

Labor

Agreement



U.S. Bureau
of the
Census
Headquarters
Suitland, MD



American
Federation of
Government
Employees
Local 2782

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ARTICLE 1 — GENERAL PROVISIONS

- 1.1 Purpose. This Agreement is entered into by the Bureau of the Census, U.S. Department of Commerce (hereafter, “the Employer”), and the exclusive representative of its headquarters bargaining unit employees, Local 2782, American Federation of Government Employees, AFL-CIO (hereafter, “the Union”), to provide for constructive and cooperative labor-management relations between the parties.

This Contract is entered into under the authority of the Civil Service Reform Act of 1978. In the administration of all matters covered by this Agreement, the Employer, the Union and employees are governed by existing or future laws, Government-wide rules and regulations. (To the extent that provisions of the Census Administrative Manual (CAM) conflict with this Agreement, the contract will govern.) This Agreement takes precedence over any other existing negotiated agreements, mid-term agreements or other negotiated language except as otherwise noted.

- 1.2 Coverage. This Agreement covers all employees of the Bureau of the Census headquarters in the Washington, D.C. metropolitan area except: management officials, supervisors, employees engaged in personnel work in other than a purely clerical capacity, confidential employees and temporary employees of 90 days or less where there is no expectation of continued employment.

1.3 Definitions.

- a. “The Act” means Title VII of the Civil Service Reform Act of 1978.
- b. “Days”, unless the context clearly indicates otherwise, means calendar and not working days.
- c. “Unit employee” means an employee covered by this Agreement (see 1.2 above) and included in an appropriate bargaining unit as determined by the Federal Labor Relations Authority.
- d. “LMRS” means Labor Management Relations Staff, Personnel Division.

ARTICLE 2 — EFFECTIVE DATE, TERM, AND CHANGES

- 2.1 Effective Date and Term. This Agreement shall, subject to such modifications as may be effected under sections 2.3 and 2.4 of this Article, remain in full force and effect for 3 years from the date of its signing and annually thereafter shall renew itself automatically on its anniversary date. However, either party must give written notice to the other, no more than 105 days and no fewer than 60 days prior to the expiration date of the Agreement, if it desires to terminate or renegotiate the current Agreement. The receiving party must acknowledge in writing receipt of the request for renegotiation or termination. The current Agreement remains in effect until a new one replaces it in accordance with 5 U.S.C. Chapter 71.
- 2.2 Renegotiation. In the event one of the parties notifies the other of its desire to renegotiate this Agreement, the parties shall meet for the purpose of renegotiation not more than 60 days or less than 10 days prior to the expiration date of the Agreement or unless the parties agree otherwise.
- 2.3 Mandatory Amendment. In the event either party determines that change(s) to law or applicable regulation require modification to the terms of this Agreement, it shall so notify the other in writing.

Such notice shall include:

- a. an explanation of the alleged conflict between the law or regulation and this Agreement; and
- b. a proposed modification for bringing the Agreement into compliance.

If the parties agree that a change requires modification to the terms of the Agreement, they shall commence negotiation of new language on that portion of the contract affected by the change(s) not later than 30 days following receipt of notice unless the parties agree otherwise

2.4 Notification of Changes.

- a. When, during the life of this Agreement, the Employer proposes to exercise one of its rights under 5 U.S.C. 7106, and this exercise gives the Union the right to bargain the impact and implementation of the change, the Employer will notify the Union President, in writing, setting forth the proposed change. The Union must request bargaining, if it so desires, in writing to the LMRS within 10 workdays of the original notification.

Within the same 10 workdays the Union may request an interpretive meeting. The Union must submit its proposals at least 5 workdays before the first negotiating session. Neither party may introduce a new matter(s) for negotiations after the beginning of the second session.

- b. The parties recognize that the Union may request negotiations during the life of the Agreement over items which are not addressed by this Agreement and over which it has not waived its right to bargain. Accordingly, the parties agree to limit the bargaining on these types of matters. Under the provisions of this Article, each party may propose negotiations over no more than 5 items over the life of the contract. In addition, each time management proposes to make changes under Article 2.4(a), and notifies the Union, the Union may raise one item for negotiation under the terms of this section.

This section should not be construed as a reopener of any items covered by this Agreement.

ARTICLE 3 — EMPLOYEE RIGHTS AND OBLIGATIONS

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

- a. to act for AFGE in the capacity of a representative and the right, in that capacity, to present the views of the labor organization

to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

- b. to engage in collective bargaining with respect to conditions of employment through AFGE.

3.2 Access to Officials.

Employees may, in resolving work-related problems, communicate with and seek advice from Census Bureau offices and officials such as the following:

- a. the Personnel Division;
- b. the Administrative Liaison on matters relating to payroll, recording of leave, and so on, or the Division Training Coordinator, if applicable;
- c. a supervisor or management official of higher rank than the employee's immediate supervisor;
- d. Equal Employment Opportunity officials (that is, a staff member of the EEO office or an EEO counselor).

Employees are entitled to a reasonable amount of official time away from the job without charge to leave to visit these officials. An employee must request and receive approval to use the official time from his/her supervisor in advance. The supervisor will normally grant the time within 1 workday. This Article does not apply to grievance related matters.

3.3 Personnel Records. Systems of personnel records, such as the Official Personnel Folder, are maintained in accordance with the Privacy Act. Access to review, photocopying, and amendment or correction of records is governed by the Privacy Act and implementing regulations.

Such records shall contain only those types and classes of records authorized by law, rule, or regulation. An employee may request to review his/her personnel records. These records will normally be

made available no later than 24 hours of such a request. However, when situations permit records will be made available in a shorter time frame.

- 3.4 Contributions. Neither party to this Agreement shall require or coerce employees to donate to charitable organizations or to purchase savings bonds. Actions which provide or create the perception that employees do not have the free choice to give or not give are prohibited, and no person's employment shall be affected adversely by his or her election in such matters. However, this section shall not be so construed as to prohibit the Employer from posting or circulating information concerning such charitable organizations, or from otherwise encouraging employees to consider contributing to worthwhile charities or purchasing savings bonds.
- 3.5 Expenses. When ordered to attend job-related meetings by their supervisors, employees will not be required to pay for attendance or registration fees or, except as otherwise required by regulations, to travel at their own expense.

Employees will not be required to join professional or similar organizations at their own expense. Where membership in a professional society or association is found to provide direct benefits to the Employer which are necessary in carrying out its mission, the Employer will consider funding institutional membership(s).

- 3.6 Access to Union Representatives. Employees are expected to receive permission from their supervisors to meet with Union representatives. Permission will usually be granted upon request but not later than 1 day. In unusual circumstances where sufficient release for full and proper discussion is not possible, the supervisor will make at least a short period of time available in accordance with the above time frame. Provision will be made for more time as soon thereafter as possible, normally the next day. Meetings between a representative and an employee will take place away from the worksite.
- 3.7 Employee Pay. If the Personnel Payroll System shows that a bargaining unit employee was not paid in the appropriate payweek, due to the Employer's administrative error, the Employer agrees to advance the employee money as regulations permit. When an em-

ployee receives an advance in accordance with this Article, the Employer will take steps necessary to offset the advanced amount.

ARTICLE 4 — UNION RIGHTS AND OBLIGATIONS

4.1 General Rights and Obligations. The Union is the exclusive representative of employees in the unit and is entitled to act for, and to negotiate agreements covering, all unit employees. The Union is responsible for representing the interests of all unit employees without discrimination and without regard to labor organization membership.

The Union shall be given the opportunity to be represented at —

- a. any formal discussion between one or more representatives of management and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
- b. any examination of an employee in the unit by a representative of management in connection with an investigation if —
 1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
 2. the employee requests representation.

When the Employer provides notice under paragraph a. or the employee asks for representation under b., the Employer will provide at least 24 hours notice except where the Employer has an immediate need. In such situations, reasonable notice will be provided. Notice under this Article will be provided to a Union officer or steward. During the month of June each year, the Employer shall provide each employee written notice of his or her rights as specified in a. and b. above.

