Collective Bargaining Agreement 2022

Ohio National Guard and AFGE Local 3970

Effective: 16 August 2022
(rescinds and replaces CBA dated 26 October 2018

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ARTICLE 1

PREAMBLE

Preamble and Purpose. This agreement is made between Ohio National Guard, hereinafter referred to as the "Agency", and American Federation of Government Employees Local 3970, hereinafter referred to as the "Union".

It is the intent and purpose of the parties to promote and improve the effectiveness and efficiency in the accomplishment of the mission of the Ohio National Guard and the well-being of bargaining unit T32 technicians and T5 National Guard Employees. T32 Technicians, hereinafter referred to as "Technicians" or T5 National Guard Employees, hereinafter referred to as "Employees."

Through this agreement, the parties establish a basic understanding relative to personnel policies and practices, employee working conditions, methods and means of performing the work, and other negotiable matters. This agreement is also established as a means to assure amicable discussion and adjustment of matters of mutual interest. Management and the Union agree to cooperate in efforts to ensure timely completion of work, improve the quality of workmanship, encourage ideas for improvement and cost reduction, prevent accidents, conserve materials and supplies, and promote the development of partnership among the Agency, the Union, and the technicians and employees.

Relationship to Laws and Regulations. In the administration of all matters covered by this Agreement, applicable Federal Statutes, Presidential Executive Orders, negotiated Department of Defense Instructions (DoDIs), Chief National Guard Bureau Instructions (CNGBIs), applicable National Guard Bureau Technician Personnel Regulations (TPRs) and government-wide regulations in existence at the time this Agreement was approved, shall apply. Where any Agency regulations conflict with this Agreement and/or a supplement agreement, this Agreement shall govern.

It is agreed and understood that any prior benefits, practices, and understandings which were in effect on the effective date of the Agreement and which are not specifically covered by this Agreement and do not detract from it shall not be changed except in accordance with 5 USC 71.

ARTICLE 2

CONTRACT DURATION AND TERMINATION

A. This agreement will take effect upon completion of the Union ratification and the Agency Head Review (AHR) process in accordance with 5 USC, Section 7114(c). This Agreement shall remain in full force and effect until five (5) years from its effective date.

B. If neither Party gives notice of its intent to negotiate a new Agreement, the Agreement will be automatically renewed for succeeding periods of one (1) year. However, either Party may give written notice to the other Party, not more than ninety (90) calendar days or less than sixty (60) calendar days prior to the initial expiration date, and each anniversary date thereafter, of its intention to negotiate a new Agreement; or to amend or modify this Agreement. Negotiations shall then begin within thirty (30) calendar days, or as otherwise mutually agreed. If negotiations are not completed by the expiration date, this Agreement will be automatically extended until a new Agreement is mutually agreed upon and approved. If neither party desires to renegotiate this Agreement, the parties may execute new signatures and date.

C. All past practices that conflict with law, government wide rule or regulation or this Agreement are extinguished upon the effective date of this Agreement.

D. Amendments to this Agreement may be negotiated at any time by mutual agreement of the parties in accordance with the midterm bargaining article of this Agreement. The Union and the Agency surrender no rights other than those specifically governed and enunciated by this Agreement.

ARTICLE 3

EFFECTS OF LAWS, REGULATIONS AND OTHER PROVISIONS

A. In the administration of all matters covered by this Agreement, the Parties shall be governed by existing and future applicable laws. Should any conflict arise between this Agreement and any such laws, the provisions of such applicable laws shall supersede conflicting provisions of this Agreement.

B. All regulations of the Department of Labor, General Accounting Office, Department of Defense (DoD), National Guard Bureau (NGB), Department of the Army or Air Force (which apply to the Ohio National Guard), Office of Personnel Management (OPM), General Services Administration (GSA), Office of Management and Budget (OMB), Office of Government Ethics (OGE), and other government agencies with authority to promulgate such regulations, in effect as of the effective date of this Agreement, have full force and effect are deemed to be government wide regulations. To the extent they may be inconsistent with the provisions of this Agreement, these government-wide regulations will supersede and govern.

C. Should any direct conflict arise between the terms of this Agreement and any aforementioned government-wide rule or regulation, rule, regulation, instruction, manual or directive, issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.

D. Any Ohio National Guard regulations, instructions, directives or policies in effect as of the effective date of this Agreement govern the personnel practices and conditions of employment of the Parties unless it conflicts with the terms of this Agreement.

E. Upon receipt of a change of law, government-wide rule or regulation, instruction, manual or directive, constituting a change in personnel policy or matters effecting conditions of employment attributable to the Agency, the Agency will, as soon as possible, notify the Union of such changes. Prior to implementation of regulations from higher headquarters and other local procedures affecting personnel policies or conditions of employment, the Union will be notified for negotiations to the extent that there is a change from those currently stated. The Agency will provide the Union thirty (30) calendar days to present their concerns or request a meeting to discuss matters appropriate for negotiation.

ARTICLE 4

TECHNICIAN AND EMPLOYEE RIGHTS

The Parties acknowledge Technician and Employee's rights in accordance with 5 USC § 7102, 7114, and this Agreement:

4-1: Right to Union Membership

Bargaining unit status technicians or employees have a right to form, join or assist the Union or to refrain from such activity, freely, and without fear of penalty or reprisal therefore each technician or employee shall be protected in the exercise of such right. Except as otherwise provided under this Agreement, such right includes the right:

1. To act for the Union in the capacity of an official representative and the right, in that capacity, to present the views of the Union to management officials and the head of the Agency and other officials of the Executive branch of the government, the Congress, or other appropriate authorities.

    a. In accordance with the Department of Defense (DOD) Appropriations Act, lobbying Congress on pending legislation is contrary to law and must be conducted during non-duty hours, however lobbying Congress on desired legislation is not. In accordance with the National Defense Authorization (NDAA) and Department of Defense (DOD) Appropriations Act of the year in question, then the Act is applicable for that year. If NDAA language changes in a future year then so does the application of duty time, and

2. Bargaining unit status technicians and employees also have the right to engage in collective bargaining with the Agency with respect to conditions of employment through Union representatives chosen by the technicians or employees.

4-2: Right to Union Representation

A. The Agency recognizes a bargaining unit status technician or employee's right to assistance and representation by the Union, and the right to meet and confer with local Union representatives in private during duty time.

B. Except in the case of grievance or appeal procedures negotiated in this Agreement, the right of Union representation under this Agreement does not preclude a technician or employee from:

1. Being represented by an attorney or other representative, other than the Union, of the technician or employee's own choosing and at the technician or employee's own expense, in any grievance or appeal action; or

2. Exercising grievance or appeal rights established by applicable law, rule, regulation or this Agreement.

4-3: Technician and Employee Performance and Conduct

A. A technician or employee is accountable for the performance of official duties and compliance with standards of conduct for Technicians and Federal Employees, respectively. Within this context, the Agency affirms the rights of the technicians and employees to conduct their private lives as they see fit, provided such conduct does not bring discredit to or adversely affect the Agency and does not cause a technician or employee to no longer meet a condition of employment.

B. Technicians and employees may engage in outside employment consistent with OPM (5 CFR 2635.801) and the Joint Ethics Regulation (DoD 5500.7-R). Technicians and employees are required to request approval for outside employment from their Supervisor, such approval will not be unreasonable withheld.

ARTICLE 5

UNION RIGHTS

The Parties acknowledge the Union's rights in accordance with 5 USC § 7114 and this Agreement:

5-1: Exclusive Representative

A. The Union is the exclusive representative of bargaining unit status technicians and employees employed by the Ohio Army and Air National Guard. Consistent with the above, the Union is entitled to act for, and negotiate collective bargaining agreements covering all bargaining unit status technicians and employees. The Union is responsible for representing the interests of all bargaining unit status technicians and employees without discrimination and without regard to labor organization membership.

B. The Union shall be informed of any change in conditions of employment proposed by the Agency. The Agency will provide the Union thirty (30) calendar days to present their concerns and/or demand to bargain matters appropriate for negotiation.

C. The Union shall be given the opportunity to be represented at:

1. Any formal discussion between one or more representatives of the Agency and one or more bargaining unit status technicians or employees or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

2. Any examination of a bargaining unit status technician or employee by a representative of the Agency in connection with an investigation if the technician or employee reasonably believes that the examination may result in disciplinary action against the technician or employee; and the technician or employee requests representation.

D. The Agency will annually inform all bargaining unit status technicians and employees of their rights under 5 USC § 7114 (a)(2)(B) and this agreement.

5-2: Union Representatives

A. The Union will designate in writing officials who are authorized to perform representational duties in accordance with this Agreement, or applicable law or regulations. The Agency is not bound to recognize the authority of any Union representative not designated in accordance with this section.

B. Union representatives are authorized to perform and discharge their Union duties and responsibilities in accordance with this Agreement, as well as law and regulation. Union representatives shall be relieved from official duties during the period they are serving as Union representatives. In the event that the Agency cannot release designated Union officials from

their assigned technician or employee duties to perform Union representation duties, the Agency shall reschedule the event for which the representational duties were requested or required to a time when the Union representative is available to attend.

C. Union representatives will be allowed access to Agency installations and facilities to perform representational duties, once appropriate approval has been coordinated and obtained from Agency leadership. Union representatives shall not be needlessly denied access to Agency installations and facilities. In the event the Agency is unable to accommodate a request from a Union representative to perform official Union duties at a particular duty location, the Agency shall provide the Union representative(s) an alternate location or time to access technicians and employees. In these situations, the Agency shall release technicians and employees to meet with their Union representatives in a regular duty status without charge to leave.

D. The Union may participate in the Agency's New Employee Orientation (NEO) sessions. During NEO sessions the Agency will inform new technicians and employees of the specific Union designation and identify the officers of the Union.

ARTICLE 6

MANAGEMENT RIGHTS

The Parties acknowledge management's rights in accordance with 5 USC § 7106 and this Agreement:

A. Subject to section B. of this section, nothing in this Agreement shall affect the authority of any management official of the Agency:

1. To determine the mission, budget, organization, number of technicians and employees, and internal security practices of the Agency; and

2. In accordance with applicable laws:

a. To hire, assign, direct, layoff, and retain technicians and employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such technicians or 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:

(1) Among properly ranked and certified candidates for promotion; or

(2) Any other appropriate source

d. To take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Nothing in this section shall preclude the Agency and the Union from negotiating:

1. At the election of the Agency, on the numbers, types, and grades of technicians and 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 technicians and employees adversely affected by the exercise of any authority under this section by such management officials.

ARTICLE 7

MID TERM BARGAINING

7-1: Purpose

A. The purpose of this article is to establish principles and ground rules for any mid-term negotiations the Parties may engage in during the term and life of this Agreement. The parties consider these procedures to be necessary and desirable to reduce potential areas of conflict and dispute during the conduct of negotiations.

B. Matters appropriate for mid-term bargaining shall include changes to established personnel policies and practices and general conditions of employment during the term of this agreement, which affect bargaining unit technicians and employees.

7-2: Procedures for Negotiating During the Term of the Agreement

A. When the Agency or the Union propose to implement changes in personnel policies, practices and general conditions of employment which affect bargaining unit technicians or employees, it will provide written notice thirty (30) calendar days in advance of the proposed changes. This notice shall include the nature and scope of the change; a description of the change; an explanation of the implementation of this plan; a description of why the change is needed; and the proposed implementation date.

B. This notice will be served by the Agency on the Local Union President or his/her designee or when served by the Union on the HRO Director or his/her designee. This notice may be hand delivered, sent via certified mail, E-mail or facsimile. The notice will be deemed effective upon hand delivery, certified mail receipt, or other mail that can confirm receipt such as E-mail.

C. The receiving Party will review the proposal and may respond to the initiating party in the following ways:

1. If the receiving Party wishes additional information or an explanation of the proposal, that Party may, within ten (10) working days of receipt of the notice, make a written request for a briefing by the initiating Party, and/or for additional information, in writing, in order to clarify or determine the impact of the proposed change; or

2. If the receiving Party wished to negotiate over any aspect of the proposed change, it shall notify the other Party by submitting a demand to bargain within twenty (20) working days of receipt of the notice (or receipt of any requested briefing or information, whichever is later).

D. Agreement to Negotiate

1. Upon request by the receiving Party, the Parties will meet and negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this Agreement. Following this request to negotiate, the Parties will schedule a

meeting to begin negotiations as soon as possible, normally no later than ten (10) working days from the receipt of the receiving Party's request. Implementation shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasses proceedings, except as required by law, executive order, or government-wide policy.

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

3. If the receiving Party has not responded to the initiating party within the prescribed timeframes, the proposed changes in conditions of employment will be implemented on the proposed effective date.

7-3: Ground Rules for Mid Term Bargaining

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

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

2. **Arrangements.** Negotiations will be held in a suitable meeting room provided by the Agency at a mutually agreed upon site. The Agency will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room.

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

4. The starting date and the daily schedule for negotiations will be established by the Parties.

a. Bargaining issues not agreed to after fifteen (15) calendar days of negotiating will be considered at impasses and the parties will exchange last best proposals on the 15th calendar day.

b. The fifteen (15) calendar day bargaining time frame may be extended by mutual consent.

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

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

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

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

9. Each Party shall be represented at the negotiations at all times and be prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.

10. The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiation table. Negotiations will take place during normal duty hours. The designated Union negotiators will be on official time for all duty time spent performing negotiations including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals.

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

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

13. Any provisions disapproved during the Agency Head Review (AHR) may be referred to the Federal Labor Relations Authority (FLRA) by the Union. Any provision held within the scope of bargaining will be incorporated into the Agreement. The parties will commence negotiations within a reasonable period after receipt of an FLRA decision sustaining the Agency's determination that the Union's proposal is outside the scope of bargaining.

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

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

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

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

7-4: Waivers

Nothing in this Agreement shall be deemed to waive either Party's statutory rights unless such a waiver is clear and unmistakable.

ARTICLE 8

STATE LABOR COUNCIL

State Labor Management Relations Council

8-1: Both parties recognize that a formal collective bargaining agreement is but one act of the Labor/Management relationship process working towards a more effective governance. To achieve these goals and to foster a cooperative, constructive working relationship between Labor and Management, the Parties agree to establish a State Labor Management Relations Council (SLMRC).

8-2: State Labor Management Relations Council.

A. The SLMRC will be made up of equal number of representatives from Management and the Union, but will not have more than five (5) members representing each Party present at the meeting. The Parties will notify each other, in writing, of the members of their respective council. Agenda items will be submitted to the Human Resources Office fourteen (14) calendar days prior to each meeting. Lack of agenda items may cause a cancellation of the scheduled meeting.

B. Meetings of the SLMRC will be held as requested. SLMRC will be scheduled as agreed upon by both parties. The purpose of these meetings will be to discuss workplace issues that are of concern to the parties. The parties by mutual agreement may schedule additional SLMRC meetings during the calendar year.

