Spokesperson. The 15-day period shall begin upon receipt of the informal charge by the President or designee

c. During this 15-day period, the parties will meet in an attempt to resolve the alleged violation.

d. In the event the informal charge is not resolved to the satisfaction of the charging party within the 15-day period, the ULP may be forwarded to the FLRA. The filing of a ULP with the FLRA shall not preclude the parties from seeking a resolution of the charge thereafter. A copy of the ULP sent to the FLRA will be sent to the other party's Spokesperson on the same day that it is sent to the FLRA.



ARTICLE 22  
VOLUNTARY ALLOTMENT OF UNION DUES

22.1 General.

a. The Employer agrees to withhold Union dues from the bi-weekly pay of eligible Unit employees. Amounts withheld will be determined by the Union. The Employer will remit the monies withheld through electronic funds transfer (EFT) to the Union.

b. After the loss of Exclusive Recognition by the Union as determined by the Federal Labor Relations Authority (FLRA), allotments will be automatically stopped beginning the next full pay period.

22.2 Union Responsibilities.

a. The Union accepts the responsibility for informing and educating its members concerning the allotment of dues and the proper completion of Standard Form (SF)1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues.

b. The Union will, upon request by an eligible employee, provide an SF 1187 to authorize an allotment for withholding dues from an employee's pay.

c. The Union will complete Section A of SF 1187 and the President or an elected official will certify and forward it to the Customer Service Representative (CSR) for processing. After processing, the CSR will forward the form to Defense Finance and Accounting Service (DFAS) within a reasonable time and give a copy of the completed form to the Union. If, in the judgment of the CSR, the employee is not eligible for dues allotment, the SF 1187 will be returned to the Union with an explanation.

d. The Union will inform the CSR of the amount of bi-weekly dues to be withheld.

e. The Union will notify the CSR to initiate termination of dues when an employee is suspended or expelled from membership in the Union.

### 22.3 Employer Responsibilities.

a. Allotments will be effective at the beginning of the first full pay period following receipt of the SF 1187 by the DFAS.

b. Remittance for dues withheld will be forwarded by electronic funds transfer (EFT) to the Union by DFAS at the time employee's pay is processed.

c. The Employer will notify the Union when the agreement between the Employer and the Union ceases to be applicable. When such is the case or upon notification by the Union that an employee has been suspended or expelled from membership in the Union, DFAS will stop the allotment as of the next full pay period.

### 22.4 Employee Responsibilities.

An employee may, at any time, request revocation of an allotment for the payment of dues by completing SF 1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues, and submitting it directly to the Employer's CSR. Revocation will be effective at the beginning of the first pay period following one year from the original date the employee authorized dues withholding, or each anniversary date thereafter. The CSR will provide notification of any revocation to the Union.

## ARTICLE 23 SAFETY

23.1 General. Safety is a collective effort and a responsibility of the Employer, the Union and the employees. The Parties will cooperate to identify and eliminate serious hazards and achieve a high level of worker safety and health. The Parties agree that a cooperative relationship between the Employer and the Union will assist in this endeavor. The Employer will make every reasonable effort to provide for and maintain safe working conditions for Unit employees. The Union will support the Employer's safety goals by encouraging all employees to work in a safe manner, and by reporting unsafe or unhealthy conditions.

23.2 Employer Safety Responsibilities. The Employer will meet its obligation to comply with all statutory and regulatory requirements pertaining to occupational safety and health programs for US Army Corps of Engineers employees. These include Executive Order 12196, February 26, 1980, Occupational Safety and Health Programs for Federal Employees and 29 CFR 1960, Federal OSHA, Basic Program Elements for Federal Employee Occupational Safety and Health Programs.

23.3 Safety Committee. The Union may appoint one participating non-voting Union representative to the Safety and Health Committee.

23.4 Annual Safety Inspections. The Safety Officer will conduct annual scheduled safety inspections of District-operated facilities. Inspections will be conducted in accordance with 29 CFR, 1903.8. One Union representative will be invited to accompany the Safety Officer during the physical inspection of any workplace for the purpose of aiding such inspection. The Union Representative will be given official time, with travel and per diem reimbursement, for the period of such inspections.