4.2 Internal Union Business. Activities relating to internal union business (including the solicitation of membership, election of its officials, and the collection of dues) shall be performed only dur-

ing the time the employee is in non-duty status or on official paid breaks.

4.3 Notices. When the Employer issues:

1. a letter of proposed adverse action;
2. a proposed suspension of 30 days or less;
3. a written reprimand;
4. a within grade increase denial; or
5. a letter proposing a demotion or removal on an unsatisfactory performance rating

to a unit employee, the latter will receive an original and one copy noted "Optional Representation Copy." Each notification shall clearly state that the employee is entitled to representation if he/she desires. The Employer also agrees to furnish to the Union a quarterly summary of the above-cited actions by Division.

4.4 Training of Local 2782 Representatives. The Employer agrees to grant the Union a block of 400 hours of official time each contract year. This time is intended for training which is of mutual benefit and related to appropriate matters within the scope of the Act for officers and stewards of the Union specified in Article 5.2. The Employer will grant requests for time under this section on the basis of a written request from the Union submitted to the LMRS at least 5 workdays in advance of the start of the training session. The written request must include a copy of the agenda for the training. In approving time under this section, the Employer will grant an individual officer or steward no more than 80 hours per contract year unless the parties agree otherwise.

4.5 Advance Notice of Assignment. In order to facilitate the orderly carrying out of representational activity under this Agreement, the Employer will give reasonable advance notice, where practicable, of impending assignments conflicting with a Union official's ability to continue to function in that capacity. Reasonable advance notice shall normally mean at least 15 work days in

the case of assignments to excluded positions. This section applies only to Union officials mentioned in Article 5.2. This section shall not apply to competitive actions or at the employee's request.

4.6 National Representatives. National representatives of the Union may be granted access to Agency premises for the following reasons and subject to the conditions stated below:

- a. to meet with Union officers and/or stewards in the Union office or other non-work area; or
- b. to meet with a bargaining unit employee(s) who is/are party(ies) to a grievance provided any such meetings occur in the Union office or other non-work area and provided the employee(s) has/have properly requested the time to do so in accordance with Article 3; or
- c. to meet with any bargaining unit employee(s) provided such meetings occur while the employee(s) is/are in a non-duty status and such meetings occur in a non-work area (i.e., Sunny Spot Lobby, cafeteria, Union office, etc.).

National representatives may not enter the Agency's premises to meet with any non-bargaining unit employee(s) without prior notice and approval from the LMRS. Also, under no circumstances may a national representative enter any worksite for any reason without prior notice and approval of the LMRS. (The LMRS must normally receive at least 1 workday advance notice from the Local for any of the above requests which require notice.)

ARTICLE 5 — OFFICIAL TIME

5.1 Purpose. The Employer and Local 2782 recognize that official time, as described below, spent by Union officials conducting Union-Management business contributes to the development of orderly and constructive labor-management relations.

5.2 Amount of Official Time.

- a. The Employer agrees to grant official time to the following recognized Union officials consistent with Article 5.3, 5.4, 5.5, 5.6, and the following table:

President	- 60 hours per pay period [p.p.p.]
2 Chief Stewards	- 60 hours p.p.p. each
3 Senior Stewards	- 20 hours p.p.p. each
2 Secretaries	- Total pool of 20 hours p.p.p.
9 Stewards	- Total pool of 100 hours p.p.p.

b. Unused official time may not be accumulated or borrowed.

5.3 Arranging for Official Time. Each time a Union representative uses official time under the Agreement, he/she must receive advanced concurrence for the use of official time from his/her immediate supervisor or designee. When the Union representative returns to the worksite after using official time under this Article, he/she must inform the supervisor of the amount of time used. Work requirements take precedence in the scheduling and use of time. The Union official may establish a regular schedule for time used under section 5.2 with the approval of the supervisor.

5.4 Use of Official Time. Official time as provided to the Union in Article 5.2 shall be used for all legitimate representational functions except for those listed in Article 5.5. Examples of legitimate representation functions are as follows:

- a. to investigate, prepare and present an employee grievance through Step (3) of the grievance procedure;
- b. to investigate, prepare and present a Union grievance through Step (3) of the grievance procedure;
- c. to prepare for any employee, Union or management grievance at the arbitration stage;
- d. to review proposed actions of the Employer under Article 2.4 and to attend any requested interpretive meeting;
- e. to investigate, prepare and meet with the Employer on any ULP filed by the Union pursuant to 5 U.S.C. 7116 and Article 28;

- f. to investigate and prepare a petition for unit clarification under 5 U.S.C. Chapter 71;
- g. to prepare for an impasse proceeding;
- h. time spent at an orientation session in accordance with Article 14.3.

5.5 Exceptions. The following activities are excluded from the official time allocation and use specified in Article 5.2 and 5.4 respectively for recognized Union representative(s). The Employer will grant reasonable official time to those officials mentioned in Article 5.2 for labor-management activities authorized under 5 U.S.C. 71, such as:

- a. time spent for negotiations pursuant to Articles 2 and 7;
- b. time required at arbitration, Impasse and Federal Labor Relations Authority (FLRA) hearings (including travel to and from);
- c. labor-management meetings, subject to Article 10;
- d. to investigate and meet with the Employer on any ULP filed by the Employer pursuant to 5 U.S.C. 7116 and Article 28;
- e. to investigate and respond to a management grievance at Step (3) of the grievance procedure;
- f. to attend formal meetings and Weingarten meetings as defined in 5 U.S.C. 7114a(2)(A) and (B) and in Article 4.1.

Employees will be responsible for notifying supervisors of the purpose for the time, that is, for paragraphs a. through f., or for some other authorized reason. Employees who are not identified in Article 5.2 may be used as appropriate in the above activities subject to the provisions of this Agreement.

- 5.6 Change in Designation of Officers and Stewards. On April 1 of each year the Union will provide the LMRS a list of its officers and stewards. For official time purposes the Union may not designate substitutes or changes to the list when the duration of the substitution or change is less than 3 workdays, unless the substitute is presently a Union official identified in Article 5.2.
- 5.7 Recording Official Time. The officer or steward's supervisor will record official time use each Monday for the previous week on the Records of Official Time (ROT's) provided by the Employer. The officer or steward will review the ROT to ensure that it is accurate and return it to the supervisor within 24 hours.
- 5.8 Union Obligation. The Union is responsible for training its officers and stewards on legitimate use of official time under the terms of this Agreement and on the provisions for its use.

Officers and stewards who must enter a work area in the exercise of legitimate representational duties under this contract must request and receive permission from the supervisor of that work area in advance.

ARTICLE 6 — EMPLOYER RIGHTS AND OBLIGATIONS

- 6.1 Management Rights. Nothing in this Agreement shall affect the authority of any management official
- a. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
 - b. in accordance with applicable laws
 1. to hire, assign, direct, layoff and retain employees in the Agency, or to suspend, remove, reduce in grade or pay or take other disciplinary action against such employees;
 2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations are to be conducted;

3. with respect to filling positions, to make selections for appointments from:
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and
 4. to take whatever actions may be necessary to carry out the Agency's mission during emergencies.
- c. Nothing in this Agreement shall preclude the Employer and the Union from negotiating
1. at the election of the Agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
 2. procedures which management officials will observe in exercising any authority under section 6.1; or
 3. appropriate arrangements for employees adversely affected by the exercise of any authority under section 6.1 by such management officials.

ARTICLE 7 — FUTURE NEGOTIATIONS

- 7.1 Application. This Article applies solely to negotiations conducted pursuant to Article 2.2.
- 7.2 Basic Guidelines. Each party will designate not more than 5 persons (including a chief negotiator) to serve as members of its negotiating team. The Union will provide its designated team members to management (LMRS) in accordance with Article 7.6. Management will designate its team members in writing to the Union at least 5 workdays prior to the beginning of negotiations. Either party may alter its team upon 24 hours notice or as soon as possible for reasons beyond its control. The chief negotiator for each team, acting as the spokesperson, will conduct that team's negotiations. Other members of a team may pass notes to their spokesperson and may speak when authorized by their spokesperson.

son. Dates, times, and places of meetings will be arranged by mutual agreement as will changes in scheduling. However, each negotiating session will be of at least 4 hours duration unless changed by mutual agreement. While each party may recess to caucus as it deems necessary, each such caucus will not normally exceed 15 minutes in length. A general 15-minute recess may be had during each negotiating session, and the time spent in such recess, as well as the time spent in caucus, shall be considered as time spent in negotiation.