C. Meetings will be held during normal duty hours and scheduling will accommodate travel time for council members.

ARTICLE 9

PAYROLL ALLOTMENTS FOR WITHHOLDING OF DUES

9-1: General

A. For the purpose of this Article:

1. The term "employee" refers to any bargaining unit technician or employee who is a member in good standing of AFGE Local 3970.

2. The term "servicing payroll office" refers to the Ohio National Guard Comptroller's office which is currently responsibility for processing the pay of the employee.

3. The term "payroll allotment" refers to a voluntary authorization by the employee for deduction in a specified amount to be made from the employee's pay each pay period for the payment of dues, associated with his/her membership, to the AFGE Local 3970.

B. The Agency and AFGE Local 3970 agree that Local and the Agency are each responsible for fully informing the technician or employee of his/her authorization for a payroll allotment:

1. Is completely voluntary; and

2. May be revoked only after a period of at least one (1) year has elapsed from the effective date thereof.

3. The Secretary-Treasurer is the only one with the authority to request termination of dues deduction. The Secretary-Treasurer will submit the signed SF-1188 to the applicable Agency payroll office.

9-2: Authorization of Payroll Allotment

A. Only one payroll allotment shall be authorized for a technician or employee for dues deductions.

B. Standard Form (SF) 1187, Request for Payroll Deductions for Labor Organization Dues, shall be used. The AFGE Local 3970 shall purchase and distribute this form to technicians and employees.

C. AFGE Local 3970 shall furnish the Agency with written notification of the name and title of the AFGE Local 3970 officials who are designated to sign the certification on the SF 1187.

D. The AFGE Local 3970 shall be responsible for furnishing the servicing payroll office with a certified schedule of payroll allotments supported by completed SF1187s that are signed by the designated AFGE Local 3970 officials and the employees.

E. The payroll allotment shall be in an amount determined by the AFGE Local 3970.

1. Written notification of a change in the amount of the payroll allotment shall be furnished to the servicing payroll office by the AFGE Local 3970.

2. The change in the amount of the payroll allotment shall become effective with the first complete pay period which occurs thirty (30) calendar days after written notification is received by the servicing payroll office

9-3: Termination of Authorization

The payroll allotment shall be terminated when any of the following situations occur:

A. The technician or employee retires.

B. The technician or employee dies.

C. The technician or employee is separated.

D. The technician or employee ceases to be a member of the bargaining unit.

E. The technician or employee ceases to be a member in good standing of the AFGE Local 3970. If this occurs, the AFGE Local 3970 shall be responsible for promptly furnishing written notification to the servicing payroll office.

F. Members whose Union dues have been in effect for more than one year and who wish to cancel their membership the employee must file a written notification (SF 1188, Cancellation of Payroll Deductions for Labor Organization Dues) which the servicing payroll office within one week before or one week after their anniversary date. Bargaining Unit Employees who signed the 1187 joining the Union after August 10, 2020 and thereafter may submit an 1187 any time after their initial one year anniversary.

G. If a technician or employee is on active military orders AFGE Local 3970 will suspend dues withholding, during the time of the orders and resume at the end of the employee's military orders.

9-4: Processing Payroll Allotments

A. Payroll allotments shall be processed at no cost to the AFGE Local 3970, the technician or employee.

B. The effective date of the payroll allotment will be no later than the first pay period following submission of the SF 1187 to the servicing payroll office for processing.

C. The servicing payroll office shall deduct the amount of the payroll allotment each pay period.

9-5: Agency Payroll Audits

It is understood that the Agency will routinely conduct audits of technician and employee payroll records. In the event that the Agency discovers that Union dues allotments are being deducted from a technician or employee's pay and the Agency does not have a SF1187 on file for a technician or employee, the Agency will request that the Union and technician or employee provide a copy of the missing SF1187. If available, the Union and/or technician/employee will provide the Agency a copy of the missing SF1187 within thirty (30) calendar days after the request. In the event that the Union, technician/employee and the Agency are unable to locate the SF1187, the technician or employee will be afforded the opportunity to complete a new SF1187. The Agency will certify to the Union the receipt of any SF1187 from the Union, technician or an employee. If the missing SF1187 is not located and the technician or employee does not complete a new SF1187, within 30 days after the request, the Agency will terminate the allotment after notifying the Union and the technician or employee. The Agency will not violate 5 USC 7115(b).

ARTICLE 10

USE OF FACILITIES

10-1: Government Phone Usage

Union officers or stewards may have access to government telephones to make local telephone calls when conducting appropriate labor-management relations activities.

10-2: Office Space

A. At locations where it is feasible, the Agency agrees to provide suitable office space to the Union. The Union may use available facilities for Union meetings or other special events. The Union will follow the same reservation procedures for these rooms as all others. In addition, the Agency will provide the Union access to a government telephone with voice mail capability. The Agency will provide the Union access to print, copy and facsimile. The Agency will provide the Union a desk, reasonable furniture accessories and a chair from existing inventory or allow the Union to choose from excess inventory.

B. At major facilities, with more than two-hundred (200) bargaining unit members, the Union will be provided office space sufficient to meet with technicians or employees. At minor facilities, with less than two-hundred (200) bargaining unit members, the Union will be provided a private place upon request and two file cabinets and/or lockers to store Union records and equipment.

10-3: Email/Mail System

The Union and its representatives may use the Agency mail system and Agency email system for regular representation communications (e.g., grievance correspondence or memos to the Agency, technician, employee or other Union Officials). The Agency does not assume any responsibility for the security of items placed in the Agency mail system, nor does it guarantee delivery or timeliness of delivery. The Union must conform to all internal security practices relating to information security when using government email systems. The Union Officials are responsible for protecting technician, employee and government information, and must not make any unauthorized disclosure of such information. The Agency mail systems and government email systems may be used for distribution of Union business and relevant work place information to the bargaining unit technicians or employees.

10-4: Agreement

The Agency will post this agreement on the Human Resource Office (HRO) website and inform technicians and employees of how to access the agreement.

10-5: New Employee Orientation

The Agency will inform technicians and employees at the New Employee Orientation (NEO) how to access this agreement on the Agency's website.

10-6: Facility Use

The Union may use available Agency facilities for Union meetings or conferences. The union will follow the same reservation procedures for these rooms as all others. The Agency will make available a private area for the Union to meet its representational requirements without having to reserve a room.

10-7: Bulletin Boards

If there is an appropriate area or wall space, the union will be permitted to have a bulletin board for posting union information. In work areas where it is not feasible to post a separate bulletin board, the Union will be allowed space on one (1) existing bulletin board in each work area where bulletin boards exist. The space should be sufficient to post materials and identified as AFGE Local 3970. The Agency also agrees to permit distribution by the Union of notices and circulars sponsored by the Union to all members in the bargaining unit. The Union agrees that material posted or distributed will not violate any laws, rules, regulation or security. Official time will be granted for the updating of official bulletin boards once each month.

10-8: Agency Equipment

The Parties have an interest in maintaining adequate use of facilities, and administrative and business equipment. Union representatives, at facilities where a separate Union office is located, may use existing office equipment while conducting Union business, Agency equipment will not be used for internal Union business.

ARTICLE 11

CORRECTIVE AND DISCIPLINARY ACTIONS

11-1: Definitions

This Article applies to all bargaining unit technicians and employees who have completed the applicable probationary or trial period, as appropriate, in their current positions. For purposes of this Article, corrective actions include counseling and admonitions both oral and written. For purposes of this Article, disciplinary actions are Letters of Reprimand (LOR). If the agency believes that disciplinary or adverse action is necessary, such action will be initiated in a timely manner after the offense was committed and made known to the agency.

11-2: Corrective Actions

Corrective actions include counseling and admonitions, whether oral or in writing. When a technician or employee is counseled in writing, the technician or employee may respond in writing and have the response attached to the counseling document. If after counseling the misconduct continues or is repeated, but corrective action is still appropriate, an admonition is warranted.

Letters of counseling and admonitions are written in the Supervisor's records for the technician or employee. The technician or employee must be allowed to reply to the facts and reasons stated by the supervisor. If the technician or employee replies orally and declines to reply in writing, the supervisor will write on the brief a summary of the reply. A copy of the technician or employee's response will be maintained by the supervisor with the letter of counseling or admonition. The supervisor will state the date on which the counseling or admonition and reply will be expunged, absent continuation or repetition of the misconduct. This date may not be more than one year after the date of the counseling or admonition. Expungement eliminating all record of the occurrence of the counseling or admonition will be accomplished on that date absent continuation or repetition of the misconduct.

11-3: Disciplinary Actions (Letters of Reprimand)

Letter of Reprimand. A letter of reprimand is a disciplinary action but does not constitute an adverse action. It may be used when corrective action is ineffective or when the nature of the offense warrants a more serious and formal action. NG employees should be treated equitably, so agencies should consider appropriate comparators as they evaluate potential disciplinary actions. When taking disciplinary action, supervisors will utilize the "Douglas Factors" in determining the appropriateness of a disciplinary action.

1. Procedures. A letter of reprimand is issued by a person in the employee's supervisory chain, normally the first-line supervisor. The first-line supervisor will receive a copy of the letter of reprimand if it is issued by a different management official. The issuing supervisor must determine, by a preponderance of the evidence, that the facts supporting the issuance of the letter

of reprimand are substantiated. This might, but does not always, require a formal or informal investigation. The letter of reprimand will be cleared for procedural accuracy through the LRS. All letters of reprimand must at a minimum include the following:

a. A description of the offense (sometimes referred to as the cause or charge) in sufficient detail to show why the letter of reprimand is being issued.

b. The timeframe that the letter of reprimand will remain in effect in the employee's electronic Official Personnel Folder, typically one but no more than two (2) years. Circumstances or the applicable CBA may require a different timeframe. Detail the circumstances that require other timeframes in writing.

2. Repeated Behavior. Repetition of the same offense may warrant more severe disciplinary action.

3. Grievances. All letters of reprimand are subject to grievance procedures. All bargaining unit employees must use the negotiated grievance procedure.

4. Use in Adverse Actions. Letters of reprimand may be used as evidence of a previous offense for consideration of progressive discipline in adverse action proceedings only if the adverse action is commenced before the letter of reprimand has expired and if the reprimand is otherwise still in effect and is like or a similar offense.

11-4: Douglas Factors

A. Factors (often referred to as the "Douglas factors") may be relevant considerations in determining the appropriateness of a penalty in an adverse action case. Without purporting to be exhaustive, the factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:

1. Consider the nature and seriousness of the offense, and its relation to the technician or employee's duties, position, and responsibilities, including whether the offense was intentional or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

2. Consider the technician or employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

3. Consider the technician or employee's past disciplinary record.

4. Consider the technician or employee's past work record, including the length of service, performance on the job, ability to get along with fellow workers, and dependability.

5. Consider the effect of the offense on the technician or employee's ability to perform his/her job at a satisfactory level and its effect on supervisor's confidence in the technician or employee's ability to perform assigned duties.

6. Consider the consistency of the penalty with those imposed on other technicians or employees for the same or similar offenses.

7. Consider the consistency of the penalty with NGB guidance regarding adverse actions.

8. Consider the notoriety of the offense and its impact on the reputation of the Agency.

9. Consider the clarity with which the technician or employee was on notice of any rules violated in committing the offense, or any warning about the conduct in question.

10. Consider the potential for the technician or employee's rehabilitation.

11. Consider mitigating circumstances surrounding the offense such as unusual job tensions, personal problems, mental impairment, harassment or bad faith, malice, provocation on the part of others involved in the matter, or deployment induced/combat related stress.

12. Consider the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the technician, employee or others.

B. Not all of these factors will be pertinent in every case. Frequently in an individual case, some of the pertinent factors will weigh in the technician or employee's favor, while others may not; or may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in the individual case.

ARTICLE 12

ADVERSE ACTIONS

12-1: Definitions

A. This Article applies to all bargaining unit technicians and employees who have completed the applicable probationary or trial period, as appropriate, in their current positions. For purposes of this Article, an adverse action is defined under 5 USC 7502 and 7512 as including a suspension for fourteen (14) calendar days or less, a suspension of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal. Categories of Adverse Actions are:

1. Category 1 adverse actions are suspensions of fourteen (14) calendar days or less.

2. Category 2 adverse actions include suspensions of more than fourteen (14) calendar days, reduction in grade or pay, furlough of thirty (30) calendar days or less, and removal.

B. The following actions do not constitute an adverse action, and the procedures and protection provided in this article of this agreement will not be applied:

1. Voluntary and Non-Disciplinary Actions.

2. Performance-Based Actions that cover performance management in general (such as performance standards, ratings, etc.).

3. Actions based on classification or job grading determinations.

4. Reduction-in-force and furlough actions covered by Article 24, Reduction in Force.

5. Discharge of probationary or trial period technicians or employees. (An adverse action procedure applies when suspending probationary or trial period technicians or employees.)

6. Mandatory retirements.

7. Denial of within-grade increases.

8. Actions excluded by law (i.e., political activity cases, Hatch Act violations).

9. Alleged loss or lessening of promotion potential.

10. Reduction of technician rates of pay from rates that are contrary to law or regulation.

11. Recording absences as absent without leave (AWOL can become the basis for initiating adverse action.)

12. Termination or reduction of entitlements that affect technician or employee pay but do not involve any loss of base pay (e.g. night differential, hazardous duty pay, environmental differential pay).

13. Actions that entitle technicians or employees to grade or pay retention or actions to terminate such entitlements.

14. Terminations of temporary or indefinite type appointments or termination of temporary promotions, details, etc.

15. Placement of technicians or employees serving on an intermittent or part-time basis in a non-duty status in accordance with conditions established at the time of appointment.

16. Details to lower-graded positions without a change in official position assignment or loss of pay.

17. Trial/Probationary technician or employee removals.

a. Removal action may be taken at any time during the probationary period. If the removal of the technician or employee is for post-appointment reasons, the technician or employee is entitled only to written notice before the end of tour of duty on the last day of the probationary period.

b. A trial period (Title 32 Technician) or a probationary period (Title 5 National Guard Employee) removal does not provide the affected technician or employee with the right to an administrative hearing or appellate review. This applies to either pre-appointment or post-appointment trial/probationary period removals.

c. A thirty (30) calendar day notice is not required for removal of trial technicians or probationary employees within their trial/probationary period.

18. **Suspension with Pay**. The fact that an adverse action is being processed does not require that a technician or employee be prevented from performing their normal duties. In cases where there is no good reason to do so, the technician or employee will continue with their normally assigned duties. Where the continued presence of the technician or employee may have an adverse impact on the mission, cause a safety concern or will unduly disrupt the work area, the technician or employee may be suspended from duty with pay until such time as an original decision is rendered or the end of the thirty (30) calendar day notice of removal period. Suspension with pay is not an adverse action. If a technician or employee is suspended with pay, arrangements must be made with the technician or employee and/or their representative for the preparation of their reply and or appeal. This must include access to documents and witnesses who voluntarily wish to meet with the technician or employee or their representative.

C. An adverse action will be taken only for such cause as will promote the efficiency of the service. Adverse actions will not be taken for arbitrary or capricious reasons.