23.5 Training. Upon recommendation of the Safety Officer, the Employer will provide appropriate safety and related training to Union representatives to enable them to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting annual workplace

safety and health inspections in accordance with 29 CFR 1960.59. The Employer will pay for travel, per diem and registration fees for this training, if needed. If otherwise in a duty status, Union representatives will be granted official time, in accordance with Article 7 - Official Time, in order to attend this training.

ARTICLE 24  
EMPLOYEE HEALTH PROGRAMS

24.1 Employee Assistance Program. An Employee Assistance Program will be made available for employees to assist in identification and rehabilitation of alcoholism, drug abuse, or other problems which affect job performance.

24.2 Employee Health Programs. The Employer will, to the extent practicable and available from DoD sources, offer whatever health services are obtainable for employees.

24.3 Fit-To-Win Program. The Fit-To-Win Program will be administered in accordance with the most current versions of CESPL OM 600-1-1, Personnel – General, FIT TO WIN PROTOCOL and CESPL OM 600-1-4, Personnel – General, FIT TO WIN WELLNESS CENTER. The Employer will meet its bargaining obligations if there are any changes to the program.

## ARTICLE 25 CONTRACTING OUT

25.1 Notification. The Employer agrees to inform the Union prior to issuance of an invitation for bids or request for proposals for any contracting out work that may result in termination of any bargaining unit employee. The Employer will provide the Union with a milestone chart that shows the schedule that will be used to follow the OMB Circular A-76 requirements. A copy of the request for proposal issued to prospective participants will be provided to the Union.

25.2 Assistance. The Employer agrees to minimize termination action by providing assistance to place eligible employees in accordance with Reduction in Force procedures.

25.3 Employer Authority for Decisions. The Employer retains the authority to make decisions on contracting out.

ARTICLE 26  
ORIENTATION OF NEW EMPLOYEES

26.1 Orientation of New Employees. The Employer will use its best efforts to timely conduct the District Commander's New Employee Orientation sessions. A Union representative will be given an opportunity to be present at these sessions. All new employees attending this orientation, will be informed by the Employer, that the Union is the Exclusive Representative of employees. The employees, in attendance, who choose to remain after the orientation will be given the opportunity to meet with the Union representative, to ask any questions during a 15-minute period immediately following the session. Any official time granted for this 15-minute period will be recorded in accordance with the article addressing the use of official time.

26.2 Monthly List of New Employees. The Employer shall furnish the President of the Union each month the following information to identify all new employees of the Unit hired since the last list:

- a. Full name.
- b. Position title and grade.
- c. Organizational assignment.
- d. Date entered on duty.

## ARTICLE 27 MISCELLANEOUS PROVISIONS

27.1 Dress Codes. Employees will be neat, clean and businesslike in dress and personal grooming while on duty. In this regard, employees may conform to contemporary apparel and contemporary grooming styles provided that the styles do not create a health or safety hazard, interfere with or tend to interfere with accomplishment of the missions of the Employer, in a particular situation by reducing ability to deal effectively with either the public, fellow employees, other governmental agencies or organizational entities. Some examples of inappropriate attire are casual shorts, halter-tops, sweats, jogging clothes, workout clothes, tattered clothing, slippers and rubber/plastic thong shoes.

27.2 Telephone Calls. Bargaining Unit employees will be reimbursed for telephone calls home, of reasonable duration, while traveling on government business, in accordance with the DoD Joint Travel Regulations, as may be amended.

27.3 Missing Paycheck. The Employer will assist any employee who does not receive pay by the Monday following the week in which the pay is due. The employee will contact the Customer Service Representative (CSR) in the Resource Management Office to report the problem. The CSR will immediately contact the Defense Finance and Accounting Service (DFAS) in order to initiate action for payment.



## ARTICLE 28 REPRODUCTION AND DISTRIBUTION

28.1 Agreement. The Agreement will be 8 1/2 X 11 inches and will have 3 holes punched along the left margin. The Agreement will have a table of contents in the front.