- 7.3 Proposals. The initiating party shall submit its proposals, in writing, to the other party at least 40 days prior to the scheduled commencement of negotiations. Following receipt of such proposals, the other party shall have no more than 20 days in which to submit, also in writing, any counter proposals or new matter. No new matter will be admitted for negotiation from either party following the first 12 hours of negotiations; either party may at any time submit counter proposals to or modifications of proposals previously admitted. Either party may also request that any or all counter proposals or modifications of proposals be reduced to writing at the time submitted.
- 7.4 Signifying Agreement. When agreement is reached upon any proposal or any part of a proposal, the two chief negotiators shall signify such agreement, either through their initials or through some other device, on the face of the proposal. Such signification shall not, however, preclude the parties from mutually agreeing to reconsider or revise previously approved proposals at any time prior to the formal termination of negotiations. The parties further agree that no information concerning negotiations or any proposal presented in connection with negotiations will be disseminated during the first 40 hours of negotiation.
- 7.5 Impasses. When the parties reach an impasse upon a particular matter, that matter shall be temporarily set aside. After all other negotiable matters on which agreement can be reached have been disposed of, the parties shall once more attempt to resolve the impasse. If either party then wishes to seek the assistance of the Federal Mediation and Conciliation Service (FMCS), it may invoke mediation after first notifying the other party in writing. If the efforts of the FMCS fail to resolve an impasse, either party may re-

quest the Federal Service Impasses Panel to consider the matter pursuant to the Panel's rules and regulations.

- 7.6 Preparation for Negotiations. Each member of the Union's bargaining team shall be granted 40 hours official time to draft and review proposals and to perform other functions related to negotiations. The Employer will grant this time only after the Union has designated in writing its chief negotiator and team to the LMRS. For each 8 hours of actual negotiations, members of the Union's negotiating team will be granted 4 further hours of official time to engage in preparation for bargaining. This section shall apply in the case of negotiations conducted by full bargaining teams.
- 7.7 Official Time. The number of employees for whom official time is authorized under this section shall not exceed 5 in any one session. The use of official time is subject to the appropriate provisions of Article 5.
- 7.8 Effective Date. Any substantive agreement reached shall become effective following ratification by the Union's general membership and approval by the Agency head. The procedures shall be as follows:
- a. The Union agrees to present the agreement to its membership for ratification within 30 days of the tentative agreement by the parties.
 - b. The Union agrees to notify Management of the outcome of ratification within 3 days. If the membership does not ratify the contract, the Union agrees to specify those portions of the proposed agreement which were disapproved. The parties agree that they will return to the table within 5 days of notification to negotiate only those specific portions that the membership did not ratify. The Union will finalize the ratification process on the renegotiated portions within 10 days.
 - c. Following receipt of notice of Union ratification, both parties will sign the agreement and the Employer within 5 workdays will submit the agreement to the Agency head for a 30-day review.

- d. The collective bargaining agreement becomes effective and binding on both the Agency and the Union upon approval by the Agency head or, in the absence of either approval or disapproval within the 30-day period for Agency-head review, on the 31st day.
- e. If the Agency head disapproves any portion of the Agreement, the parties will meet within 15 days to reopen negotiations on all affected provisions. Implementation of the remaining provisions will not be delayed.

ARTICLE 8 — GRIEVANCE PROCEDURE

- 8.1 Purpose. This Article provides a mutually satisfactory method for resolving employee, Union, and management grievances.
- 8.2 Definitions. Except for matters specifically excluded by section 8.3, a grievance is any complaint:
 - a. by any employee concerning any matter relating to the employment of the employee;
 - b. by the Union concerning any matter relating to the employment of any employee; or
 - c. by an employee, the Union, or the Employer concerning the effect of interpretation, or a claim of breach of this Agreement, or any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.
- 8.3 Exclusions. The following matters are specifically excluded from the grievance and arbitration procedures contained in this Article:
 - a. any claimed violation of Subchapter III, Chapter 73, Title 5 U.S.C. (relating to prohibited political activities);
 - b. retirement, life insurance, or health insurance;
 - c. a suspension or removal under 5 U.S.C. 7532 (relating to national security);

- d. any examination, certification, or appointment;
 - e. the classification of any position which does not result in the reduction in grade or pay of an employee;
 - f. the nonadoption of a suggestion;
 - g. the nonreceipt of a nonmandatory performance award (as specified in the Article covering the General Workforce Appraisal System), or other individual or group award under the Employer's incentive awards program;
 - h. the separation of a temporary (i.e., noncareer, noncareer-conditional) employee during the first year of the appointment for other than disciplinary reasons;
 - i. reduction-in-force actions.
- 8.4 Use. The negotiated grievance procedure shall be the only method used for resolving employee grievances, except for:
- a. discrimination because of race, color, religion, sex, national origin, age or handicapping condition;
 - b. removal or reduction in grade based on unacceptable performance; and
 - c. adverse action (i.e., removal, suspension for more than 14 days, reduction in grade, reduction in pay, and furlough of 30 days or less).

At the discretion of the employee, these matters may be raised under this Article or under certain statutory appeal procedures but not both. Except for EEO matters the employee will be deemed to have exercised this option when the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of this Article, whichever event occurs first. In EEO matters, the employee will be deemed to have exercised this option when the employee timely files a formal complaint with the appropriate office or files

a grievance in writing in accordance with the provisions of this Article, whichever event occurs first.

Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board or the Equal Employment Opportunity Commission to review a final decision of discrimination as provided in Section 7121 of the Act.

- 8.5 Independent Action. Any unit employee(s) may present a grievance under this Article without Union representation, as long as any grievance adjustment is consistent with the terms of this Agreement. In such situations, the Union will be given the opportunity to be present during all proceedings and will be provided a copy of any grievance-related correspondence.
- 8.6 Representation. At any stage of a grievance, a unit employee may request and obtain a representative from the Union. The employee shall designate in writing the name of the representative and the effective date of the designation. This designation will remain in effect throughout the processing of the grievance unless the grievant or the Union otherwise revokes it in writing. A representative shall not be (1) a management official (2) a supervisor, (3) a confidential employee, (4) an employee engaged in personnel work other than in a purely clerical capacity.

When the grievant has a Union representative, all grievance related correspondence will be addressed to the designated representative with a copy to the grievant. Otherwise the Employer will address all correspondence to the grievant. Employees shall remain unimpeded and free from restraint, interference, coercion, discrimination or reprisal in pursuing a grievance or presenting evidence or testimony under this procedure. The employer reserves the right to designate a fourth person to be present for grievance meetings.

- 8.7 Official Time. A unit employee is entitled to a reasonable amount of official time to process and present a grievance under the procedures in this Article. The grievant must request and receive approval for the use of such time from the supervisor in advance. A Union representative's time will be governed by the official time provisions in Article 5.

8.8 Grievance Procedure

a. General Information

Grievances will normally begin at Step (1), except for the following:

1. An employee grieving an accomplished reprimand, a suspension of 14 days or less, or adverse action must begin the procedure at Step (3) of the grievance procedure.
2. When the division or office chief is the lowest level management official with authority to grant the relief sought, the grievance must begin at Step (2).
3. Employer and Union grievances begin at Step (3).

Grievances filed under the above exceptions must be filed at the appropriate step within 25 days of the grieved instance or event, unless the grievant was unaware of the situation. In the latter case, the grievant/representative must initiate proceedings within 25 days of the date the grievant became, or should have become, aware of the aggrieved event.

b. The Grievance Process

Step (1)

The grievant/representative must begin proceedings under this section within 25 days of the grieved instance or event, unless the grievant was unaware of the situation. In the latter case, the grievant/representative must initiate proceedings within 25 days of the date the grievant became, or should have become, aware of being aggrieved. The grievant/representative shall present a grievance at this step to the lowest level management official with authority to grant the relief sought, normally the employee's immediate supervisor. To initiate a grievance, the grievant/representative must timely contact the deciding official and arrange for a meeting normally within 5 days thereafter. The deciding official will render a decision within 10 workdays from the date of the grievance meeting.