12-2: Adverse Actions

In effecting adverse actions, the Agency endorses the use of like penalties for like offenses and progressive discipline. However, mere surface consistency is to be avoided. The Agency shall give due regard to the existence of any mitigating and/or aggravating circumstances, the nature of the position occupied by the technician or employee at issue, and any other factors bearing upon the incidents or acts underlying the action. The degree of discipline administered will be proportionate to the offense and the technician or employee's disciplinary history, and will be determined on a case-by-case basis.

12-3: Canceling and Restarting Adverse Actions

Adverse actions are administrative actions, not criminal actions, and are not subject to "double jeopardy" rules. At any time, an adverse action may be cancelled, changed, or restarted. If an adverse action is cancelled for purposes of starting it over, the technician or employee affected by the adverse action must be made whole (returned to the position the technician or employee would have been in prior to the action). This may include returning the technician or employee to a previously held position, restoring leave, and restoring pay. All references to the initial action, including cancellation, must be removed from the technician or employee's files if the cancellation is due to the Agency determining the information leading to the action to be inaccurate or was taken illegally or in error.

12-4: Douglas Factors

A. Factors (often referred to as the "Douglas factors") may be relevant considerations in determining the appropriateness of a penalty in an adverse action case. Without purporting to be exhaustive, the factors generally recognized at the time of execution of this Agreement as being relevant to the setting of the penalty include the following:

1. Consider the nature and seriousness of the offense, and its relation to the technician or employee's duties, position, and responsibilities, including whether the offense was intentional or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

2. Consider the technician or employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

3. Consider the technician or employee's past disciplinary record.

4. Consider the technician or employee's past work record, including the length of service, performance on the job, ability to get along with fellow workers, and dependability.

5. Consider the effect of the offense on the technician or employee's ability to perform his/her job at a satisfactory level and its effect on supervisor's confidence in the technician or employee's ability to perform assigned duties.

6. Consider the consistency of the penalty with those imposed on other technicians or employees for the same or similar offenses.

7. Consider the consistency of the penalty with NGB guidance regarding adverse actions.

8. Consider the notoriety of the offense and its impact on the reputation of the Agency.

9. Consider the clarity with which the technician or employee was on notice of any rules violated in committing the offense, or any warning about the conduct in question.

10. Consider the potential for the technician or employee's rehabilitation.

11. Consider mitigating circumstances surrounding the offense such as unusual job tensions, personal problems, mental impairment, harassment or bad faith, malice, provocation on the part of others involved in the matter, or deployment induced/combat related stress.

12. Consider the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the technician, employee or others.

B. Not all of these factors will be pertinent in every case. Frequently in an individual case, some of the pertinent factors will weigh in the technician or employee's favor, while others may not; or may even constitute aggravating circumstances. Selection of an appropriate penalty must thus involve a responsible balancing of the relevant factors in the individual case.

12-5: Adverse Action Procedures

When the Agency takes an adverse action against a technician or employee, the following procedures will apply:

1. A notice of proposed adverse action will be provided by at least the first line supervisor in the technician or employee's chain of command and will contain detailed reasons for the proposed action. It is understood that the notice of proposed adverse action is not grievable upon receipt. However, disputes regarding the proposal may be merged into a grievance concerning the final decision of the Agency, after the final decision is issued.

2. The technician or employee will be given at least seven (7) calendar days for category 1 adverse actions and fourteen (14) calendar days for category 2 adverse actions from the date s/he receives the notice of proposed adverse action, to make an oral reply and/or to submit a written reply. Reasonable requests for one extension to submit or deliver a reply may be granted; any additional extension request(s) to respond to notice of proposed adverse action must be supported by justification and are in the Agency's sole discretion to approve or deny.

3. The technician or employee will be provided with the name and contact information for a member of the HRO that will be available to provide the technician or employee with technical assistance about the adverse action process. The HRO member cannot provide representation for the technician or employee concerning the merits of their case, but is limited to providing procedural advice.

4. The notice of proposed adverse action will specify who the deciding official is that will hear/receive the oral and/or written reply. This official will be the person who will be making the final decision on the matter, or his/her designee.
5. The technician or employee will have the right to be represented in the preparation and presentation of her/his reply. If the technician or employee elects to have a representative, the Union will assign the representative and inform the Agency of this assignment in writing. The technician or employee will receive reasonable time to prepare the reply in a duty status.

6. The proposed notice of adverse action shall inform the technician or employee of her/his right to review the material which is relied upon to support the proposed adverse action. The term "material relied upon" includes all information contained in the adverse action file that relates directly to the charge(s) and specification(s), whether favorable or unfavorable to either side's position in the matter. The Agency will make a copy of such material available for review, concurrent with the delivery of the proposed notice of adverse action to the technician or employee. If requested by the technician or employee or her/his representative, the Agency will furnish a copy of such material prior to the oral reply. Where management has relied upon witnesses to support the reasons for the proposed action, the Agency will make available any written witness statements.

In the event the Agency cannot release the information used to justify the adverse action to the technician or the Union, the technician and his/her Union representative will be allowed to review all materials being used to develop the justification for the adverse action. The Agency will sanitize any material which is provided to the technician or employee.

7. In making a reply, the technician or employee may set forth mitigating circumstances, refute aggravating circumstances, and give reasons as to why the proposed action should not be effected.

8. If a technician or employee chooses to make an oral reply, such reply will be made at the worksite of the employee if both s/he and the deciding official work in the same location. When the technician or employee and deciding official are not in the same location, an oral reply will be delivered by audio- or video-conference, as circumstances permit, unless otherwise determined by the Agency for purposes of that case only.

9. The Agency will provide a written summary of the technician or employee's oral reply. A copy of the summary will be included in the material relied upon, and it will also be provided to the technician or employee's representative (or to the technician or employee if s/he is unrepresented). The Agency agrees that the technician or employee may use the same means as the Agency does to take notes during the oral reply.

10. The final decision in an adverse action, covered by this Article, must be made by an official at a higher-level official than the one who issued the notice of proposed adverse action, unless the proposing official is the Adjutant General (TAG). The original decision letter will state which charge(s) is/are sustained and the reason(s) therefore, and will respond to relevant defenses raised by the technician or employee. The original decision letter will

indicate whether the proposed action will be effected, modified or withdrawn and the date the adverse action will be effective.

11. In any case, where the charges are premised upon off-duty misconduct, the proposal and decision will describe the relationship (often referred to as the "nexus") between the misconduct and the employee's position.

12-6: Category 1 Adverse Action Challenges (suspensions of fourteen (14) calendar days or less)

A. The original decision letter issued on the adverse action to the technician or employee will contain a statement of her/his right to challenge the action in one of the following procedures:

1. A grievance filed under the negotiated grievance procedure contained in Article 13 of this Agreement.

2. An appellate review. The appellate review is accomplished by the Adjutant General without the involvement of a NGB hearing examiner. This appellate review involves a review by the Adjutant General of all pertinent records including the reply(s) of the technician or employee and/or their representative and any documents submitted with the appeal. In this method of appeal, the final decision on appeal is issued by the Adjutant General.

3. An administrative hearing. In an administrative hearing, a NGB hearing examiner from another State will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and recommendations to the Adjutant General. In this method of appeal, the final decision on appeal is issued by the Adjutant General.

B. Once a technician or employee elects one of these procedures, the technician or employee may not change thereafter to a different procedure. The technician or employee can appeal via an appellate review or an administrative hearing by sending a written notice to the HRO specifying which method of appeal is requested. This request must be postmarked no later than twenty (20) calendar days after the date of the original decision letter, or emailed to the HRO no later than twenty (20) calendar days from the date of the original decision letter. If a request for extension of this appeal period is requested, such request is directed to the Adjutant General and must be received within the twenty (20) calendar day period, and the reasons for the request must be included. The Adjutant General will decide if the requests for extension should be granted or not.

12-7: Category 2 Adverse Action Challenges (Suspension of more than 14 calendar days, Reduction in Pay and Reduction in Grade)

A. The original decision letter issued on the adverse action to the technician or employee will contain a statement of her/his right to challenge the action in one (1) of the following procedures:

1. A grievance filed under the negotiated grievance procedure contained in Article 13 of this Agreement.

2. An appeal to the Merit Systems Protection Board (MSPB) in accordance with applicable law and regulation.

B. Once a technician or employee has elected one of these procedures, the technician or employee may not change thereafter to a different procedure. If the technician or employee decides to appeal via the MSPB, no extension can be granted after the final decision has been issued. A technician or employee has thirty (30) calendar days from the final decision to invoke an MSPB appeal.

12-8: Last Chance Agreements (LCAs)

A. Last Chance Agreements (LCAs). On occasion it may be desirable to enter into an LCA rather than immediately initiate an adverse action up to removal of an employee from his or her position. This determination is at the sole discretion of TAG (or designee). LCAs hold an adverse action up to removal in abeyance under certain conditions. Figures 9, 10, and 11 list the conditions that must be part of the LCA, a sample LCA and a sample statement of understanding. LCAs are only used for conduct related actions and not performance actions.

B. Prior to offering a technician or employee a LCA, the technician or employee will be afforded the right for Union representation and if desired by the technician or employee, the Union will be given an opportunity to be present at any meeting in which the technician or employee is offered such an agreement.

ARTICLE 13

GRIEVANCE PROCEDURES

13-1: Grievance Definition

A. A grievance is a complaint by a bargaining unit status technician or employee subject to this Agreement or the Union concerning any matter relating to conditions of employment, any complaint by a bargaining unit status technician or employee, or the Union concerning the interpretation or application of this Agreement or any claimed violation, misinterpretation or misapplication of law, rule, or regulation affecting conditions of employment. The Union may file a grievance on its own behalf, or on behalf of some or all of its covered technicians or employees.

B. The Union and the Agency acknowledge these are not grievable actions:

1. Prohibited political activities, or

2. Retirement, life insurance, health insurance, or

3. Any examination, certification, or appointment, or

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

5. Provisions identified in 32 USC 709(f), however alternate resolution options may be available in a variety of formats prior to the final decision made by the Agency for any of these issues.

6. Suspension or removal in the interest of National Security under 5 USC 7532.

7. Complaints regarding non-bargaining unit positions.

13-2: Procedure Purpose

A. The purpose of this Article is to provide a mutually acceptable and orderly method for the prompt and equitable resolution of grievances filed by bargaining unit technicians or employees or the Parties. This Article identifies procedures to be used for resolving grievances between bargaining unit technicians and employees and the Agency's management officials. These procedures will also be used between designated representatives of the Union and the Agency. The Union and the Agency acknowledge that conflicts and disagreements will inevitably occur, therefore having defined and agreed upon procedures for resolving these issues in a way that will address the underlying problems, respect the interest of all parties and contribute to mission accomplishment are in the interest of both the Union and the Agency. The Agency and the Union agree that the following apply to these procedures:

1. All complaints should be resolved informally at the lowest level. All informal resolutions to grievances will be the result of a voluntary consensual agreement between the parties in the complaint.

2. Nothing in this article shall prevent open discussions to resolve problems or potential complaints between bargaining unit status technicians or employees and the Agency's management officials.

3. Potential problems and concerns must be identified and communicated as they occur. Poor communication will lead to misunderstanding and potentially negative outcomes.

4. A bargaining unit status technician or employee is entitled to Union representation, at their choice, at any point in the discussion of a potentially grievable complaint with a supervisor or Agency management official.

B. The Agency and the Union agree that these grievance procedures are the exclusive procedures for resolving grievable complaints for bargaining unit status technicians and employees. However, technicians and employees are afforded other options for resolving complaints as addressed in this Agreement, law and regulation. A complaint concerning discrimination as identified under Federal law may be raised under this negotiated procedure or with the Agency's Equal Employment Opportunity (EEO) Office in accordance with Article 22, Equal Employment Opportunity. A technician or employee will be deemed to have exercised her/his option to raise the matter under either the regulatory procedure or this procedure at such time as the employee timely files a formal EEO complaint or timely files a grievance, in writing, under this procedure, whichever occurs first.

C. The Agency and the Union agree to attempt in good faith to resolve grievances at the lowest possible level. Technicians and Employees dissatisfied with the directive properly grounded in supervisory authority must follow the directive first and then grieve the matter if they believe relief should be granted. However, the technician or employee has a right to decline to perform his/her assigned tasks due to a reasonable belief that under the circumstances, the task poses an imminent risk to health or safety, if there is insufficient time to effectively seek corrective action through normal reporting and abatement procedures.

D. Grievances which involve the same issue and arise from the same or similar facts and actions, initiated by more than one technician or employee, may be joined and processed as one.

13-3: Informal Grievances

A. The Agency and the Union agree that all complaints should be resolved at the lowest level possible. Therefore, bargaining unit technicians and employees are afforded the opportunity to file an informal grievance in regards to, any grievable complaint in an attempt to resolve the problem without having to file a formal grievance through this procedure. The technician or employee may choose to invoke this right and request an informal grievance or s/he may go immediately to the formal grievance procedures defined in this article to seek resolution to the problem.

B. When complaints surface in the workplace, the best approach to resolve the problem is open communication between the primary parties involved in the complaint. An informal grievable complaint may be addressed to an immediate supervisor or the appropriate management official at the level where the issue giving rise to the complaint occurs within sixty (60) calendar days after the matter, issue, or incident out of which the grievance arose, or within sixty (60) calendar days after the date the aggrieved technician or employee became aware or should have become aware of the matter, issue, or incident giving rise to the grievance. The complaining party or their labor representative is required to contact the appropriate supervisor or management official and inform them that they desire a meeting to discuss an informal grievance. If either party to a grievable issue decides that discussion of the problem would be better served by including a union representative in the discussion, a meeting with the parties and a union representative will be coordinated. If the parties reach a consensus agreement resolving the complaint, no other action will be required. The informal complaint need not be in writing but should be documented by both parties as far as the date, time and issue. An informal grievance must be resolved within thirty (30) calendar days of the initial notification to management of the informal complaint, or if not resolved, it must be pursued through a formal grievance or dismissed. When a grievable issue has been identified, but no informal resolution agreement has been achieved between the primary parties to the complaint following a reasonable attempt to discuss and resolve the issue (with or without a union representative involved), the grievant may file a formal grievance.

13-4: Formal Grievances

A. Technicians and employees must use the grievance procedures set forth in this Article for filing and processing grievances concerning issues relating to this Agreement.

B. During any of the steps indicated in this Article, the Parties may, by mutual agreement, hold a meeting in an effort to resolve the grievance. Such meetings will occur during the regularly scheduled workday of the individuals involved. In unusual circumstances and by mutual agreement, a meeting may take place outside of the regularly scheduled workday of the grievant.

C. Failure on the part of the Agency to observe the time limits for any step in the grievance procedure will have the effect of the grievance being denied at that step, at which point the grievant is accelerated to the next step in the formal grievance process. Failure on the part of the grievant or the Union to observe time limits for any step will have the effect of the grievance being nullified and not capable of being processed further. By mutual written consent of the Parties, the time limits in this Article may be extended and/or a step of the grievance procedure may be waived. Such consent, when sought by either party, shall not be unreasonably withheld by either Party.