28.2 Agreement Cover. The color of the Agreement cover will be blue. The effective dates of the Agreement, beginning and ending, will be printed on the cover. The words "Labor-Management Agreement" will stand out on the cover. The Union symbol, Corps castle, and the District logo will be on the cover.

28.3 Format. Each Article will begin on a new page. The Article number and title will be centered at the top of the first page of each article. Each section will have an underlined title. Arial font 14 point will be used.

28.4 Distribution. Copies of this Agreement will be provided by the Employer to the Union for distribution to each new bargaining unit employee during New Employee Orientation. In addition, the Employer will furnish 50 copies to the Union.

28.5 Intranet. A read-only copy of this Agreement will be posted on the District's Intranet. A link will be added by the Employer to the District's home page to provide access to the Agreement. This link will allow the Agreement to be printed by the user's computer.

ARTICLE 29  
UNION-EMPLOYER COUNCIL

Establishment. In accordance with this Agreement, the Employer and the Union agree to establish a Union-Employer Council. Within 30 days following final approval of this Agreement, either Party may make a demand on the other to meet for the purpose of drafting a Council Charter. If neither Party makes such request within the time allotted this article is void.

ARTICLE 30  
MIDTERM NEGOTIATIONS

30.1 General. Both Parties to this Agreement have the responsibility of conducting their midterm negotiations in good faith and in such manner as will further the purposes of the Civil Service Reform Act (CSRA). They agree to make every reasonable effort to resolve all differences which arise between them.

30.2 Scope. The scope of midterm negotiations is as follows:

a. Employer decisions affecting bargaining unit employees or their conditions of employment, subject to non-negotiable exclusions as provided by law;

b. Negotiable proposals by the Union on matters not contained in or covered by this Agreement;

c. Amendments and supplements to this Agreement to reflect legal and regulatory changes, or other negotiable items, as mutually agreed.

30.3 Notification of Employer Decisions Affecting Conditions of Employment of Bargaining Unit Employees.

a. The Employer will notify the Union prior to implementation of decisions affecting conditions of employment of bargaining unit employees. Such notification will be furnished to the Union President or designee.

b. If, after notification from the Employer, the Union chooses to exercise their right to bargain, their demand to bargain will be furnished to the Employer's Spokesperson not later than 10 days after receipt of the notification. Absence of a demand to bargain on or before the 10th day will be accepted as the Union's declination to bargain.

30.4 Procedures For Midterm Negotiations.

a. Negotiations will begin not later than 15 days after receipt of the demand to bargain. Extensions may be granted by mutual

agreement. Failure of the Union to commence negotiations will be accepted as the Union's declination to bargain.

b. Normally, the number of Union bargaining team member(s) authorized official time will not exceed the number of individuals designated as representing the Employer at the bargaining session. When more than one individual represents each Party, the lead negotiator for each party will be identified at the commencement of negotiations. The lead negotiators must have the authority to enter into an agreement and bind their respective Party. Agreements will be signed and dated by the lead negotiators.

c. Either Party may have a subject matter expert present information pertinent to the subject being negotiated between the Parties. The subject matter expert may not negotiate for or become a member of either bargaining team.

30.5 Requests for Information. All requests for information made by the Union pursuant to section 7114(b)(4) of the CSRA will be sent in writing to the Employer's Spokesperson. The response to the request, whether approved or denied, will be in writing.

ARTICLE 31  
EFFECTIVE DATE

31.1 This agreement is subject to approval by the Secretary of the Army or designee. The Secretary of the Army or designee shall approve the agreement within 30 days from the date this agreement is executed, if the agreement is in accordance with the provisions of the CSRA and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

31.2 If the Secretary of the Army or designee does not approve or disapprove this agreement within the 30-day period, this agreement shall take effect and shall be binding on the Parties, subject to the provisions of the CSRA and any other applicable law, rule, or regulation.