Step (2)

If Step (1) does not result in a mutually acceptable resolution, the grievant/representative may proceed to Step (2). At this step, the grievant/representative must contact the appropriate office or division chief, or designee, within 10 days of receipt of the decision at the previous step to arrange for a meeting. The grievant/representative must submit to the deciding official a completed grievance form at least 1 workday in advance of the scheduled meeting. The deciding official will render a decision within 10 workdays from the date of the grievance meeting.

Step (3)

If Step (2) does not result in a mutually acceptable resolution, the grievant/representative may proceed to Step (3). At this step, the grievant/representative must submit a written grievance form to the Chief, Personnel Division within 5 workdays of the final decision in Step (2). The Chief, Personnel Division will refer the grievance within 5 workdays of receiving the grievance to either:

- a. the appropriate Associate Director or other management representative above the division level for employee or Union grievances; or
- b. the union president or designee for management grievance. The written grievance must contain at least the following information:
 1. the specific action, omission, or condition causing the grievance and/or the provision of this Agreement, law or regulation allegedly violated, misinterpreted or misapplied, if any;
 2. the remedy sought;
 3. the grievant's signature on the Step (3) written grievance form;

4. the name of the grievant's representative at the Step (3) level, if applicable.

The Chief, Personnel Division will return an improperly filed grievance to the grievant/representative with a statement of its deficiencies. The grievant/representative will have 5 additional days from receipt of the notice of deficiency to refile the grievance with the deficiencies corrected.

The official or designee receiving the written grievance from the Chief, Personnel Division shall investigate the complaint, meet with the grievant/representative, and give a written response to the grievant/representative no later than 30 days after referral.

Step (4)

If Step (3) does not result in a mutually acceptable resolution the Union or the Employer may invoke arbitration within 30 days of receipt of the decision at Step (3).

The grievant/representative may advance to the next step in the grievance process if the deciding party fails to meet this Article's time limits.

The time limits for any step of the grievance procedure may be extended by mutual agreement of the parties.

- 8.9 Nullification. When an employee dies, resigns, or is otherwise separated from the unit before a decision is reached on his or her grievance, the grievance shall be nullified unless the issue involves a question of back pay.

A grievance is also nullified when:

1. the grievant fails to meet time limits in this Article; or
2. the grievant or his/her representative fails to appear, without cause, for scheduled meetings or hearings.

8.10 Outstanding Grievances. The parties agree that any outstanding grievances which were initiated before the effective date of this Agreement will be processed under the terms of the 1984 Agreement. "Initiated" means that the grievant/representative timely filed at the appropriate step of the process under the 1984 Agreement.

If the event giving rise to a grievance occurs before the effective date of this agreement, but the grievant/representative timely files the grievance after the effective data of this Agreement, the terms and conditions of this agreement will control the grievance.

This section should not be interpreted as an extension/waiver of the time limits for filing under either agreement.

8.11 Meetings Between Management and Grievant. Management agrees that it will not meet with a grievant regarding his/her grievance without the representative of record being present.

8.12 Declaration of Non-Grievability, Non-Arbitrability. If the Agency considers a grievance non-grievable or non-arbitrable, it shall so declare to the grievant/representative in its Step 2 reply. Failure to do so, however, will not preclude the Agency from raising the issue at a later time. If the Agency decides to raise the issue after rendering a Step 3 decision, but before an arbitration hearing, the Agency will inform the Union of its intent as far in advance of the arbitration hearing as possible.

ARTICLE 9 — ARBITRATION

9.1 Binding Arbitration. Arbitration is provided as a means of obtaining the services of a third party, when necessary, to assist in the resolution of grievances under Article 8.

9.2 Invoking Arbitration. Either party (Employer or Union) to this Agreement may invoke binding arbitration as the final step of the grievance procedure in Article 8 within 30 calendar days following receipt of a decision under Step (3) of the grievance procedure. The party invoking arbitration shall submit a timely written notice to the other party.

The arbitrator will decide any question of arbitrability as a threshold issue.

- 9.3 Selecting the Arbitrator. The parties will establish jointly a panel of arbitrators who will hear all arbitration cases. They will select panel members as follows:
- a. Each party will submit to the other a list of 10 qualified candidates' names, selected from appropriate, recognized sources (such as, but not limited to, the Federal Mediation and Conciliation Service [FMCS], and the American Arbitration Association [AAA]. Before submitting the names, each party is responsible for making a written inquiry to each candidate regarding the arbitrator's interest and availability for serving on the panel. Based on the above written inquiry, the parties agree to submit the names of only interested available candidates. Also, the parties agree that, in order to reduce costs, they will submit only names of candidates living in the Washington, D.C. metropolitan commuting area.
 - b. From the list of 20 candidates the parties will select 6 panel members by alternately striking single names from the list until 6 names remain.
 - c. The panel will serve for the duration of this Agreement unless both parties agree to alter the membership.
 - d. Replacement for panel members before their terms are complete will be selected from the original list of 20 (Step b) using the alternate striking method until 1 name remains. (The parties will flip a coin to see which strikes first.)

9.4 Scheduling Arbitrations.

- a. The names of the 6 panel members selected according to section 9.3 will be listed in alphabetical order by last name. If more than one arbitrator has the same last name, the first name controls.
- b. Cases will be scheduled in the order in which the arbitration procedure was invoked, (first in, first out) unless the parties

mutually agree otherwise and except for removals which automatically take priority.

- c. Assignment of cases to arbitrators will be done on a rotational basis from the beginning of the alphabet to the end of the alphabet.
- d. The parties will meet within 15 workdays of the invocation of arbitration to reach mutually agreeable dates for the arbitration hearing. The parties will schedule the dates for hearing within 60 days of this meeting if possible. Removals take precedence and will be scheduled within 60 days of the meeting mentioned above. If other non-removal actions are scheduled such that they interfere with the scheduling of any removal actions, the parties agree to cancel to a later date these arbitrations to allow scheduling of the removal actions within 60 days. If more than one removal action is pending, the parties agree to schedule them as soon as possible.
- e. The party invoking arbitration will contact the appropriate arbitrator on the list to schedule a hearing date after the meeting in d. above.
- f. If the appropriate arbitrator is unavailable for any of the dates agreed upon in d. above, the next panel member in rotation will be contacted. This process will continue until an arbitration is scheduled. (An arbitrator will be considered unavailable if he/she is unable to schedule a hearing date on any of the dates agreed upon in d. above.) The unavailable arbitrator(s) will not be scheduled again until reached on the regular rotation.

9.5 Arbitration Proceedings. The Employer and the Union shall attempt a written agreement of the precise issue(s) to be decided and shall submit the agreement to the arbitrator. If the parties cannot agree on the issue(s) to be decided, each shall write its own version and submit it to the arbitrator. The appealing party shall normally include in its statement:

- a. the alleged violated section(s) of this Agreement or of applicable law, rule, or regulations, if applicable; or

- b. a statement of the issues if a. is not applicable; and
- c. the expected remedy.

The arbitrator will decide the pertinent issues.

The parties shall request that the arbitrator conduct a hearing, or, by mutual consent, decide the issue(s) based on submission of written briefs, documentary evidence, or joint stipulation. The arbitrator will also rule on the issue of the prevailing party in accordance with Article 9.9.

Either party may submit a written brief and/or other documentary evidence to the arbitrator with one copy to the other party. Except in extraordinary circumstances, hearings will be held on the Employer's premises during regular day-shift hours of the basic work week.

Normally at least 5 workdays before the hearing date, each party agrees to give the other a written list of any witnesses it expects to call. Each party is responsible for notifying its witnesses of the date, time, and place for the arbitration. Witnesses will be granted official time during normal duty hours to testify at the hearing in accordance with the terms of this Agreement.