D. It is understood that a technician or employee processing a grievance under this Article is limited to Union representation or self-representation.

E. The Parties agree that any resolution of a grievance must be consistent with the terms and conditions of this Agreement. The Agency agrees to provide a copy of all written decisions rendered on a grievance filed under this Article, to both the grievant and the technician or employee's Union representative.

F. The technician or employee must file a formal grievance in writing and provide copies of the complaint to the appropriate union representative and to Agency's management official as specified in the various steps. The grievance must be titled "Formal Grievance" and include the following information:

1. Date submitted and the date the action occurred giving rise to the complaint;

2. Name and signature of the grievant and her/his union representative, if any;

3. The name(s) of the supervisor(s) involved and the next higher level supervisor;

4. Work organization and location of the grievant and primary parties to the complaint;

5. Sufficient detail to identify the basis of the grievance, including reference to pertinent Article(s) and Section(s) of the Agreement at issue, and general reference to any practice, law, rule or regulation alleged to be violated, misinterpreted, or misapplied;

6. All known and alleged facts; and

7. The specific, personal relief available in accordance with this Agreement which is sought by the technician or employee and the Union.

13-5: Formal Grievance Steps

A grievance by a technician or employee will be processed as follows:

A. **Step 1:**

1. The grievance must be presented in writing and submitted to the technician or employee's immediate supervisor (or if an informal grievance was previously filed, to the next higher level supervisor, as established by the Agency) within thirty (30) calendar days after the matter, issue, or incident out of which the grievance arose, or within thirty (30) calendar days after the date the aggrieved technician or employee became aware or should have become aware of the matter, issue, or incident giving rise to the grievance.

2. The assigned supervisor will either serve as the Step 1 official or expeditiously forward the grievance to the Step 1 official designated by the Agency. If a grievance is forwarded to a different Step 1 official, the immediate supervisor will inform the Union and the technician or employee who will be serving as the Step 1 official on that grievance. The Agency has determined that, whenever feasible, the Step 1 official will have been involved in, or will have direct knowledge of the action that prompted the grievance.

3. Issues or redress not raised at Step 1 of the grievance shall not be raised by either Party at any subsequent stage or in arbitration.

4. The Step 1 official will, upon written request by the grievant or their Union representative, conduct a grievance resolution meeting with the grievant after receipt of the grievance. Those participating in such a meeting may include the Step 1 official, another official designated by the Agency, the grievant, and one Union representative. The Agency may elect to hold the meeting by telephone - or video - conference, particularly where a face-to-face meeting would require travel outside of the participants' commuting areas.

5. Within twenty-one (21) calendar days after the meeting, or within twenty-one (21) calendar days after submission of the grievance, if no meeting is held, a written decision response will be provided to the technician or employee and the Union. It will specify the reason(s) for the decision and designate who the Step 2 official will be, should the technician or employee not be satisfied with the Step 1 decision.

6. If the grievant's complaint is resolved, a brief annotation will be made on the copy of the complaint to be maintained by the Union, the management official, and the Agency's HRO with the date of resolution. No further action will be required.

7. If the grievant's complaint is not resolved or the grievant and the Agency agree that continued discussion will not be productive, or if no resolution is reached within the twenty-one (21) calendar days, the grievant or their representative should forward a written copy of the grievance annotated with "No Resolution at Step 1 as of (date) to the Step 2 official.

B. **Step 2:**

1. If the grievant is dissatisfied with the decision of the Step 1 official, the grievant may accelerate to the Step 2 official designated by the Agency within twenty-one (21) calendar days of receipt of the Step 1 decision. If no Step 1 decision has been received, the Step 2 grievance must be filed within twenty-one (21) calendar days of the date in which the decision at Step 1 should have been issued. In the latter case, the Step 2 grievance must be filed with the supervisor of the Step 1 official, unless the Supervisor of the Step 1 official was included in the Step 1 grievance resolution meeting.

2. The Step 2 grievance must include a copy of the Step 1 grievance and decision, along with a statement of the specific issue(s) in the Step 1 grievance which are unresolved and what remedy the grievant seeks for all such issues. A copy of the complete grievance package must be provided at the time of filing to the designated Agency official.

3. The Step 2 official may designate another official to respond to a grievance submitted under this Article, who will become the Step 2 official. Grievance officials will be designated by the Agency.

4. The Step 2 official will, upon written request, meet with the grievant after receipt of the Step 2 grievance. Those participating in the meeting with her/him may include another Agency representative, the grievant and one Union representative. The Agency may elect to hold the meeting by telephone - or video - conference, particularly where a face-to-face meeting would require travel outside of the participants' commuting areas.

5. Within twenty-one (21) calendar days after the meeting, or within twenty-one (21) calendar days after receipt of the Step 2 grievance if no meeting is held, a written decision will be provided to the technician or employee and the Union. It will specify the reason(s) for the decision and designate the service specific Assistant Adjutant General (by coordination through the Agency's Human Resource Officer) as the Step 3 official, should the technician or employee not be satisfied with the Step 2 decision.

7. If the grievant complaint is resolved, a brief annotation will be made on the copy of the complaint to be maintained by the Union, the management official, and the Agency's HRO with the date of resolution. No further action will be required.

8. If the grievant complaint is not resolved or the grievant and the Agency agree that continued discussion will not be productive, or if no resolution is reached within the twenty-one (21) calendar days, the grievant or their representative may forward a written copy of the grievance annotated with "No Resolution at Step 2 as of (date) to the service specific Assistant Adjutant General, by coordination through the Agency's Human Resource Officer or designee.

C. **Step 3:**

1. If the grievant is dissatisfied with the decision of the Step 2 official, the grievant may accelerate to the service specific Assistant Adjutant General by coordination through the Agency's Human Resource Office (HRO) within twenty-one (21) calendar days of receipt of the Step 2 decision.

2. The HRO will be provided a copy of the written grievance and will then schedule a grievance resolution meeting. This meeting will include the grievant, a union representative as determined by the Union, the Human Resource Officer or designated representative, and other management representatives as designated by the Assistant Adjutant General.

3. The Step 3 grievance must include a copy of the Step 2 grievance and decision, along with a statement of the specific issue(s) in the Step 2 grievance which are unresolved and what remedy the grievant seeks for all such issues. A copy of the complete grievance package must be provided at the time of filing to the HRO.

4. Within thirty (30) calendar days after the meeting a written decision will be provided to the Union through the HRO from the Assistant Adjutant General. It will specify the reason(s) for the decision and designate the Adjutant General (by coordination through the Agency's Human Resource Officer) as the Step 4 official, should the technician or employee not be satisfied with the Step 3 decision.

5. If the grievant's complaint is resolved, a brief annotation will be made on the copy of the complaint to be maintained by the Union and the Agency's HRO with the date of resolution. No further action will be required.

6. If the grievant is not satisfied with the Step 3 decision, then the grievance will be accelerated to The Adjutant General for a final decision.

D. **Step 4:**

1. A grievant's complaint appeal to The Adjutant General will be coordinated through the HRO. The grievant is permitted to provide a detailed explanation of the grievance complaint and a requested resolution for consideration.

2. The management official who participated in the Step 3 meeting is permitted to provide a management perspective on the complaint.

3. The Adjutant General will review both submissions and make a final decision on the matter. At the sole and unfettered discretion of The Adjutant General, a face-to-face meeting may be granted prior to a decision being rendered. If this meeting is scheduled, the appropriate union officer will accompany the grievant.

4. The Adjutant General's final decision will be issued in writing and provided to the grievant, the union and the Human Resources Office within 30 calendar days after the receipt of the grievance at Step 4 or within 30 calendar days after the face-to-face meeting, if one is held.

5. Upon completion of the Adjutant General's final decision on any grievances, the grievant will be informed of any appeal rights the respective grievant may have.

E. **Arbitration of Grievance Issues**

1. A grievance will only be referred for arbitration if The Adjutant General has considered the issue and rendered a final decision, in accordance with laws, rules and regulations.

2. No issue for which the Adjutant General has the final authority, as provide in 32 U.S.C. 709, may be referred to arbitration.

ARTICLE 14

ARBITRATION PROCEDURES

14-1: Notice to Invoke Arbitration

A. Only the Union or the Agency may seek arbitration of any grievance remaining unresolved after the final step under the Grievance Procedures of this Agreement. A notice to invoke arbitration shall be made in writing to the opposite party within thirty (30) calendar days after receipt of the written decision rendered in the final step of the grievance procedure.

B. Notice to invoke arbitration must be served on the HRO, if filed by the Union, or on the Union's Local President, if filed by the Agency. Arbitration is deemed to be invoked upon hand delivery, E-mail, facsimile, or date of postmark, if mailed, to the appropriate party.

C. A grievance will only be referred for arbitration if The Adjutant General has considered the issue and rendered a final decision, in accordance with laws, rules and regulations; and if the arbitration is otherwise appropriate and lawful.

D. No issue for which The Adjutant General has the final authority, as provided in 32 USC 709, may be referred to arbitration.

14-2: Arbitration Procedure

A. On or after the date of the notice to invoke arbitration, the Agency and the Union will submit a joint request to the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial persons to act as an arbitrator. The parties shall meet within ten (10) calendar days after receipt of such list to select an arbitrator. If the parties cannot mutually agree on one of the listed arbitrators, **the Union and the Agency will alternate the opportunity to strike first**, and then each party will alternatively strike one arbitrator from the list and the remaining person will be the duly selected arbitrator. Following the selection, the Agency will, within fourteen (14) calendar days, notify the FMCS of the name of the arbitrator selected. A copy of the notification will be served on the Union. The time limits may be extended by mutual consent.

B. The Federal Mediation and Conciliation Service (FMCS) will designate an arbitrator to hear the case in the event either party refuses to participate in the selection of an arbitrator or upon inaction or undue delay on the part of either party.

C. Within forty-five (45) calendar days after arbitration is invoked, the Parties shall agree upon a hearing date. If the Parties cannot agree upon a hearing date within the forty-five (45) calendar days, the arbitrator has unilateral authority to schedule the hearing. If the hearing date is not scheduled within ninety (90) calendar days after arbitration is invoked, the parties will jointly contact the FMCS for a hearing date.

D. The arbitration hearing will be held at the Agency's Headquarters, Beightler Armory, Columbus, Ohio, during regular duty hours of the basic workweek, unless the Parties agree otherwise. Where appropriate, the Parties will consider the use of long-distance telephone and/or video-conferencing during the arbitration hearing for the taking of testimony of witnesses whose assigned duty station is outside the commuting area of the site selected.

E. The grievant, the grievant's representative, and all technicians and/or employees who are approved as witnesses and who are in a regular duty status, shall be excused from other assignments to the extent necessary to participate in the arbitration proceeding without loss of pay or the charge of leave. Upon sufficient advance notice from the Union, the Agency will rearrange necessary witnesses' schedules and place them on duty during the arbitration hearing.

F. The arbitrator's fees and expenses shall be borne equally by the parties. A verbatim transcript of the arbitration shall be made (unless mutually waived). The cost of the transcript will be shared equally. It is understood that any per diem costs of the arbitrator are governed by applicable government travel rules and regulations and will be shared equally by the Parties. In any grievance where the Parties settle the matter prior to an arbitration hearing, both Parties will share equally any fees charged by the arbitrator. Each Party will bear the costs associated with preparing and presenting its own case in arbitration. Each party will bear the costs of office supplies, non-agency employees being called as a witness, non-agency personnel, associated with preparing and presenting its own case in arbitration.

G. The arbitrator has no power to add to, subtract from, disregard, alter, or modify any terms of this Agreement or the Agency's policy and regulations.

H. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator, except to the extent provided herein. Both parties shall be entitled to call and cross-examine witnesses before the arbitrator.

I. In all cases in which a technician or employee challenges a final rating of record in a performance appraisal, the evidentiary standard shall be substantial evidence.

J. The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. To the extent possible, the arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance. The Parties are free to decide by mutual agreement to approach the arbitrator prior to the hearing for a ruling on the arbitrability question(s).

K. By mutual agreement, the Parties may arrange for a pre-hearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) to writing, stipulating the facts, outlining intended offers of proof, authenticating proposed exhibits, and/or waiving the use of a transcript.

L. The Parties will attempt to submit a joint statement of the issue or issues to the arbitrator. If the Parties fail to agree on a joint submission, each shall make a separate submission. The arbitrator shall determine the issue or issues to be heard.

M. The Parties agree to exchange a complete list of prospective witnesses at least fifteen (15) calendar days prior to the hearing. The Parties shall attempt to mutually agree on witnesses to testify at the hearing. To the extent the Parties cannot agree on appropriate witnesses, the Parties may either submit a list of disputed witnesses to the arbitrator at the hearing for a determination or request in writing prior to the hearing that the arbitrator make a determination as to those witnesses.

N. The Parties will be entitled to submit pre-hearing and post-hearing briefs, provided that all documents given to the arbitrator are also provided to the opposing party's representative at the same time.

O. The arbitrator will strive to issue a decision within sixty (60) calendar days from the close of the record. His/her award or recommendation shall be limited to the issue(s) stipulated to by the Parties or determined by the arbitrator pursuant to this Article.

P. The arbitrator's written decision shall include findings of facts and an opinion containing the reasoning and basis for his/her decision on all issues which were heard.

Q. The arbitrator's decision shall be final and binding. However, either party may file an exception to the arbitrator's award in accordance with applicable law and regulations. Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for settlement.

ARTICLE 15

HOURS OF WORK - WORK SCHEDULES

15-1: General

This article governs the work schedules for technicians and employees employed by the Agency. The Agency has established work schedules to meet mission needs while promoting the quality of life for the work force.

15-2: Standard Work Schedule

The standard work schedule for the Agency's technicians and employees is 5 days per week, 8 hours per day (5-8 schedule) Monday through Friday. Standard daily work schedules are from 0730 to 1630 hours with a non-paid 1 hour lunch period from 1130 to 1230 hours. All technicians and employees will work the standard work schedule unless otherwise approved by local supervision in accordance with this agreement. The standard work schedule can be modified for limited periods of time by local management in order to meet mission requirements (i.e. night flying, periods of high OPTEMPO and/or deployment support, etc.).

15-3: Alternate Work Schedules

In addition to the standard work schedule, the Agency is authorized to use Alternate Work Schedules (AWS) consisting of both Compressed Work Schedules (CWS) and Flexible Work Schedules (FWS) in accordance with this agreement for technicians and employees. Implementation of any AWS program within the Agency is optional at the local work area management's discretion and should only be undertaken after careful advance planning and consideration of whether implementation will have an adverse impact on mission accomplishment. Local work area management may exclude certain technicians and employees or organizational units from participating in an AWS program. Local work area management may direct technicians and employees to participate in an AWS.

15-4: Compressed Work Schedules

The Compressed Work Schedules (CWS) are schedules which permit technicians and employees to work an 80 hour pay period in less than 10 work days. CWS are fixed schedules with arrival and departure times specified by the local supervision. The only CWS authorized for use by the Agency's technicians and employees are as follows:

A. Four-day work week (4-10 schedule): Under this schedule, the technician and employees works a 4 day per week, 10 hour per day schedule for a total of 80 hours worked in the pay period. The technician or employee has one regular day off (RDO) per week.