31.3 The following is a list of participants in the negotiation of this Labor-Management Agreement. The Employer representatives included Richard Leifield, Lead Negotiator, Stephen Temmel, Thomas D. (Dan) McKercher, Patricia Delgado, Madeline Zamorano, Ventura Gomez, Sandra Redding, Teresa Kaplan and Arthur Jung. The Union representatives included Pedro Gonzalez, Lead Negotiator, Vernon Bernhardt, Irene Leyva-Tracy, Regina Parker, Mary Ann Powers, Christopher Tu, Patricia Vasquez, Veronica Vasquez and Leticia Zarate.

31.4 In witness whereof, the Parties hereto have caused this Labor-Management Agreement to be executed on this 1<sup>st</sup> day of February 2005.

U.S. Army Corps of Engineers,  
Los Angeles District, (Employer)

National Federation of  
Federal Employees,  
Local 777 (Union)



Alex C. Dornstauder  
Colonel, US Army  
District Engineer



Pedro R. Gonzalez  
President

31.5 Approved by the Department of Defense on March 2, 2005.

## Appendix A

### CHAPTER 71 - LABOR-MANAGEMENT RELATIONS

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# Appendix A

## SUBCHAPTER I-- GENERAL PROVISIONS

### § 7101. Findings and purpose

(a) The Congress finds that--

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

### § 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--



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

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

### § 7103. Definitions; application

(a) For the purpose of this chapter--

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual--

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include--

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or

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(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Printing Office, and the Smithsonian Institution, but does not include--

- (A) the General Accounting Office;
- (B) the Federal Bureau of Investigation;
- (C) the Central Intelligence Agency;
- (D) the National Security Agency;
- (E) the Tennessee Valley Authority;
- (F) the Federal Labor Relations Authority;
- (G) the Federal Service Impasses Panel; or
- (H) the United States Secret Service and the United States Secret Service Uniformed Division.

(4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include--

- (A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
- (B) an organization which advocates the overthrow of the constitutional form of government of the United States;
- (C) an organization sponsored by an agency; or
- (D) an organization which participates in the conduct of a strike against the Government or any agency thereof or

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imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) "dues" means dues, fees, and assessments;

(6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) "grievance" means any complaint--

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning--

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

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

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or

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authorize the individual to formulate, determine, or influence the policies of the agency;

(12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means--

(A) an employee engaged in the performance of work--

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

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(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which-

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--

(i) on the basis of an election; or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

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**(b)(1)** The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that--

**(A)** the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

**(B)** the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

**(2)** The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

### § 7104. Federal Labor Relations Authority

**(a)** The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

**(b)** Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

**(c)** A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of--

**(1)** the date on which the member's successor takes office, or

**(2)** the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

**(d)** A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

**(e)** The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and decisions it has rendered.

**(f)(1)** The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel

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may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

- (2) The General Counsel may--
  - (A) investigate alleged unfair labor practices under this chapter,
  - (B) file and prosecute complaints under this chapter, and
  - (C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

### § 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority--

- (A) determine the appropriateness of units for labor organization representation under section 7112 of this title;
- (B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;
- (C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;
- (D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;
- (E) resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title;

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- (F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;
  - (G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;
  - (H) resolve exceptions to arbitrator's awards under section 7122 of this title; and
  - (I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.
- (b) The Authority shall adopt an official seal which shall be judicially noticed.
- (c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.
- (d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.
- (e)(1) The Authority may delegate to any regional director its authority under this chapter--
- (A) to determine whether a group of employees is an appropriate unit;
  - (B) to conduct investigations and to provide for hearings;
  - (C) to determine whether a question of representation exists and to direct an election; and
  - (D) to supervise or conduct secret ballot elections and certify the results thereof.
- (2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.



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(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of--

- (1) the date of the action; or
- (2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may--

- (1) hold hearings;
- (2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and
- (3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

### § 7106. Management rights

(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

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(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.

### **SUBCHAPTER II-- RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS**

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### § 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority--

(1) by any person alleging--

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which--

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

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may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose--

- (1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or
- (2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization--

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting

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chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

### § 7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes--

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization--

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(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

### § 7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

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### § 7114. Representation rights and duties

**(a)(1)** A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

**(2)** An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

**(A)** any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

**(B)** any examination of an employee in the unit by a representative of the agency in connection with an investigation if--

**(i)** the employee reasonably believes that the examination may result in disciplinary action against the employee; and

**(ii)** the employee requests representation.

**(3)** Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

**(4)** Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

**(5)** The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--

**(A)** being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

**(B)** exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

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(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

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

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.