At either or both parties' request a stenographic account, recorded by a certified court reporter or stenographer, shall be made of any hearing. If only one party wishes such an account, that party will bear the total cost of the court reporter and the transcript notwithstanding the provisions of Article 9.9.

- 9.6 Arbitrator's Decision. When making a decision/award, the arbitrator shall be consistent with the terms of this Agreement, or any appropriate law, rule, or regulation.

The parties will ask the arbitrator to make a decision/award as quickly as possible but no later than 30 days after receipt of the parties' briefs. The arbitrator will direct the decision and award to the parties' representatives.

- 9.7 Exceptions. Either party (Employer or Union) may file exceptions to an arbitrator's decision/award according to prescribed law, rule, and/or regulations.
- 9.8 Official Time for Arbitration. An Agency employee whose presence is required in an arbitration hearing will be authorized of-
ficial time for the actual amount of time to participate in an arbi-
tration hearing, plus 1 hour of official time for preparation.

The Union may have the same number of representatives on offi-
cial time as management. However, if the Union designates an at-
torney or other non-Census Bureau employee to represent the
grievant, the Union, or both, that person counts as one of the
Union representatives even though the person is not entitled to of-
ficial time.

- 9.9 Cost of Arbitration. The loser will bear the following arbitration costs:
- a. arbitrator's fees and expenses;
 - b. certified court reporter and transcripts (only if both parties agree that they wish to have this service or if the arbitrator wishes to have it.)

When there is a split decision, the parties will share equally the above mentioned costs. In the decision, the arbitrator will identify the prevailing party or a split decision.

- 9.10 Special Cases. The parties agree that for certain, single issue grievances mentioned below, they will follow the hearing proce-
dures in this section rather than those mentioned elsewhere in
this Article.

- a. Included Subjects.

Single issue grievances involving the following topics are
subject to the abbreviated hearing procedure described below:

1. oral admonishments confirmed in writing

2. written reprimands
3. access to bulletin boards and literature distribution
4. denial of official time to Union representatives
5. space allocations
6. reorganizations

If there is mutual agreement, the parties may use this abbreviated procedure for other issues.

- b. **Selecting the Arbitrator and Scheduling the Arbitration.** The arbitrator will be selected from the panel established in Article 9.3 The scheduling will follow the procedures in Article 9.4.
- c. **Proceedings.**
 1. Either party, at its own expense, may have a court reporter present to produce a transcript.
 2. Neither party may submit written opening or closing arguments.
 3. Either party may, at its option, submit a brief of not more than 3 pages before the close of the hearing.
- d. **Arbitrator's Decision.** The Arbitrator will provide a bench decision. Such awards will have no precedential value.

Except for the items above, the provisions in the remainder of this Article apply, to the extent they do not conflict with this section.

ARTICLE 10 — UNION-LABOR MANAGEMENT RELATIONS STAFF MEETINGS

- 10.1 **Purpose.** The parties agree that it is mutually beneficial to meet on a periodic basis to discuss matters of general interest.

- 10.2 Frequency and Scope. The Union and the LMRS may arrange to meet monthly, or on an ad hoc basis. The parties will normally exchange their proposed agendas at least 3 workdays in advance of any scheduled meeting, and as soon as possible for meetings on an ad hoc basis. Such meetings will be devoted to matters of general interest and not to individual grievances.
- 10.3 Participation. The parties agree that each may have present at these meetings no more than five representatives. Each party will normally notify the other at least 5 workdays in advance of the names of the attendees. The Union attendees will be granted official time to attend the meeting in accordance with Article 5.
- 10.4 Minutes of Meetings. No official minutes of the proceedings of any meeting will be kept unless previously agreed to by both parties. However, either party may make and retain such records or notes as it desires for its own use. In any event, no record, either official or unofficial, of the meeting will be disseminated without the consent of both parties.
- 10.5 Agency Level Consultation. The parties also agree to establish a structure for meaningful consultation and communication at the Agency level, while continuing any such ongoing activity. These meetings shall be at least semi annually.

ARTICLE 11— DUES WITHHOLDING

- 11.1 Basic Agreement. The Employer agrees to deduct regular and periodic Union dues from the pay of unit members who have made a voluntary allotment for that purpose, provided that the authorizing employee's regular earnings are sufficient, after all other legal deductions have been made, to cover the full amount of the dues withholding allotment.
- 11.2 Authorization. Each unit employee wishing to have Union dues withheld from his or her pay shall secure form SF-1187 ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues") from the Union. When properly executed by both the employee and the Union, the original form shall be transmitted to the LMRS for verification of the employee's eligibility for dues withholding. After verification, the

LMRS will forward the form (normally within 5 workdays) to the appropriate office for processing. If an employee requests revocation of an SF-1187 before the Employer has entered it into the payroll system, the Employer will honor this request and will not further process the original request to withhold dues deduction. The employee must submit such request for revocation to the LMRS in writing.

- 11.3 Amount of Withholding. The amount of regular dues to be withheld for each unit member shall be certified by the Union on the unit member's SF-1187 at the time allotment is requested. The rate of withholding may be changed by the Union no more than twice during any contract year. The LMRS will notify the payroll office promptly after written notification from the Union of such change(s). The Agency agrees to change the dues allotment for members of AFGE, Local 2782 when the member's grade changes so as to place him/her in different dues group.
- 11.4 Termination of Allotment. The Employer shall terminate a unit member's allotment.
- a. as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn from the Union;
 - b. when this Agreement ceases to be applicable to the employee;
 - c. when the employee is suspended or expelled from membership in the Union. (The Union is responsible for providing written notification to the LMRS when this situation occurs.);
 - d. as of the beginning of the first full pay period following the next anniversary date of the member's original allotment, following the Employer's receipt of the member's written revocation.

An employee wishing to terminate a dues allotment under this provision must submit a written statement of the desire to do so to the LMRS. This written statement may be in a memorandum format or submitted on form SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues, which the employee may obtain from the LMRS.

If an employee timely submits a revocation of dues allotment under this section but, through administrative error, the Employer fails to process the request by the appropriate anniversary date, the Employer will process the employee's request as soon as the error is discovered.

- 11.5 Current Records. The Employer will provide the Union biweekly lists of:
- a. employees with dues allotments including individual anniversary dates and amount of dues allotment; and
 - b. requests for allotment cancellation.
- 11.6 Dues Structure. The Employer agrees to make provision for and implement a multiple dues structure of up to 6 levels in accordance with Article 11.3 above.
- 11.7 Erroneous Dues Remittance. When, during the life of this Agreement, the Employer erroneously remits payment of dues to the Union, the Union agrees to reimburse the Employer in the amount of the overpayment within 6 months of the Employer notification of the error.

In no case will the Union be obligated to reimburse the Employer any amount in excess of 6 months overpayment.

ARTICLE 12 — EQUAL EMPLOYMENT OPPORTUNITY

- 12.1 Basic Agreement. The Employer will provide equal opportunity in employment for all persons, prohibit discrimination because of age, race, color, religion, sex, national origin, or handicap, and promote the full realization of equal opportunity through a continuing affirmative action program.
- 12.2 Utilization of Skills. The Employer shall provide the maximum feasible opportunity for employees to enhance their skills so that they may perform at their highest potential and compete for advancement in accordance with their abilities.

12.3 EEO Complaints. Neither party shall coerce, restrain, interfere with, or take reprisal against any employee in the processing or presentation of his or her discrimination complaint. The parties further agree that a unit employee, in pursuing his or her complaint, may proceed without representation, or may designate a representative of the complainant's own choosing. Any unit employee seeking to file a complaint is herein advised of the right to a representative of his or her choice. An employee representative chosen by the complainant is entitled to a reasonable amount of official time only for such purposes as provided by the appropriate EEO laws, rules, and regulations.