B. **The 5-4-9 work schedule:** Under this schedule, the technician or employee works eight 9-hour days, one 8-hour day and has one RDO during each biweekly pay period, for a total of 80 hours worked each pay period.

15-5: Regular Day Off

Local work area management will establish which day or days of the week will be used as Regular Day Offs (RDOs). Any day within the workweek may be designated as an RDO and is subject to management's approval. All technicians and employees within a work area may or may not have the same RDOs each work week. In approving compressed work schedules, supervisors must carefully consider the impact of selected RDOs on mission requirements. The impact of RDOs is significant, especially during holiday weekends and peak leave periods. Technicians and employees may be required to change an RDO when required by the mission and/or to maintain work area coverage. Changes to the RDO for these reasons may be directed by supervisors as circumstances warrant.

15-6: Flexible Work Schedules:

A Flexible Work Schedule (FWS) is a schedule that permits technicians and employees, within certain constraints, to select the starting and ending times of their basic workday. Under such a system, the workday is split into core hours and flexible time bands.

A. **Core hours** is that portion of the day during which all technicians and employees must be present for work (or account for absences through the use of leave). The core hours for the Agency's technicians and employees is designated as 0900 to 1500. Core hours can be modified by local management in order to meet mission requirements (i.e. night flying, periods of high OPTEMPO and/or deployment support, etc.).

B. **Flexible time bands** is that time band at the start of the workday and end of the workday in which technicians and employees may choose the times of arrival and departure (subject to management's approval). The flexible time bands for the Agency's technicians are from 0600 to 0900 for arrival times and from 1500 to 1800 for departure times. Flexible time bands can be modified by local management in order to meet mission requirements (i.e. night flying, periods of high OPTEMPO and/or deployment support, etc.).

Only Flexi-Tour schedules are authorized for use by Agency technicians and employees. **Flexitour** is a fixed schedule requiring technicians and employees to work 8, 9 or 10 hours per day (on 5-8, 5-4-9 or 4-10 work schedules respectively) and 80 hours in a biweekly pay period. In a Flexi-Tour schedule, the supervisor ensures core hours are covered by the technician and employees each work day. However, the technician and employees may have arrival and departure times which are different from the established work area schedule. These arrival and departure times may or may not be the same each workday. The technician and employees' arrival and departure times are fixed and must be within flexible time bands specified in this agreement.

15-7: Lunch Period

All technicians and employees are required to schedule a non-paid lunch period of 30 minutes, 45 minutes or 60 minutes, per workday subject to management's approval. The time allotted for

the lunch period does not count as hours of work. Technicians and employees are not authorized to work through lunch in order to arrive late or leave early.

15-8: Holidays

Technicians and employees on a CWS will be credited the number of hours the technician or employee was scheduled to work (8, 9, or 10 hours) on workdays designated as a holiday. When a Federal holiday occurs on a CWS technician and employee's RDO, the following apply:

A. If the holiday falls on Sunday, the first regularly scheduled workday following the Sunday-holiday is the technician or employee's in lieu of holiday.

B. If the holiday is not a Sunday, the last regularly scheduled workday preceding the holiday is the technician or employee's in lieu of holiday.

C. Supervisors have the authority to designate a different day for a technician or employee's in lieu of holiday to ensure work area coverage and mission requirements are met. **Such a day must be within the same pay period as the holiday.**

15-9: Night Pay

General Schedule Technicians and employees. The Agency will pay night differential pay to technicians and employees for those hours that must be worked between 1800 and 0600 as part of a technician or employee's ***regularly scheduled basic tour of duty.*** If the technician or employee's normal established work schedule is between 0600 and 1800, then any time worked between 1800 and 0600 will be paid as overtime or compensatory time (employees) or compensatory time (technicians).

Federal Wage System Technicians and Employees. The Agency will pay night differential pay for work performed when the majority of the technician or employee's ***regularly scheduled basic tour of duty*** falls between 1500 and 0800. Majority of hours means a number of whole hours greater than one-half (including meal breaks) of the technician or employee's scheduled duty day, e.g., 5 hours of a scheduled 8 hour shift.

15-10: Sunday Premium Pay

The Agency will pay Sunday Premium Pay for work during a technician or employee's ***regularly scheduled basic tour of duty*** (not to exceed 8 hours) that begins or ends on a Sunday. Notwithstanding the normal 8-hour limit, for a technician or employee on a compressed work schedule, all hours in the technician or employee's regularly scheduled daily tour of duty beginning or ending on a Sunday constitutes Sunday work. If a technician or employee's normal

tour of duty does not include Sundays, then any work performed on a Sunday will be paid as overtime (employees only) or compensatory time (technicians or employees).

15-11: Physical Fitness Program

A. Technician and employees are authorized to participate in a voluntary Physical Fitness Program (PFP) during normal duty hours subject to supervisory approval and mission accomplishment. If approved by management and subject to mission constraints, technician and employees who choose to participate in a PFP are allowed to do so from 1.0 to 1.5 hours per duty day, 3 to 5 duty days per workweek, but not to exceed 5 hours per workweek. Subject to advance supervisory approval and mission constraints, technicians and employees may be permitted to leave their work location to participate in a PFP at public or private fitness locations or facilities.

15-12: Cleanup Time

Technicians and employees are authorized fifteen (15) minutes of duty time for personal clean-up, hygiene and clothing changes before interviews and prior to the end of the workday.

15-13: Work Schedule Administration

Work area supervisors and/or installation management shall establish work schedules for their respective work areas to best meet mission needs while contributing to the quality of life of Agency technicians and employees. These work schedules shall comply with the agreement, be consistent with core hours, flexible time bands, RDOs and workweek requirements for their respective work areas. All proposed work area/installation work schedules will be endorsed through the chain of command and will be submitted to the Army Chief of Staff, the Air Director of Staff or the Chief of the Joint Staff, or their designees respectively, for approval. Once approved, a copy will be provided to the Human Resource Office, Labor Relations Specialist, and the Union President. Upon approval, all work area schedules are equally applicable to all full-time personnel assigned to the work area.

A. Local work area management may establish work schedules for individual technicians and employees that conform to this agreement but are different than the work schedule established for the work area/installation. This will be done to meet mission needs first and to provide for quality of life for the technician or employee. Individual technician and employee work schedules are to be approved at the local management level only.

B. No adjustments will be made to parking rules, cafeteria hours, security hours, environmental control schedules, etc., to accommodate AWS. Persons working early or late may find uncomfortable temperature levels at times.

C. Management reserves the right to restrict a technician or employee to the standard work schedule or specific AWS when a technician or employee's performance requires remedial action (such as closer supervision); when the technician or employee occupies a "one of a kind"

position; or for any other reason where it would be in the best interest of the Agency to restrict a technician or employee's work schedule.

D. Technicians or employees who move to a new work unit will not be authorized to transfer their existing work schedule. The new supervisor will make reasonable effort to accommodate a request for a specific schedule within the constraints imposed by mission needs.

E. Opportunities to participate in an AWS or select a different schedule may be offered at the discretion of management.

F. Supervisors are authorized to terminate or require modifications to the work schedule of any technician or employee to ensure that mission and work area coverage requirements are met.

G. When feasible, supervisors will provide as much advanced notice to work schedule changes as possible. Supervisors will provide at least one week notice prior to the start of the administrative work week to changes in work schedules except when The Adjutant General determines that the agency would be seriously handicapped in carrying out its function or that costs would be substantially increased. Supervisors may direct temporary changes to a technician or employee's approved work schedule anytime to ensure mission and work area requirements are met.

H. The AWS does not require a supervisor to extend his/her working day beyond normal working hours. In cases where the presence of a supervisor is required, coordination between supervisory and non-supervisory personnel will take place in order to establish a mutually satisfactory schedule.

I. Compensatory time are hours which are officially ordered and approved hours of work in excess of the technician's established work schedule. Technicians do not earn compensatory time for working the hours specified in an AWS.

J. Overtime are hours which are officially ordered and approved hours of work in excess of the employee's established work schedule. Employees may elect to earn compensatory time instead of overtime. Overtime only applies to National Guard Employees, it does not apply to Technicians. Employees do not earn overtime or compensatory time for working the hours specified in an AWS.

15-14: Additional Options

The terms established within this agreement will meet most mission and personal needs to the Agency and Agency technicians and employees. However, at times circumstances may warrant additional flexibility to either meet mission requirements or accommodate the personal needs of Agency technicians and employees. In those situations, supervisors shall contact the Human Resources Office (HRO) and discuss other options that can be developed to accommodate the Agency or the Agency's technicians and employees. HRO may be able to offer additional flexible options that can be exercised to meet the needs of the mission or the Agency technicians and employees more effectively than the constraints imposed by this agreement. These other schedule options are for use only during extenuating circumstances and/or for limited periods of

time. These schedule options will be endorsed through the chain of command and will be submitted to the Army Chief of Staff, the Air Director of Staff or the Chief of the Joint Staff, or their designees respectively for approval. Once approved, a copy will be provided to the Human Resource Office, Labor Relation Specialist, and Union President.

15-15: Special Considerations

The Agency and the Union agree to negotiate the impact and implementation of work schedule options that are required during periods of unique circumstances or to meet special mission requirements.

ARTICLE 16

OVERTIME, HOLIDAY WORK, AND COMPENSATORY TIME

16-1: Eligibility

A. As pay matters are regulated by law, government-wide regulation, and regulations published by the Department of Defense and subject to the availability of proper funds, this Agreement cannot provide exclusive and authoritative guidance regarding all overtime matters. Additionally, some employees are covered by the Fair Labor Standards Act (FLSA) (commonly referred to as "FLSA non-exempt") and some employees and all technicians are not covered by the FLSA (commonly referred to as "FLSA exempt"). Such coverage determines the manner in which compensatory and overtime issues are dealt with, the dollar value earned by the respective employee for working overtime and will determine the course of action the Agency will take. The determination of FLSA-exempt or non-exempt status is a decision reserved to the Agency, based upon the duties of the position and the language of the Fair Labor Standards Act.

B. In order to ensure that technicians and employees completely understand what rights they may have to be paid compensatory time or overtime compensation, the Agency will notify the employee as to whether s/he is exempt or non-exempt for purposes of the FLSA on her/his SF-50 (Notification of Personnel Action) form. All technicians are FLSA-exempt and are not eligible to receive overtime pay.

C. Title 32 dual status technicians are not eligible to earn overtime time but are eligible to earn compensatory time for work directed by the Agency. Title 5 National Guard Employees are eligible to earn overtime or compensatory time (in lieu of overtime) for work ordered by the Agency. The employee may choose either overtime or compensatory time (in lieu of overtime).

16-2: Work Directed by the Agency

Title 32 Dual Status Technicians, performing work officially ordered or directed by the Agency, and performed by the technician, which is in excess of eight (8) hours in a day or forty (40) hours in a week are considered eligible for compensatory time except when the technician is working a form of AWS as specified in Article 15 (Work Schedules). Title 5 National Guard employees, performing work officially ordered or directed by the Agency, and performed by the employee, which is in excess of eight (8) hours in a day or forty (40) hours in a week is considered eligible for overtime pay except when the employee is working a form of AWS as specified in Article 15 (Work Schedules). FLSA-exempt and non-exempt employees will be compensated for overtime, compensatory time (in lieu of overtime) or holiday work, as appropriate to their status, in accordance with all applicable laws, rules, and regulations at the time the work is performed, subject to the terms of this Agreement that are not inconsistent therewith.

16-3: Distribution

To the extent practicable, compensatory and overtime, as applicable, will be distributed among all qualified and capable technicians or employees, respectively, suitable to perform the particular assignment, as determined by the Agency in its sole discretion.

16-4: Compensatory and Overtime Time Increments

All overtime and compensatory time will be earned and paid in quarter hour or fifteen (15)-minute increments.

16-5: Compensatory Time and Overtime Determinations

The Agency will staff compensatory time and overtime, as applicable, assignments from a pool of appropriately-qualified volunteers unless none is available or, due to the nature of the task, it is impractical to use volunteers (e.g., a case assigned over a long term to a particular technician or employee). The Agency will select technicians or employees based upon their familiarity with subject matter and task so as to be best able to perform work demands, and to possess the skills and knowledge needed to accomplish the work effectively, efficiently, and cost-effectively.

A. When the compensatory time or overtime, as applicable, is voluntary and more qualified and capable employees (as determined by the Agency) volunteer than are needed to perform the work, the technicians or employees assigned compensatory or overtime, as applicable, will be selected on a rotational basis, based upon seniority as defined in this Agreement. Those technicians or employees with the most seniority will be selected first, then the selection will be rotated based on decreasing seniority until all volunteers have been exhausted.

B. Technicians or employees who are selected for voluntary compensatory or overtime, as applicable, assignments will not be included among the candidates in subsequent voluntary compensatory or overtime, as applicable, situations until all qualified and capable technicians and employee (as determined by the Agency) have had the same opportunity.

C. Where the compensatory or overtime, as applicable, is voluntary and the number of qualified and capable technicians or employees (as determined by the Agency) who volunteer equals the number required to accomplish the work available, all volunteers will work the compensatory time or overtime, as applicable.

D. Where the compensatory time or overtime, as applicable, is mandatory and there are no qualified and capable volunteers, technicians or employees with the skill and knowledge needed to perform the work (as determined by the Agency) will be assigned on a rotational basis based upon seniority as defined by this article. In this situation, those with the least seniority will be selected first to fill the work requirement and then rotating in order to the individual of next least seniority until all qualified technicians or employees have been exhausted.

E. A technician or employee who is ordered to work compensatory time or overtime, as applicable, pursuant to subsection D above may be relieved if the technician or employee finds a

qualified and capable replacement acceptable to and approved in advance by the Agency. However, those technicians or employees maintain their places in the rotation.

F. Nothing in this Article precludes the Agency from exercising its discretion to seek volunteers to work on overtime or compensatory time, as applicable, in accordance with the procedures in this section.

16-6: Compensatory Time

A. Technicians or employees who work irregular or occasional compensatory time or overtime, as applicable, may upon request, be granted compensatory time in lieu of payment for such work. Such requests may be denied if the supervisor has reason to believe that the workload during the twenty-six (26) pay periods after the pay period in which the technician or employee worked is likely to prevent her/his using the compensatory time before it is lost.

B. Once earned, compensatory time must be used by the end of the twenty-sixth (26th) pay period after the pay period in which the technician or employee worked it. If a technician or FLSA-exempt employee does not use earned compensatory time during those twenty-six (26) pay periods, the compensatory time will be lost. No pay will be provided to any technician or FLSA-exempt employee for unused compensatory time. FLSA non-exempt employees will be paid for compensatory time earned in lieu of overtime, consistent with the requirements of law, rule, and regulation.

C. Compensatory time earned in connection with otherwise non-compensable hours in a travel status will be earned as travel compensatory time and used consistent with applicable law and Government-wide regulation.