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### § 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when--

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

### § 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

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- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
  - (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
  - (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
  - (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
  - (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
  - (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
  - (8) to otherwise fail or refuse to comply with any provision of this chapter.
- (b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--
- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
  - (2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;
  - (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;
  - (4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

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(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which--

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

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(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if--

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

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- (B) the Authority determines that a compelling need for a rule or regulation does not exist.
- (3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.
- (4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.
- (c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.
- (2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by--
- (A) filing a petition with the Authority; and
  - (B) furnishing a copy of the petition to the head of the agency.
- (3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall--
- (A) file with the Authority a statement--
    - (i) withdrawing the allegation; or
    - (ii) setting forth in full its reasons supporting the allegation; and
  - (B) furnish a copy of such statement to the exclusive representative.
- (4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.
- (5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.
- (6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

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**(d)(1)** A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

**(2)** A labor organization having consultation rights under paragraph (1) of this subsection shall--

**(A)** be informed of any substantive change in conditions of employment proposed by the agency, and

**(B)** shall be permitted reasonable time to present its views and recommendations regarding the changes.

**(3)** If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization--

**(A)** the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

**(B)** the agency shall provide the labor organization a written statement of the reasons for taking the final action.

### § 7118. Prevention of unfair labor practices

**(a)(1)** If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

**(2)** Any complaint under paragraph (1) of this subsection shall contain a notice--

**(A)** of the charge;

**(B)** that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

**(C)** of the time and place fixed for the hearing.

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(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of--

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6- month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order--

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

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(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of any employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

### § 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what matter it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse--

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasses, but only if the procedure is approved by the Panel.



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**(c)(1)** The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

**(2)** The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

**(3)** Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

**(4)** The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

**(5)(A)** The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--

**(i)** recommend to the parties procedures for the resolution of the impasse; or

**(ii)** assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

**(B)** If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may--

**(i)** hold hearings;

**(ii)** administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

**(iii)** take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

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(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

### § 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for--

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that--

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

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- (2) the organization is in fact subject to influences that would preclude recognition under this chapter.
- (c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.
- (d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.
- (e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.
- (f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation--
- (1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or
  - (2) take any other appropriate disciplinary action.

### **SUBCHAPTER III-- GRIEVANCES, APPEALS, AND REVIEW**

#### § 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e) and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

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**(2)** Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

**(b)(1)** Any negotiated grievance procedure referred to in subsection (a) of this section shall--

**(A)** be fair and simple,

**(B)** provide for expeditious processing, and

**(C)** include procedures that--

**(i)** assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

**(ii)** assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

**(iii)** provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

**(2)(A)** The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

**(i)** a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

**(ii)** the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

**(B)** Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

**(c)** The preceding subsections of this section shall not apply with respect to any grievance concerning--

**(1)** any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

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- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under section 7532 of this title;
- (4) any examination, certification, or appointment; or
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title

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which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

**(g)(1)** This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

**(2)** An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

**(3)** The remedies described in this paragraph are as follows:

**(A)** An appeal to the Merit Systems Protection Board under section 7701.

**(B)** A negotiated grievance procedure under this section.

**(C)** Procedures for seeking corrective action under subchapters II and III of chapter 12.

**(4)** For the purpose of this subsection, a person shall be considered to have elected-

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**(A)** the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

**(B)** the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

**(C)** the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

**(h)** Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

§ 7122. Exceptions to arbitral awards

**(a)** Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award

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relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--

- (1) because it is contrary to any law, rule, or regulation; or
- (2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

### § 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under--

- (1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or
- (2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part

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the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

### **SUBCHAPTER IV-- ADMINISTRATIVE AND OTHER PROVISIONS**

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.



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(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section--

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

### § 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may--

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

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(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

### § 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

### § 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

### § 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude--

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force

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and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.