12.4 Reasonable Accommodation. Consistent with applicable law and regulation, the Employer agrees to consider reasonable accommodation to the known physical or mental limitations of qualified handicapped employees. Such accommodation may include, but is not limited to:

- a. job restructuring;
- b. making facilities readily accessible to and usable by handicapped persons;
- c. modifying work schedules;
- d. acquisition or modification of equipment or devices;
- e. appropriate adjustment or modification of examinations;
- f. provision of readers and interpreters.

In determining what accommodation, if any, can be made, the Employer will consider the views of the handicapped individual involved and the provision of a needs assessment if appropriate.

12.5 Religious Beliefs. The Employer will make reasonable accommodation to an employee's religious practices and beliefs.

12.6 Orientation. Orientation kits for all new employees will include material concerning the Bureau's Handicapped Employment Program and identifying sources of information and assistance for

handicapped employees (e.g., the Selective Placement Coordinator).

- 12.7 Interpreters. To assist hearing impaired employees, the Employer will establish procedures for providing sign language interpreting services for use in the following work-related situations:
- a. orientation of new employees;
 - b. promotion interviews;
 - c. job training classes (both informal and formal);
 - d. work-related meetings; and
 - e. formal grievances, arbitration, investigatory or disciplinary meetings.

When employees serve as interpreters in the above situations, they will not be charged leave.

- 12.8 Qualification Requirements. In determining whether an employee is physically and/or mentally able to perform the duties of a position, the Employer will be guided by applicable laws, rules, and regulations.
- 12.9 Affirmative Action Information. The Union will be provided with 2 copies of the Bureau's annual Affirmative Action Plan (AAP) as soon as it becomes available. Other reasonably available statistical information concerning the AAP which is not considered privileged by the Employer will be provided to the Union upon request to the LMRS.
- 12.10 Sexual Harassment. The Employer and the Union recognize that sexual harassment undermines the integrity of the employment relationship and may adversely affect employee opportunity. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Therefore, the parties mutually agree to work to identify and to eliminate such occurrences.

The parties agree to apply the definitions and criteria for sexual harassment as defined in appropriate regulation which currently define sexual harassment as follows: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

- 12.11 Management-Union Support. The parties agree at all levels to support and abide by the policies and programs aimed at ensuring Equal Employment Opportunity.
- 12.12 Decision. When the Employer plans to implement a decision which impacts on personnel policies, practices or the working conditions of other employees in the unit, the Union will be given the opportunity to negotiate such changes.
- 12.13 Adverse Impact. The Employer agrees to develop an EEO policy that encourages affirmative action throughout the Census Bureau.
- 12.14 Affirmative Action Plans and Programs.
 - a. The Employer shall develop a results-oriented program for affirmative action that is intended to resolve problems of conspicuous absence or manifest imbalance of members of minority groups, women, and the handicapped. The affirmative action plan will be developed in accordance with EEOC, Department of Commerce's and OPM guidelines and may include:
 1. A workforce analysis;
 2. An under representation analysis;
 3. Goals and timetables to remedy under representation;
 4. An EEO policy statement; and

5. An upward mobility program.

- b. The Employer will notify the Union in the early development stages of the affirmative action planning process. The Union may submit its comments and any recommended goals, objectives within 30 days of the notice. Management will take the comments into consideration when preparing the affirmative action plan.
- c. Employees may review the affirmative action plan in the EEO office.

12.15 EEO Advisory Committee. The Employer agrees to have an EEO Advisory Committee. The Committee shall be composed of 5 persons designated by each party and 2 substitutes. Substitutes will attend only when a member is missing. The Chair will rotate annually between the parties. The Committee's function shall be to:

- a. consider the goals, objectives and performance of the Employer's EEO program, and specific components thereof;
- b. consider and recommend to the Employer any studies for which it believes task forces should be used;
- c. provide advice and recommendations for improvement to the Employer on matters related to EEO within Census, including program publicity and dissemination of information to handicapped employees;
- d. identify architectural, attitudinal, procedural or other barriers to employment of the handicapped;
- e. provide advice on the implementation of laws and regulations regarding employment of the handicapped;
- f. make recommendations in writing to the Associate Director for Management Services and signed by all committee members.

The Committee shall meet monthly or as it deems necessary to consider specific goals, targets or objectives established by the Employer and referred to the Committee. Members of the Committee may use reasonable amounts of official time for legitimate work of the Committee.

The Committee may request clerical assistance from the EEO office.

The Employer will furnish the Committee with available statistical information as is necessary to carry out its function.

Both parties will submit names of its committee members within 30 days of signing the contract and annually thereafter. The Union will submit the names of its members to the LMRS. Management will submit its list to the Union president.

ARTICLE 13 — FACILITIES AND SERVICES

13.1 Bulletin Boards.

- a. The Union will be provided 30 existing bulletin boards of approximately the same size with receptacles for distribution and receipt of communications with unit employees. The Union agrees to maintain the boards in a neat manner and will be solely responsible for the content of all posted material and for assuring that no such material contains assertions for which prior inquiry could have suggested no reasonable basis in truth.
- b. The Union will retain 18 of its current boards. The location of the remaining 12 boards will be determined from among existing boards by mutual agreement of the parties. In determining the location of the 12 boards, if a current or future outlying building (i.e., other than FB-3 or FB-4) does not have a Union board or other existing board, the Employer agrees to install a Union board.

- 13.2 (a) Distribution. The Employer agrees to allow the Union use of the house mail for no more than 4 mailings per month. The Union is responsible for properly packaging all materials so that the Employer can mail all materials without further preparation. The Em-

ployer shall furnish to the Union updated labels for this packaging. When a problem affecting a specific work area requires communication with the employees of that area exclusively such that distribution of materials to the workforce at large would be inappropriate, the Union may distribute literature at the desks of unit employees before or after work or during lunch time.

(b) Interoffice Mail. The Employer agrees to allow the Union to continue reasonable use of the interoffice mail system for such things as letters to supervisors or individuals involved in a grievance and communications between Union officers and stewards and occasionally to Union members.

- 13.3 Office Space. The Employer will continue to provide the Union, without charge, its current office across from the Sunny Spot.

Union activities will not extend into the corridor or adjacent areas leading to the cafeteria. Exceptions to the latter would include legitimate activities covered elsewhere in this Agreement such as investigation of complaints about space or other facility problems.

In addition the Union may store reasonable numbers of boxes of Union files in space provided by the Agency.

- 13.4 Union Meetings. The Union's general membership meetings are between 12:00 and 1:00 p.m. on the third Thursday of each month. The Employer agrees to provide the Union Room 254/256 as long as the space remains meeting space for its monthly general membership meetings. If the space becomes unavailable the Employer will provide equivalent space, with first emphasis on equivalent space in FB 3, and the second emphasis on equivalent space in FB 4.

For special purposes, management agrees to provide appropriate space, as available, provided the Union gives 5 days notice. First emphasis for available space will be in FB 3 and second emphasis will be in FB 4.

- 13.5 Office Furniture. The Union may retain the current Union office furniture provided by the Employer for the life of this contract. The Employer agrees to replace or repair any structurally damaged

or broken furniture. This replacement/repair will occur once only during the life of this agreement.

- 13.6 Telephone and Telephone Listing. The Employer will continue to provide the Union office with 4 telephones and 3 lines. In addition, the Employer will submit the Union office telephone number for inclusion in the Department of Commerce telephone directory. These phones are intended for Union business in place of regular worksite phones, except to meet special needs such as occasional arrangements for meetings or occasional short discussions between officials and employees. The Union will pay for any toll calls, either local or long distance, made from the Union office phones which are not made in its representational capacity.
- 13.7 Photocopying.
- a. The Employer will allow the Union to use its photocopying facilities without charge for reasonable numbers of copies of correspondence directed to management or directly associated with a grievance. This copying may be done on official time.
 - b. For all other copying, the Union must submit the job to the Chief of the branch responsible for the photocopy center or his/her designee. Upon completion, the Union will be notified that the material is ready for pick-up. The Employer will bill the Union for all copying (paper and labor) done under the provisions of this section.
- 13.8 Word Processor. The Employer will provide the Union with two working word processors and printers. The Union is fully responsible for maintaining the word processing equipment. Employees and the Union are not authorized to use Agency computers, word processing equipment, or typewriters for any union business, including preparation of grievances, either pursuant to the Union's role as exclusive representative or for internal Union business.
- 13.9 Parking. The Employer agrees to provide three reserved parking spaces for the Union. These spaces will be in front, in back, or adjacent to, FB 3.
- 13.10 Listing of Unit Employees. The Employer agrees to provide the Union, on a quarterly basis, an alphabetical listing of all employees

in the unit by divisions showing their names, position titles, grades, and salaries. In addition, the Employer will provide a list of excluded employees by division showing their names, position titles and grades.