16-7 Travel Compensatory Time

A technician or employee who has obtained prior written approval from her/his supervisor will be granted overtime or compensatory time, as appropriate, except where the provisions of Article 15 (Hours of Work - Work Schedules) apply for work performed during an Alternate Work Schedule. Compensatory time for travel will be authorized only for “hours of employment” as defined in 5 USC 5542 and under standards established by applicable decisions of adjudicatory bodies.

16-8: Holiday Work

When the Agency requires the services of technicians or employees on an established holiday, it will seek to fill its needs through volunteers qualified and capable of performing the duties assigned (as determined by the Agency). When the Agency is unable to fill its needs through qualified and capable volunteers, it will assign the work to such technicians or employees on a rotational basis using the seniority to determine the order. Any technician or employee involuntarily assigned to work on a holiday may be relieved if s/he finds a qualified and capable replacement acceptable to and approved in advance by the Agency. To minimize the adverse repercussions of assigning technicians or employees to work on holidays, the Agency will strive to provide as much notice as possible to the affected employees.

16-9: Overtime and Compensatory Time Records

The supervisor will maintain appropriate compensatory time and overtime records to show who worked compensatory time or overtime and when the compensatory time and overtime was earned.

16-10: Call In Provision

Irregular or occasional compensatory time or overtime, as applicable, work performed by a technician or employee on a day when work was not scheduled for her/him and for which s/he is required to return to her/his place of employment, is deemed at least two (2) hours in duration for the purposes of compensatory time or overtime earned.

ARTICLE 17

LEAVE

17-1: Annual Leave

A. Technicians and employees will apply in advance for approval of anticipated leave. Leave requests and approval or denial will be made electronically using an SF-71, Request for Leave, through the Automated Time, Attendance and Production System (ATAAPS). The leave approving official, normally the supervisor, will respond to all requests for leave in a timely manner. Technicians and employees may, upon request and with the approval of their supervisor, change previously authorized annual leave to sick leave in accordance with 5 CFR 630.405.

B. Technicians and employees will utilize annual leave in fifteen (15) minute increments. Annual leave may not be charged in increments of less than fifteen (15) minutes.

C. Annual vacation request procedures: During the month of January, all technicians and employees will be given the opportunity to request leave for planned vacations. At this time, technicians and employees may request desired dates that fall within the upcoming twelve (12) month period (February through January). The supervisor with approving authority, usually the first-line supervisor, will approve or disapprove these requests no later than 15 February of each advance request period. Supervisors will use seniority to resolve leave request conflicts; however, leave in conjunction with holidays will be rotated without regard to seniority.

D. Periodic and routine request procedures: Annual leave will be approved on a "first come, first served" basis. If two or more requests are received on the same day and a scheduling conflict occurs, an effort should be made to resolve the conflict between the technicians or employees involved. Unresolved conflicts will be settled by use of seniority per Article 26. A technician or employee's approved annual leave will not be disapproved if a technician or employee with an earlier Technician Service Date (TSD) subsequently requests leave for the same period. In case of a tie, the conflict will be resolved by Service Computation Date (SCD).

E. Technicians and employees will be informed of whether their requests for leave have been approved or disapproved in a timely manner. When requests are made to use leave on the following day, the supervisor's response will be made as soon as possible. Without the appropriate supervisors' approval, the requested leave has not been approved.

F. In instances where technicians and employees received advanced approval for leave which is later rescinded and results in the loss of personal expenses to the technician or employee, the Agency will make every reasonable effort to accomplish the technician or employee's work prior to rescinding the approval.

G. The granting of advanced annual leave by the Agency is discretionary.

17-2: Timely Arrival for Work

Reasonable delays due to traffic or other factors beyond the technician or employee's control may not result in a charge of AWOL and in some circumstances may not require the use of leave. The Agency will exercise its discretion to approve brief periods of tardiness without charge to leave. Unacceptable levels of tardiness will be brought to the technician or employee's attention. If the tardiness continues, tardiness could be charged as AWOL and could subject the technician or employee to disciplinary and adverse action.

17-3: Sick Leave

A. Technicians and employees will earn and accrue sick leave in accordance with applicable laws and regulations. Technicians and employees may utilize sick leave in fifteen (15) minute increments.

B. Technicians and employees must inform their supervisors, as soon as possible, about medical, dental or optical appointments requiring the use of leave.

C. Under normal circumstances a written medical excuse may be requested by the supervisor after an absence in excess of three (3) consecutive days.

D. Granting of sick leave shall be appropriate for the following circumstances:

1. Medical, Dental or optical examination or treatment. (Administrative leave is authorized for physical and dental examinations required for military membership taken during regularly scheduled tour of duty hours).

2. Incapacitation for the performance of duties by physical or mental illness, injury, pregnancy or childbirth.

3. Care for family member as a result of physical or mental illness.

4. To make arrangements necessitated by the death of a family members or attend the funeral of a family member. Family members include; spouse, parent, children to include adopted children, brothers, sisters, and any individual related by blood or affinity whose close association with the Technician or Employee is equivalent to a family relationship.

5. Any activities resulting to adoption of a child, including appointments with social worker, adoption agencies, travel, courts proceedings etc.

E. Advancement of sick leave may be granted to a permanent technician or employee with a medical emergency. A maximum of 240 hours may be granted for the purposes related to the adoption of a child, for care of a family member with a serious health condition. Sick leave may be advanced under the following conditions:

1. Request for sick leave will be supported by a medical certificate.

2. Available sick leave will be exhausted before advancement.

3. Annual leave that would otherwise be forfeited will be used.

4. There is reasonable assurance the technician or employee will return to duty to earn and repay advance leave.

17-4: Unplanned Leave

A. When a technician or employee is unable to report to work because of illness or emergency, he/she will notify his/her immediate supervisor as soon as possible. Supervisors will provide technicians and employees with a phone number where they can be reached for this purpose. When the supervisor is unavailable for call off he/she will provide an alternative phone number for call off. If the supervisor cannot answer his/her phone at the time of call off the technician or employee will leave a voice mail message stating the following information:

1. The time of the call.

2. The reason for his/her absence.

3. When he/she expects to return to work.

4. A phone number where he/she can be reached.

A failure to call off properly may result in the time away from the workplace to be coded as Absent Without Leave (AWOL).

B. If the technician or employee uses sick leave in a pattern, (for example, when sick leave is used frequently or in patterns), the appropriate supervisor may inquire further into the matter and ask the technician or employee to explain. Absent a reasonably acceptable explanation, the Technician or Employee may be counseled that continued and frequent use of sick leave, or use in patterns may be cause to investigate and if a determination that sick leave is being abused may lead to the technician or employee being placed on leave restriction. This does not preclude the Agency from exercising their discretion to take other appropriate action.

17-5: Family and Medical Leave Act (FMLA)

Technicians and employees are entitled to a total of 12 administrative workweeks of Family Medical Leave during any 12-month period for:

1. Birth of a son or daughter and care of the newborn;

2. Placement of a son or daughter with the Technician or Employee for adoption or foster care;

3. Care of a spouse, son or daughter or parent with a serious health condition; or

4. Serious health condition of the technician or employee that makes the technician or employee unable to perform the duties of his or her position.

17-6: Temporary Restrictions

Supervisors will make a reasonable effort to accommodate technicians and employees, who are under temporary medical restriction, to work within their respective work sections. Certification of such medical restriction must be in writing showing work restrictions, and length of time necessary.

17-7: Leave Without Pay (LWOP)

A. Leave without Pay (LWOP) is a temporary non-pay status and absence from duty for a specific period of time, which may be granted to a technician or employee in accordance with applicable laws, rules, and regulations. LWOP may be requested in the same manner and for the same purposes as annual leave and sick leave.

B. Approval of LWOP is mandatory for:

1. Military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave (38 USC 4316(d));

2. Medical treatment for disabled veterans;

3. Technicians or Employees exercising LWOP rights under the Family and Medical Leave Act.

17-8: Absent Without Leave (AWOL)

When the Agency determines that it will charge a technician or employee AWOL, it will notify the technician or employee in writing of the intention to do so. The notification will be issued to the technician or employee as soon as possible but no later than one pay period after the AWOL is recorded. Such notice will include the reason for charging AWOL and include the date and time period in question. The notice will be delivered to the technician or employee in person if the technician or employee is present in the workplace. If the technician or employee is not present and/or is not expected to be present within a reasonable period of time, the notice will be delivered to the technician or employee via certified mail to the technician or employee's address of record. AWOL will be changed to approved leave if it is later determined that the absence was excusable.

ARTICLE 18

OFFICIAL TIME

18-1: This Article governs the use of official time for bargaining unit representational functions performed by technicians and employees. Official time is defined as paid duty time used for various labor relations and representational obligations in accordance with laws, rules, regulations and this Agreement.

18-2: Basis for official time:

A. The purpose of official time is to permit technicians or employees to engage in specific activities designated per 5 USC Section 7131, when the technician or employee would otherwise be in a duty status, without loss of pay or charge or leave. Official time will only be granted to Union officers, designated stewards, and other representatives, identified by the Union to the Agency in writing, for the purpose of: negotiating a collective bargaining agreement, including attendance at impasse proceedings; participating for, or on behalf of, a labor organization in any phase of proceedings before the Federal Labor Relations Authority; and representing the Union, or in connection with any other matter covered by the Federal Labor Relations Statute. Designated and identified Union representatives shall be granted official time in any amount the Agency and the Union agree to be reasonable, necessary, an in the public interest. Technicians and employees are prohibited from using official time for internal Union business which includes: the solicitation of Union membership; elections of Union officials; and collection of Union dues. All of which shall be performed during time when the technician or employee is in nonduty status.

B. The Union and the Agency recognize that the granting of official time may ultimately lead to improved labor-management relations. Such a relationship in the best interest of all parties, including the public. The parties believe it is necessary for supervisors, mangers, Union representatives, technicians and employees to understand the importance of official time and its role in meeting our labor-management relationship goals.

C. Official time will be granted to AFGE Local 3970 to represent agency bargaining unit technicians and employees and to meet requirements and responsibilities in accordance with and as specified in this Agreement and applicable laws, rules and regulations. Representatives of the Union who are technicians or employees of the agency will be granted reasonable amounts of official time in accordance with the provisions of this Agreement. Requests for reasonable amounts of official time will be granted when requested, unless granting the requested time would clearly hinder the accomplishment of the mission.

D. Official time will be requested and accounted for in accordance with applicable laws, rules and regulations. Supervisors are responsible for approving official time.

18-3: Official Time Usage.

The Agency and the Union agree that to determine the exact amount of official time needed by union representatives to meet the terms of this agreement is impossible to define. The percentages listed herein are not to be considered limits, but rather estimates needed to meet the Agency's mission and representational requirements of the Union. In order to meet the terms of this Article and Agreement, more or less time than what is specified may be needed. The use of official time will be approved per the terms of this Agreement and not arbitrarily approved or denied based on these estimates. Based upon the size, scope and mission of the Agency, the following percentages have been estimated to be reasonable:

1. The AFGE Local 3970 President will be authorized but not limited to 60% of his/her normal work week in an official time capacity.

2. The AFGE Local 3970 Executive Vice-President and Secretary-Treasurer will be authorized but not limited to 40% of his/her normal work week in an official time capacity.

3. AFGE Local 3970 Stewards will be granted official time capacity as needed of his/her normal work week to handle issues at the lowest level. Stewards authorized to utilize the official time will be designated by AFGE Local 3970 Executive Board.

4. During periods of negotiations, the Parties agree that members of the AFGE Local 3970 negotiation team will be on 100% official time during negotiations and will be allowed preparation time for proposals prior to negotiations convening.

5. During periods of training identified in this Article, members of AFGE Local 3970 will perform up to 100% of their normal work week in an official time capacity. Union representatives will provide or attend training which is designed to advise representatives on matters within the scope of 5 USC, and which is of mutual benefit to the Agency and the Union. The Union representative(s) wishing to provide or attend such training will present a written description of the course to the HRO which demonstrates which portion of the training is mutually beneficial. The Parties agree that training under this section is generally of mutual benefit when it covers areas such as contract administration, grievance handling and information related to federal personnel/labor relations laws, regulations and procedures.

18-4.

A. The Union agrees to provide the Agency with a written listing of its Union representative(s) authorized to use official time along with a description of their individual Union assignments no later than two (2) weeks after the effective date of this Agreement. Changes will be submitted to the Agency not less than ten (10) work days prior to the assumption of representational responsibilities by any new representative(s). The Agency will not approve such official time until the written notices are received by the HRO.

B. Except where explicitly provided, this Agreement shall not be interpreted in any manner which interferes with the Union's right to designate representatives of its own choosing on any particular representational matter.

ARTICLE 19

TIME CARDS AND TIME ACCOUNTING

19-1:

Time cards and time accounting is the joint responsibility of the technician or employee and the Agency. The Agency will maintain compliance with all laws, regulations, DoD policies with regard to time cards and time accounting.

19-2:

The Agency will maintain accurate records of the hours worked by technicians or employees using electronic means as established by the Agency.

1. It is the responsibility of each technician or employee to enter their time correctly.

2. It is the responsibility of the technician or employee's supervisor to ensure accuracy and certify time card inputs.

3. Once the supervisor reviews the appropriate time card, if changes are made, it will be provided to the technician or employee for review.

19-3:

The Union and Agency will conduct impact and implementation bargaining on time and attendance systems changes and updates.

ARTICLE 20

HIRING AND PROMOTION - MERIT SYSTEM PRINCIPLES

A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement will be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.

B. All technicians, employees and applicants for employment, shall receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, federally identified discrimination, and with proper regard for their privacy and constitutional rights.

C. All technicians and employees will maintain high standards of integrity, conduct, and concern for the public interest.

D. The Agency work force should be used efficiently and effectively.

E. Technicians and employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected. Technicians or employees can be separated who cannot or will not improve their performance to meet required standards.

F. Technicians and employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

G. Technicians and employees should be:

1. Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

2. Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

H. Technicians and employees will be protected against reprisal for the lawful disclosure of information which the technician or employee reasonably believes evidences:

1. A violation of any law, rule or regulation, or

2. Mismanagement, a gross waste of funds, and abuse of authority, or a substantial and specific danger to public health or safety.

I. The Agency's Merit Promotion and Placement Plan and all future updates will be negotiated in regards to items which impact conditions of employment and do not interfere with respective rights of either party, prior to implementation.

ARTICLE 21

DETAILS, TEMPORARY PROMOTIONS, REASSIGNMENTS, AND VOLUNTARY CHANGES

21-1: Details

A. The Agency retains the right to detail technicians and employees. A detail is the temporary assignment of a technician or employee to a different position or to a different set of duties for a limited period of time with the technician or employee returning to their original position and duties at the end of the detail.