ARTICLE 14 — MISCELLANEOUS

14.1 Reference Materials. The Union will have access to the following reference materials in the Census Library:

- a. The Census Administrative Manual;
- b. The Department of Commerce Administrative Orders;
- c. A microfiche system; and
- d. The FPM and CFR.

As far as administratively possible, these reference materials will be kept up to date.

14.2 Listings. The Employer will furnish biweekly a list of accessions, separations, and promotions within the unit.

14.3 Orientation Sessions. The Union will be given an orientation schedule and the approximate number of employees attending on the Friday before the orientation. A representative on official time may attend the session and make up to a 20-minute presentation. The Union will be allowed to distribute information packages at each session. The Union agrees to abide by the times scheduled by the Employer.

14.4 Distribution of Agreement. The Employer agrees to print and distribute copies of this Agreement to all unit employees and to furnish 300 additional copies to the Union as soon as possible. If the contract extends beyond three years, the Employer will provide 50 additional copies to the Union each year the contract is extended.

14.5 Voluntary Allotments. The Employer will provide for voluntary allotment to savings institutions or other organizations consistent with Federal regulations within NFC processing guidelines.

ARTICLE 15 — OVERTIME

15.1 Assignment of Overtime.

a. Voluntary Overtime

1. Opportunities for voluntary assignments shall normally be rotated among qualified employees who are assigned to the branch or section within the shift in which the overtime is occurring. Employees declining to work a given assignment shall be treated as "having worked" for the purposes of any subsequent rotational assignments.
2. Where the pool of qualified volunteers arrived at above is determined by the Employer to be insufficient, the Employer will expand the area of consideration for the overtime assignment to encompass qualified employees first from other shifts (if applicable) and then to the remainder of the division. Solicitation of qualified volunteers from divisions other than that in which the overtime is occurring will be accomplished, as appropriate, by:
 - (i) an all-employee memorandum;
 - (ii) contacting those employees from other divisions who are known to possess the necessary qualifications or;
 - (iii) consideration of such employees who have placed on file with the Division or Office a statement specifying their qualifications for potential overtime assignments.

The Union recognizes that this subsection (i.e., voluntary overtime) shall not be construed as establishing a precondition to the assignment of overtime under Section 15.1b below.

3. All determinations as to which employees have the qualifications to perform a particular overtime assignment under this section shall rest exclusively with the Employer. Also, the Employer retains the right to exclude from consideration for voluntary overtime, employees who have attendance problems.

b. Mandatory Overtime

1. The Employer shall determine which employees must work overtime. When practicable, employees required to perform scheduled, mandatory overtime work will be given at least 1 day's advanced notice. (This provision does not apply to nonscheduled, mandatory overtime.)
2. The Employer agrees to:
 - (i) excuse employees from overtime assignments for bona fide medical reasons, supported by documentation acceptable to the Employer; and
 - (ii) seriously consider requests for excusal based on extreme personal hardship in terms of the employee's religious beliefs, family, or civic responsibilities.
3. Where more than 25 unit employees in a particular Branch are required to work overtime, the Employer agrees to:
 - (i) advise the Union of the necessity for such a requirement; and
 - (ii) afford the Union the opportunity to provide recommendations as to how the Employer's work requirements might be accommodated with less interference with the personal lives of employees. The parties will discuss any recommendations presented by the Union, and they will receive the Employer's careful consideration.

The parties agree that the provisions of this subsection may not be so implemented as to impede or otherwise delay the timely accomplishment of the Employer's work requirements.

- 15.2 Premium Pay. Overtime pay, or compensatory time off, will be granted in accordance with either Title 5, U.S.C. or the Fair Labor Standards Act, as appropriate.
- 15.3 Assignments Possibly Involving Overtime. Any employee who anticipates that a particular work assignment cannot be ac-

completed within his or her normal tour of duty (or work week, as applicable) shall promptly notify the immediate supervisor. In all such cases, the employee will normally be advised that:

- a. no overtime is officially ordered or approved; or
- b. overtime is officially ordered or approved, and in what amount.

15.4 Travel.

- a. Employees on temporary duty assignments outside the Washington area will be compensated for:
 1. travel outside the employee's normal workday, to the extent permissible under Title 5, U.S.C. or the Fair Labor Standards Act, as applicable; and
 2. attendance at meetings outside the normal workday, to the extent officially ordered or approved in accordance with applicable regulations.
- b. To the extent possible, the Employer will schedule an employee's time away from the official duty station within the employee's regularly scheduled workweek.

When an employee must travel during non-duty hours and may not receive overtime pay by law, the official concerned shall, upon the employee's request provide the reasons for ordering travel at these hours in writing.

- c. Where the travel results from an event which could not be scheduled or controlled administratively, time spent in a travel status from the official duty station is hours of employment and thus compensable (including premium compensation, where applicable) under Title 5, U.S.C.
- d. In accordance with applicable Federal travel regulations and on request by the employee, adjustment periods will normally be granted to employees as a result of multiple time zone dislocation during international travel, unless precluded by work requirements.

15.5 Overtime Pay. The Employer agrees to pay overtime in accordance with applicable laws, rules, and regulations. Employees called into work outside of and unconnected with their basic work schedule shall be guaranteed a minimum of 2 hours overtime compensation.

ARTICLE 16 — PART-TIME

16.1 Policy. Consistent with the obligations and intentions of the Part-Time Career Employment Act of 1978, the Employer will provide part-time opportunities for employees where resources and work requirements permit.

16.2 Conversion.

a. Requests

1. If a full-time employee wishes to convert to part-time, he/she shall make a request to his/her supervisor. Such requests will be given serious consideration consistent with the policy statement in Article 16.1 above.

2. Employees who accept or convert to part-time positions have no guarantee they will be subsequently converted to full-time employment, but management agrees to consider any request to do so.

b. If a part-time employee wishes to apply for full-time positions, but remains on a part-time tour of duty, the Employer agrees to give full consideration to the part-time candidate(s).

ARTICLE 17 — WORK SCHEDULES

17.1 Coverage. All day shift employees (except those in areas where there is more than 1 shift) can select a work schedule in accordance with this Article. The parties agree and understand that the approval of any schedule under this Article will depend on work requirements. With this understanding, employees may choose one of the following:

a. a flexitime work schedule;

b. 5-4/9 work schedule.

17.2 Flexitime Schedule. A flexitime schedule consists of a 5 day, 40 hour work week. The plan operates under the following terms:

- a. Hours of work must fall between 7:00 a.m. and 6:30 p.m.
The work day is 8 1/2 hours including 30 minutes for lunch each day.
- b. Core hours are 9:30 to 11:00 a.m. and 2:00 to 3:30 p.m. All employees must be at work during core hours unless they are otherwise in an approved leave status.
- c. Employee lunch periods must fall between 11 a.m.-2:00 p.m. The lunch period will be at least 30 minutes in duration.
- d. An employee may choose a starting time between 7:00 a.m. and 9:30 a.m. subject to supervisory approval.
- e. An employee may deviate up to 30 minutes on either side of his/her starting time without prior supervisory approval, as long as all hours of work fall between 7:00 a.m. and 6 p.m. Such deviations should not be frequent.
- f. Supervisors may require employees on flexitime to sign in and out on logs provided by the Employer.

17.3 5-4/9 Schedule.