B. Details for less than 120 calendar days will be completed without competition. The following procedures shall apply when offering noncompetitive details into bargaining unit positions for less than calendar 120 days:

1. The Agency's selecting official/detailing supervisor will canvass the qualified technicians or employees who meet the conditions of employment for the detailed position and are assigned to the work location of the detail to determine if anyone wishes to be detailed. If the same number of volunteers as vacancies exist, they shall be selected. If a technician or employee believes he/she is qualified and is excluded from consideration for a detail because of lack of qualifications, the selecting official, upon request of the local union, will articulate in writing the qualifications required for performance of the detail that the employee lacks.

2. If more technicians or employees volunteer than vacancies exist, the Agency's selecting official will select from the list of qualified volunteers.

3. If there are no volunteers or if there are fewer volunteers than vacancies, then the least senior qualified technician(s) or employee(s) will be selected. Except when the Agency demonstrates and determines that the position to which a technician or employee will be detailed requires unique skills and abilities that are not possessed by another qualified technician or employee or that operational need requires or precludes the detail of a particular technician or employee.

4. Seniority shall be defined as per this agreement, Article 26, Senority.

C. Details over 120 days will be competitively bid per the Agency's Merit Placement Plan. Supervisors shall initiate an SF-52 Request for Personnel Action for all details over 120 days on bargaining unit technicians or employees and coordinate with HRO or their HRO remote to make certain the detail is permanently documented in the technician or employee's Official Personnel Record with an SF-52 Personnel Action. Bargaining Unit Technicians or Employees detailed into a non-bargaining unit status positions for greater than 120 days are no longer covered by this agreement for the duration of the detail, or until such time as they return to a bargaining unit status position.

D. The Agency retains the right to terminate a detail at any time. A technician or employee will only be detailed once in a 12 month period.

E. The Agency will make every effort to avoid placing a Union representative on a detail that would prevent that official from performing his or her representational functions, unless the technician or employee volunteers for the detail.

21-2: Temporary Promotions

A. A temporary promotion is the temporary assignment of a technician or employee to a higher graded position or to positions of known promotion potential for a limited period of time with the technician or employee returning to their original position and duties at the end of the temporary promotion.

B. Temporary promotions will not be made unless the technician or employee's services are required for more than thirty (30) continuous days. In cases where the absence is for thirty (30) days or less, a detail would be more appropriate. Temporary promotions that last from thirty-one (31) days to 120 days during a one year period will be completed without competition. The following procedures shall apply when offering noncompetitive temporary promotions into bargaining unit positions for thirty-one (31) days to 120 days during a 12 month period:

1. The Agency's selecting official will canvass the qualified technicians or employees who meet the conditions of employment for the promoted position at the work location of the promotion to determine if anyone is interested in the promotion opportunity. If the same number of qualified volunteers as vacancies exist, they shall be selected. HRO will validate the qualifications of selected candidates. If a technician or employee believes he/she is qualified and is excluded from consideration for the promotion opportunity because of lack of qualifications, the selecting official, upon request of the local union, will articulate in writing the qualifications required for performance of the promotion that the employee lacks.

2. If more technicians or employees volunteer than promotion opportunities exist, the Agency's selecting official will select from the list of qualified volunteers. HRO will validate the qualifications of selected candidates.

C. Supervisors shall initiate and submit a SF-52 Request for Personnel Action and resume for either a bargaining unit technician or employee for temporary promotions for periods less than 120 days. Supervisors will coordinate with HRO or their HRO remote to make certain the temporary promotion is permanently documented in the technician or employee's electronic Official Personnel Record (eOPF) with a SF-50 Personnel Action. Promoted technicians or employees will be compensated at the pay grade of the promotion beginning on the effective date of the Personnel Action. Bargaining unit technicians or employees temporarily promoted into a non-bargaining unit status position are no longer covered by this agreement for the duration of the temporary promotion, or until such time as they return to a bargaining unit status position. A technician or employee will only be temporarily promoted without competition for less than 120 days once in a 12 month period.

D. Temporary promotions over 120 days for bargaining unit positions will be competitively bid per the Agency's Merit Promotion and Placement Plan. Supervisors shall initiate and submit a SF-52 Request for Personnel Action for temporary promotions for 120 days or more. Supervisors will coordinate with HRO, or their HRO remote, to make certain the temporary promotion is permanently documented in the technician or employee's eOPF with a SF-50 Personnel Action. Promoted technicians or employees will be compensated at the pay grade of the promotion beginning on the effective date of the Personnel Action. Bargaining unit technicians or employees temporarily promoted into a non-bargaining unit status positions are no longer covered by this agreement for the duration of the temporary promotion, or until such time as they return to a bargaining unit status position.

E. The Agency retains the right to terminate a temporary promotion at any time.

21-3: Reassignments

A. The Agency has the right to reassign technicians or employees, assign work and to determine the personnel by which Agency operations shall be conducted. A management directed reassignment (MDR) means a permanent change from one position to another while the technician or employee is serving continuously within the Agency. In doing so, the Agency will make reassignments to appropriately classified jobs at the appropriate grade levels. The Agency and the union agree that decisions concerning reassignments will take into account the goals of increasing career-related flexibility and mobility, and minimizing the need for involuntary reassignments. The Agency's decision to reassign employees will be based on legitimate management considerations in the interest of the Agency.

B. All reassignments will be documented in the employee's eOPF. The Agency will notify the reassigned technician or employee in writing of the change of assignment 30 days prior to the effective date of the reassignment. The employee may waive the 30 day notice at their election. When a technician or employee is reassigned to a different position, the technician or employee will be given a reasonable period in which to become proficient. If the technician or employee cannot attain satisfactory performance, consideration will be given to reassigning the technician or employee to position for which the technician or employee is qualified.

21-4: Voluntary Changes

A. Technicians or employees may voluntarily request changes in their work assignments for a temporary or permanent basis. This request shall be made in writing from the technician or employee, endorsed through their chain of command to HRO. All such requests are subject to management's right to assign technician or employees work, and to determine the personnel by which Agency operations shall be conducted. Such requests will be considered by the Agency and a good faith effort will be made to balance the needs of the technician or employee with the Agency's mission. Technician or employees may voluntarily request changes in their work assignments at any time. Any voluntary changes will be processed in accordance with applicable laws, rules, and regulations by this Agency.

B. Technicians and employees in identical positions, e.g., same title, series, grade, and qualifying experience, may voluntarily request to exchange positions with one another so long as

they do not request payment of moving expenses from the Agency. This request shall be made in writing from the technician or employee, endorsed through their chain of command to HRO. Approval or denial of any such request will be at the Agency's discretion.

21-5: Voluntary Lateral Transfers or Downgrades Transfers

A. A lateral transfer is a voluntary permanent change from one position to another at the same pay grade and same pay (not including differences in locality pay), without promotion or demotion while the technician or employee remains continuously employed by the Agency. A downgrade transfer is a voluntary permanent change from one position to another at a lower paygrade or at a loss of pay (excluding differences in locality pay), while the technician or employee remains continuously employed by the Agency.

B. If a technician or employee is interested in a lateral or downgrade transfer into a vacant equally graded or lower graded position within the same occupational series as what they currently occupy, assuming they meet all conditions of employment and position qualifications, they can contact the selecting official and identify in writing their interest in this opportunity. This may be accomplished prior to the job being announced through USA Jobs but must be completed prior to the closing date of the position posting on USA Jobs. The technician or employee may also apply for the position through USA Jobs. The selecting official may select the technician or employee requesting the lateral or downgrade transfer and close the job announcement. If more than one technician or employee contacts the selecting official requesting a lateral or downgrade transfer into the vacant position, the selecting official can make a selection among these individuals using the selection board process per the Agency's Merit Promotion and Placement Plan and then close the job announcement. The selecting official can choose not to select any of the technicians or employees requesting a lateral or downgrade transfer into this position and then make a selection from those candidates found qualified through the USA Jobs announcement process per the Agency's Merit Promotion and Placement Plan.

21-6: Employee Transitions

In order to ensure a smooth transition between positions, the Agency will provide necessary orientation to the technician or employee at the beginning of any detail, temporary promotion, reassignment or transfer. The Agency will provide to a technician or employee, who has been on detail to a different work area, the time reasonably necessary to re-familiarize her/himself with the position to which s/he is returning. The Agency will inform the technician or employee of any changes in operating procedures which affect the manner in which the duties of the position of record are performed.

ARTICLE 22

EQUAL EMPLOYMENT OPPORTUNITY

22-1: Diversity and Inclusion Program

A. The Parties agree that the Agency will not discriminate against any technician or employee on any federally identified basis.

B. The Agency will administer an Equal Employment Opportunity (EEO) and Diversity and Inclusion programs in accordance with applicable laws and regulations. The Ohio National Guard Diversity and Inclusion Program shall be designed to promote equal employment opportunity in the Agency.

22-2: EEO Complaints

A. Any technician or employee who seeks advice, wishes to file or has filed an EEO complaint shall be free from coercion, interference, dissuasion or reprisal due to the complaint.

B. Discrimination complaints must be initiated within forty-five (45) days of the date the incident or the date when the technician or employee became aware of the incident. Technicians or employees seeking assistance will be advised by the Agency's State Equal Employment Manager (SEEM) concerning the procedures involved in processing an EEO complaint.

C. A technician or employee is entitled to designate a personal representative, which may include a Union representative, while processing an EEO complaint. A technician or employee's representative who has been designated in writing in an EEO complaint will have the same access to information as the complainant. Documents provided may of necessity have to be redacted to observe privacy rights of other technicians or employees.

D. Any technician or employee who believes that he or she has been discriminated against on the grounds set forth in this Article, may file any one of the following at his or her option:

1. An informal or formal complaint of discrimination with the Agency's EEO Office in accordance with 29 CFR, Part 1614 Federal Sector Equal Employment Opportunity & Equal Employment Opportunity Management Directive for 29 CFR Part 1614 (EEO-MD-110), the Ohio National Guard Discrimination Complaint System;

2. A grievance pursuant to the provisions of the Grievance Procedures Article of this Agreement; or

3. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the technician or employee alleges that the basis for the action were federally identified factors for discrimination, reprisal or retaliation. The Agency reserves the right to assert all appropriate defenses before the MSPB.

E. A technician or employee shall be deemed to have exercised his or her option under this section at such time as the technician or employee timely files either a formal complaint of discrimination, an MSPB appeal, or a grievance in writing in accordance with the provisions of this Agreement.

F. The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved technician or employee to request the MSPB to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. The Agency reserves the right to assert all appropriate defenses before the EEOC. Appeals to the MSPB or the EEOC shall be filed pursuant to such regulations as the Board or the Commission may prescribe, respectively.

22-3: Policy

A. The Agency agrees to develop and issue a state-wide Diversity and Inclusion Plan which to the extent consistent with applicable law follows guidance issued by the National Guard Bureau. The plan shall be updated as required by National Guard regulations. The plan will focus on workforce diversity, workplace inclusion, and agency accountability and leadership. This plan shall highlight comprehensive strategies for the agency to identify and remove barriers to diversity and inclusion that may exist in recruitment, hiring, promotion, retention, professional development, and training policies and practices.

B. The Agency's Diversity and Inclusion Plan, and/or Affirmative Action Plan and all future updates will be negotiated in regards to items which impact conditions of employment and do not interfere with respective rights or either party, prior to implementation.

22-4: Council on Diversity and Inclusion and Special Emphasis Programs

A. The Agency agrees to allow a Union appointed member to attend the Agency's Council on Diversity and Inclusion (CODI), or other committees developed to increase the Agency's Diversity and Inclusion, if and when established.

B. The Union will furnish the Agency with a listing of the names and titles of all designated representatives assigned to the various Diversity and Inclusion Councils.

C. Technicians and employees not acting as Union representative, participating in or attending Special Emphasis Programs sponsored by the Ohio National Guard will be allowed to do so in a regular duty status, subject to mission requirements as determined by the supervisor.

22-5: EEO Support

A. The Agency's State Equal Employment Manager (SEEM) and/or Agency's EEO staff will be made available and accessible to technicians and employees on duty time. The agency will provide information on the role of the SEEM and their functions.

B. The Agency will post information in conspicuous places on how to obtain SEEM and EEO support along with appropriate contact information.

C. Technicians and employees are encouraged but not required to consult with the Agency's SEEM prior to filing a complaint or grievance under this Article. Such consultation shall take place within forty-five (45) days of the alleged discriminatory incident.

D. The SEEM shall advise the aggrieved technician or employee that he or she has the right to have a union representative or other representative of their own choosing present throughout all stages of the EEO complaint process.

E. The Agency agrees to provide technicians and employees access to 29 CFR, Part 1614 Federal Sector Equal Employment Opportunity & Equal Employment Opportunity Management Directive for 29 CFR Part 1614 (EEO-MD-110), the Ohio National Guard Discrimination Complaint System and the Agency's Diversity and Inclusion Plan by posting these documents on the Agency's public website.

22-6: Reasonable Accommodations

A. A reasonable accommodation is a modification or adjustment to a job or work environment or to the manner or circumstances in which a job is customarily performed that enables a qualified individual with a disability to perform the essential functions of their job or to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

B. It is the Agency's policy to accommodate any qualified technician or employee with a disability as defined by the Americans with Disabilities Act, as amended and the Rehabilitation Act of 1973 and all other laws, rules and regulations as apply. The requested accommodation must not cause the employee requesting the accommodation, or others, a direct threat of harm and must not cause the Agency any undue hardship which is defined as an action requiring significant difficulty or expense, when considered in light of

1. The nature and cost of the accommodation;

2. The overall financial resources of the facility or Agency; and

3. The mission and operations of the Agency

C. Employees who wish to request an accommodation must follow the procedures set forth by the Agency as defined by applicable laws, rules, and regulations.

D. For temporary medical situations that do not fall under the American with Disabilities Act, employees desiring accommodations may address the situation with his/her supervisor. The Agency will attempt to accommodate the employee's needs, subject to mission requirements. Whenever possible, requests will be approved at the lowest possible level. Supervisors will consider temporary work solutions including telework.

ARTICLE 23

CONTRACTING OUT

The Agency will notify the Union as soon as it decides to contract out work which will cause a Reduction in Force (RIF), reorganization or downgrade of technicians and/or employees. In these cases, the Agency agrees to negotiate appropriate arrangements consistent with applicable laws, rules, regulations and statute for technicians and/or employees adversely affected by the impact of any determination by the Agency to contract out work.

ARTICLE 24

REDUCTION IN FORCE

24-1: The Agency recognizes the need to consider options such as reorganizations, realignments, voluntary early retirements, technician and employee buyouts, and voluntary placements between services, hiring freezes, and other available management actions before implementing a reduction in force (RIF).

24-2: All reductions-in-force and transfers of function will be carried out in accordance with applicable laws and regulations and the provisions of this Agreement.

24-3: When it is anticipated a reduction-in-force (RIF) or transfer of function (TOF) affecting bargaining unit technicians and employees will be necessary, the union will be given preliminary notification in writing 120 calendar days prior to the effective date of the RIF or TOF unless compelling reasons dictate otherwise. This notification will be given in advance and will include the reason for action, the approximate number of bargaining unit technicians and employees initially affected, the anticipated effective date of the action, an opportunity to request additional information, a meeting and negotiations on the procedures to be utilized, and arrangements for employees adversely affected by a RIF or TOF, as appropriate.

Upon receipt of preliminary written notification of anticipated RIF or TOF affecting bargaining unit technicians and employees, the Union may within ten (10) working days of such notification, request negotiations concerning procedures for implementation of the action and or appropriate arrangements for unit technicians and employees adversely affected by the action. Such negotiations, if requested, shall commence in a manner which does not unnecessarily delay implementation of the action.

24-4: The Agency agrees to give specific notice of RIF/TOF to affected technicians and employees at least sixty (60) calendar days before the effective date, unless compelling circumstances dictate otherwise. The Agency shall provide complete information needed by the technicians and employees to fully understand the RIF and why they are affected. Specifically:

1. The specific RIF action to be taken;

2. The effective date of the action;

3. The technician or employee's competitive area, competitive level, subgroup, service date, and the three (3) most recent ratings of record received during the last four (4) years;

4. The place where the technician or employee may inspect the regulations and pertinent records;

5. The reason for retaining a lower standing technician or employee in the same competitive level for more than thirty (30) calendar days;

6. Grade and pay retention information; and

7. The technician or employee's grievance or appeal rights.

24-5: Unit technicians and employees affected by RIF or TOF will be given an opportunity to receive counseling on the proposed action and their rights and benefits pertaining thereto and if desired, labor union representation.

24-6: The Agency will ensure that transition services are made available for use by those technicians and employees adversely affected by RIF.

ARTICLE 25

PERFORMANCE MANAGEMENT PROGRAM

A. The technician and employee performance management program will be conducted in accordance with established local procedures.

B. A technician or employee may use the grievance process to appeal a performance rating outlined in Article 13, Grievance Procedures.

C. A technician or employee has the right to Union representation in response to a proposed personnel action and right to appeal a Final Agency Decision based on failure to demonstrate an acceptable level of performance upon completion of a performance improvement period in accordance with established local procedures and as outlined in Article 13, Grievance Procedures.

D. Any changes in locally established procedures will be negotiated between the Agency and Union prior to implementation.

E. Technicians and employees should be retained on the basis of adequacy of their performance. Unsuccessful performance should be corrected. A performance improvement plan (PIP) will be implemented for a period of ninety (90) days for technicians or employees whose performance has become unsuccessful. Technicians or employees can be separated who cannot or will not improve their performance to meet required standards once the PIP has been completed.

ARTICLE 26

SENIORITY

26-1: Definition

The Union and Agency agree that for the purposes other than a reduction in force, seniority will be defined as:

A. Title 32 Technician seniority will be based on Technician Service Date (TSD). TSD is defined as the service date based on the total service as a Technician and a Title 5 National Guard Employee under permanent, indefinite and temporary appointments, including service with other states. It is further agreed that if a technician performs military service during this period and returns to a technician position within ninety (90) days from the date of release from military service, their employment will be considered as uninterrupted. Military service and Federal Civilian Service with other agencies prior to an initial appointment as a technician shall not be considered in determining seniority.

B. Title 5 National Guard Employee seniority will be defined as the TSD based on total combined service as a Title 32 Technician and a Title 5 National Guard Employee under permanent, indefinite, term and temporary appointments, including service in other states. It is further agreed that if an Employee performs military service during this period and returns within ninety (90) days from the date of release from military service, their employment will be considered as uninterrupted. Military service and other Federal Civilian Service with other agencies prior to an initial appointment as a National Guard Employee shall not be considered in determining seniority

26-2: Seniority Rosters

A. Seniority rosters will be provided electronically by the Agency upon request from the Union. These seniority rosters will include the technician or employee's name, physical location, and seniority as defined above. The Human Resources Office (HRO) and the Union will validate rosters to the work center level. Validated seniority rosters will be forwarded to state HRO for posting. Seniority rosters will be published electronically at a mutually agreed location, e.g. HRO websites. Seniority rosters will be separated for the respective services, Army and Air.

B. If the technician or employee believes his/her seniority has been calculated incorrectly he/she will gather and submit evidence of such to his Union representative and HRO for review. If the Union representative disagrees that a recalculation is appropriate he/she will submit a request to the HRO through the Labor Relations Specialist for review.

ARTICLE 27

EMPLOYEE ASSISTANCE PROGRAM

27-1: Definition

An Employee Assistance Program (EAP) is a program designed to assist in the resolution of work-related and non-work-related stressors that may adversely impact a technician or employee's job performance and/or contribute to productivity problems. Personal concerns may include but are not limited to; alcohol/drug abuse, financial stress and relationship stress.
The Parties believe that retaining trained technicians and employees is in our mutual best interest and both labor and management are sincerely committed to assisting technicians and employees with personal problems. The parties support a proactive approach to aide technicians and employees with personal problems which can impact upon their conduct, job performance, and productivity.

27-2: Assist Employees

Under the Employee Assistance Program (EAP) the Agency agrees to continue efforts to counsel and assist in rehabilitating employees with alcohol, drug related, or personal concerns which may adversely affect job performance. The union agrees to cooperate fully with the Agency in this program, while complying with the provisions for confidentiality in safeguarding technician and employee information.

27-3: Rehabilitation

The Agency recognizes its responsibility to make a reasonable effort at the rehabilitation of technicians or employees with alcohol or drug problems at an early stage. Technicians and employees undergoing a prescribed program of treatment will be approved leave for this purpose on the same basis as any other illness which requires absence from work.

EAP consultation(s) will be approved by the Agency as an approved leave or as an excused absence, provided the technician or employee informs her/his leave-approving official that the requested time away from the office will be used for EAP consultation. The technician or employee need not provide further details to the official.

Technicians or employees may request to use sick leave, annual leave, leave without pay, and/or earned compensatory time, consistent with applicable provisions of this Agreement, for purposes of undergoing a treatment program resulting from a referral by the designated Director of Psychological Health (DPH).

27-4: Documentation

Counseling records and information related to employee visits to EAP will be kept in a confidential manner consistent with applicable laws and regulations. Confirmation of

attendance, when necessary, will be provided by the designated DPH according to applicable confidentiality procedures.

27-5: Discipline

The Agency and the Union jointly agree that technicians or employees entering the EAP are not immune from disciplinary action. However, the fact that a technician or employee is actively pursuing, or indicates a commitment to enter, an established program of rehabilitation will be given weight in considering appropriate disciplinary action.

ARTICLE 28

WORKPLACE HEALTH AND SAFETY

28-1: Workplace Safety

A. The Agency agrees to furnish to technician's and employee's places and conditions of employment that are free from recognized hazards that are causing or are likely to cause physical harm or death in accordance with all applicable federal laws, standards, codes, regulations and executive orders.

B. The technician or employee may decline to perform his or her assigned task because of the reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek an effective remedy through normal hazard reporting and abatement procedures established in accordance with 29 CFR Section 1960.46(a).

C. It is understood by the parties that the Agency has the responsibility for providing information and training on health and safety issues. The Union at the appropriate level will have the opportunity to provide recommendations into any safety programs or policy development.

28-2: Safety and Health Committees

A. Although the Agency employs Health and Safety Specialists whose primary function is to oversee the health and safety programs at each facility, all applicable federal laws, standards, codes, regulations and executive orders are the recognized authorities when issues involving health and safety are raised.

B. The Agency will establish and maintain an Environment, Safety and Occupational Health (ESOH) council at each Wing facility and a state level Army Safety Council. A Labor representative will be provided the opportunity to participate in these committees. One labor representative from respective work areas will be authorized to be members of the existing safety councils or committees at any level within the Ohio National Guard. These committees will serve in an advisory capacity and be composed of representatives of the Agency and the Union. The primary duties of the safety and health committee shall be per service regulations. In addition, the following will be addressed:

1. Develop and recommend specific goals and objectives designed to reduce the number and severity of on the job accidents and occupational illnesses.

2. Review reports of on the job accidents, injuries and occupational illnesses to identify specific hazards and adverse trends and to formulate specific recommendations to prevent recurrences.

3. Review findings of inspections, audits and program reviews to assist in the formulation of recommendations for corrective action.
4. Review safety and hazard reports.

5. Review plans for abating hazards.

C. Safety and health committees will meet per service regulation/instruction.

D. Written minutes of each meeting will be maintained and made available to all committee members. All information necessary for the effective conduct of the safety and health committee will be made available to the committee.

E. Union representatives will be on regular duty time to attend the safety and health committee meetings and to participate in any health and safety activity under laws, rules regulations, executive orders and this agreement.

28-3: Reporting of Unsafe Conditions

Unsafe and unhealthful conditions reported to the Agency by the Union or technicians or employees, will be promptly investigated, by an Agency certified safety representative. Any findings from said investigations relating to safety and health conditions will be provided to the Union, in writing, upon request. No technician or employee will be subject to restraint, interference, coercion, discrimination, or reprisal for making a report and/or complaint to any outside health/safety organization and/or the Agency.

28-4: Workplace Injury

A. If a technician or employee is injured in the performance of duty, the technician or employee will be informed of the procedures to be followed for filing a claim for benefits under the Federal Employees' Compensation Act. The technician or employee will be informed of the leave options available, including sick leave, annual leave, leave without pay, etc.

B. When a technician or employee is injured, the Agency will provide him/her with the appropriate forms for filing for benefits under the Federal Employee's Compensation Act.

C. At the technician's or employee's request, a qualified representative of the Agency will assist the technician or employee with filing for benefits under the Federal Employee's Compensation Act.

D. When a technician or employee files a claim under the Federal Employee's Compensation Act, the Agency will, upon request, review the forms to ensure that they are properly completed and will file these forms as appropriate, in a timely manner (no later than 10 working days after receipt).

ARTICLE 29

PROTECTIVE PERSONAL EQUIPMENT (PPE)

A. The Agency agrees that assessments to determine the need to provide PPE will be conducted by the Agency in each workplace following established Occupational Safety and Health Administration (OSHA) and service requirements and/or regulations and instructions. Upon request, the Union will be provided the assessment schedule for each workplace. Upon request, the Union will receive a copy of all assessments conducted, within thirty (30) calendar days after the request, including findings, conclusions, and decisions and all documents, data and materials used as a basis for the decision. When assessments result in an initial determination that PPE is not warranted, the Agency will consider requests for reconsideration upon notice by the Union. The Agency will provide a substantive response to the Union's positions, giving explanations as to why PPE will not be provided. When assessments determine that PPE is appropriate, and the union identifies deficiencies or problems with the identified PPE, the Union will notify the appropriate office. The parties will meet and consult over the deficiencies and look at available resources or sources to procure appropriate or more efficient PPE.

B. Personal Protective Equipment (PPE), as required by appropriate Federal and/or state government standards to protect technicians and employees from hazardous conditions encountered during the performance of their official duties, will be provided at no cost to technicians or employees required to wear PPE.

C. Technicians are required by Federal Statute to wear the military uniform. In doing so, the Agency agrees that serviceable uniforms will be provided by the Ohio National Guard per service regulation or instruction.

1. The Agency will provide all military rank, insignia, name tags, and other mandatory accoutrements.

2. If the uniform cannot be issued at the employee's worksite, duty time and transportation will be provided to a location where uniforms can be issued. The employee's supervisor shall coordinate the time and method of travel.

3. Unserviceable uniforms (faded, torn, improper fit, etc.) will be traded in for serviceable uniforms on a one for one basis.

4. Duty time will be authorized for the purpose of exchanging unserviceable uniforms. The times will be coordinated with the employee's supervisor.

D. Employees that work in industrial areas (Civil Engineering, Maintenance, Supply, etc.) will be authorized at least two (2) sets of coveralls for wear. For safety purposes, coveralls will be the correct size as determined by the technician or employee.

E. The agency will provide military issue and/or authorized inclement weather clothing to Technicians who are required by their position description to work in inclement weather and/or cold weather. Appropriated funding cannot be used for the purchase of foul weather gear for National Guard Employees who are required by their position descriptions to work in inclement weather and/or cold weather.

ARTICLE 30

TRAFFIC SAFETY

30-1: Applicant of Law, Regulation or Instruction

Ohio National Guard technicians and employees will comply with State of Ohio laws in regards to traffic safety and motor vehicle operations on all Ohio National Guard facilities and installations. In addition, technicians and employees will comply with Army traffic safety and motor vehicle operation regulations on Army National Guard installations and facilities and Air Force traffic safety and motor vehicle operation instructions on Air National Guard installations and facilities. For joint use facilities or installations, the service which owns the real property or leases the real property shall be the governing regulation or instruction which will be followed in regards to traffic safety and motor vehicle operation for that facility or installation. Where state law is more stringent than respective service regulations or instructions, state law shall govern. When respective service regulations/instructions in relation to traffic safety or motor vehicle use change, agency and the union agree to negotiate the impact and implementation of any changes made in these instructions/regulations which impact the working conditions of agency bargaining unit technicians and employees.

ARTICLE 31

WORKPLACE TOBACCO USE - SMOKING/VAPING

31-1: Definitions: "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. "Smoking" includes the use of an electronic smoking device and a vapor product.

31-2: Separation of Designated Tobacco Use Areas

Ohio National Guard technicians and employees will comply with State of Ohio laws in regards to tobacco use and will comply with Army tobacco use regulations on Army National Guard installations and facilities and Air Force tobacco use instructions on Air National Guard installations and facilities. For joint use facilities, the service which owns the real property or leases the real property shall be the governing regulation or instruction which will be followed in regards to tobacco use for that facility or installation. When respective service regulations/instructions in relation to tobacco use change, the Agency and the union agree to negotiate the impact and implementation of any changes made in these instructions/regulations which impact the working conditions of Agency bargaining unit technicians and employees.

31-3: Designated Tobacco Use or Smoking Areas

The Ohio National Guard will establish designated tobacco use areas or designated smoking/ vaping areas as identified and required by respective service instructions and/or regulations. These areas will be located and equipped per State of Ohio law and in accordance with the respective service regulation or instruction. Such areas will comply with safety and fire regulations, codes or requirements. The Agency shall coordinate with installation or facility Union representatives and will negotiate the number and location of designated smoking/vaping or tobacco use areas at the installation/facility.

ARTICLE 32

LOCKERS/CHANGING FACILITIES

A. The Agency will make available, in close proximity of their work area where feasible, a secure, private, clean area where technicians and employees can change from or into their duty uniform. Technicians and employees will have access to a way to secure their personal property.

B. Technicians and employees that work in industrial areas as part of their duties will also be provided an additional locker or storage area to store coveralls, PPE, jackets, boots, gloves, etc. so as not to "cross contaminate" industrial clothing with personal clothing.

ARTICLE 33

BREAK AREAS

The Agency will provide a break area at each installation/facility where technicians and employees work. When providing a break area in each building is not realistic due to regulation or logistical issues, a break area will be provided in close proximity to the technician or employee's work location. The break areas will be separate from any work area/office environment and will comply with all applicable laws, regulations, guidelines, instructions and standards. Where feasible, each break area will be sufficient enough in size to reasonably accommodate the technician and employees required to use the break area.