The 5-4/9 schedule allows employees to work 80 hours a pay period over 9 days during the regular work weeks and have the 10th day of the regular work weeks off. The plan operates under the following terms:

- a. Employees must select a set schedule of consecutive hours to work between 7:00 a.m. and 6:30 p.m. for each of 9 days subject to supervisory approval.
- b. The employee will work 9 1/2 hours a day for 8 days and 8 1/2 hours for one day during the pay period unless otherwise on approved leave. This includes 30 minutes for lunch.
- c. The employee will normally have his/her day off on a Monday or a Friday unless otherwise approved by the supervisor. Employees may also choose to split the day off into 2 half days during the pay period.
- d. The employee's 30 minute lunch period must fall between 11 a.m. and 2:00 p.m.

- e. The employee may deviate up to 30 minutes on either side of his/her starting time without prior supervisory approval, as long as the hours of work fall between 7:00 a.m. and 6:30 p.m. Such deviations should not be frequent.
- f. Supervisors may require employees on the 5-4/9 schedule to sign in and out on logs provided by the Employer.

17.4 Special Circumstances. Other schedules such as but not limited to weekend work and hours of work other than those mentioned in Articles 17.2 and 17.3 may be constructed by divisions to accommodate special work requirements. Such tours implemented under this provision will be voluntary on the part of the employee and governed solely by work requirements and at the discretion of management. Management will provide for such schedules as equitably as possible.

17.5 Management Rights in Scheduling Hours. In order to ensure that the Census Bureau meet its work requirements, the employer may need to limit the degree of flexibility employees have, in certain circumstances, to select from the schedules in this Article.

- a. If conflicts arise between an employee's preferred work schedule and work requirements, they will be resolved in favor of the work requirements. The decision will be made by each employee's immediate supervisor with a higher level management official concurring. Except as provided elsewhere, any decision to limit or restrict an employee's participation shall be based solely on work requirements. This includes requests for particular schedules or deviations from an approved schedule.
- b. Management may from time to time, because of work needs, require that employees report for work at certain times. Employees will be expected to adjust their hours as needed for attendance at meetings, conferences, training, etc.

17.6 Rest Periods. The Employer agrees to authorize a 15-minute break in both midmorning and midafternoon (similarly for night shift employees) during which employees are not required to work.

17.7 Shift Employees. Employees who work in areas where there is more than 1 shift may, on occasion, deviate up to 15 minutes on either side of their starting times without prior supervisory approval.

ARTICLE 18 — OCCUPATIONAL SAFETY AND HEALTH

- 18.1 Basic Agreement. The Employer will furnish places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Employer further will comply with Executive Order 12196, 29 C.F.R. 1960, and applicable standards issued or approved by the Occupational Safety and Health Administration.

The Employer agrees to post prominently in conspicuous places where bargaining unit employees are located the reporting procedures for allegations of unsafe or unhealthful conditions as provided for in the Agreement, including the name and telephone extension of the Census Safety Coordinator.

- 18.2 Union Support. The Union recognizes that the observance of safe working practices is primarily the responsibility of each employee. The Union agrees to encourage all unit employees to observe safe working practices and to report promptly to their supervisors any unsafe condition or action in accordance with Article 18.3.

No employee will be subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition or otherwise participating in the safety and health program as set forth in this Article.

- 18.3 Alleged Unsafe or Unhealthful Conditions. The parties encourage unit employees to be alert to unsafe or unhealthful conditions at the worksite. When such a condition is observed, the employee shall report it immediately to the appropriate supervisor. If the matter is not settled informally, the employee (or Union) may, within 1 workday, request an inspection by giving notice of the alleged unsafe or unhealthful condition to the Census Safety Coordinator, or designee. Notice will be in writing except in imminent danger situations.

The inspection will normally be conducted within 5 workdays of receipt, except that, in imminent danger situations, it shall be conducted as expeditiously as possible. When possible, the Union will be given reasonable notice in order to be represented at any inspection conducted pursuant to this section. The employee (or

Union) will be notified in writing of the disposition of the report, normally within 5 workdays; a copy of such disposition will be provided to the Occupational Safety and Health Committee. If dissatisfied with the disposition, the employee (or Union) may file a grievance under Article 8.9, Step 3.

When the Employer denies a grievance regarding this Article at Step 3, the Employer will, except for good cause, grant a Union request for access to the affected worksite by a representative for AFGE National or other qualified individual, for the purpose of conducting a walk-through inspection. The Employer will be afforded at least 5 workdays advance notice of the inspection and a copy of any report. Management may designate representative(s) to accompany the inspector. The Union will ensure that no disruption of operations occurs as a result of the inspection.

- 18.4 Reporting. The Employer will provide to the Union on request copies of the following:
- a. the Employer's annual statistical summary of occupational injuries and illnesses;
 - b. reports of the Safety Officer's annual inspection of worksites, and of such ad hoc inspections as may occur pursuant to section 18.3; and
 - c. on a bi-weekly basis, sanitized copies of any specific accident reports involving one or more unit employees.
- 18.5 Evacuation of Handicapped. The Employer will take all reasonable action, including an appropriate notification system for the hearing-impaired, to safeguard handicapped employees during emergencies.
- 18.6 Imminent Danger. If a bargaining unit employee reasonably perceives an assigned task as presenting immediate imminent danger of death or risk of serious bodily harm, and that there is insufficient time within which to eliminate the hazard through normal procedures, the employee may decline to perform the task, provided that the employee:

- a. in the most expeditious manner possible brings the situation to the attention of his/her supervisor or the next immediately available higher level supervisor; and
- b. performs such alternative assignments not involving the alleged imminent danger, as may be directed by the Employer.

Nothing in this section precludes the Employer from initiating disciplinary actions against the employee when appropriate.

- 18.7 AIDS Policy. Both parties agree that working in the same area as a person who has or who is rumored to have tested positive for HIV Antibodies (AIDS) is not considered placing an employee in imminent danger. An employee who refuses to work in the same area as a person who has allegedly or actually tested positive for AIDS may be disciplined in accordance with OPM regulations.
- 18.8 Health Placement-Space Renovation. Employees will make requests for temporary health placement associated with the renovation of their office space orally to the immediate supervisor. These requests must be limited to the duration of the space renovation, otherwise the terms of Article 18.9 apply. The Employer will temporarily accommodate the employee's request where reasonable under the circumstances.
- 18.9 Accommodation-Health Reasons. The terms of this Article apply when an employee is requesting an accommodation for health reasons not covered elsewhere in the contract.
 - a. An employee must present in writing to the immediate supervisor (or the deciding official in a disciplinary/adverse action situation) any request for an accommodation due to medical reasons not covered in Article 18.8. Employees are responsible for providing the Employer with acceptable medical evidence supporting their requests, such as a detailed letter from their doctor substantiating the basis for the request and, when appropriate, documenting what duties the employee can or cannot perform.
 - b. When an employee does not provide sufficient medical evidence to enable the Employer to reach a determination, the

Employer may offer at its discretion a medical examination by an independent authority. When the Employer makes such an offer the examination will be at no cost to the employee.

- c. Any medical information submitted by the employee or developed by an independent authority will be disseminated only to those officials with a need to know.
- d. The Employer will make reasonable efforts to accommodate properly supported requests to the extent that no work disruption occurs. In cases where the employee is a qualified handicapped employee, the Employer shall make reasonable accommodation unless the accommodation would impose an undue hardship on the operation of its program.
- e. If the employee does not assert the presence of a health related problem, or does not provide sufficient medical evidence (for example, by declining an examination), the Employer will be considered to have fulfilled its responsibilities to address requests for accommodation and/or to consider medical problems as mitigating deficiencies in performance or conduct.

18.10 Alcoholism and Drug Abuse Program. The Employer will continue to make available counseling, referral and treatment services to unit employees on a confidential basis, and to grant leave or official time, when appropriate, to participate in such programs. The parties encourage employees whose performance and/or conduct may be adversely affected by alcoholism or other forms of drug abuse to seek assistance through such programs, or from any other resource.

18.11 Work-Related Injury or Illness. When an employee becomes ill or is injured in the performance of his or her assigned duties, the employee will be promptly referred to the Health Unit for treatment and counseling as to the employee's right to file for compensation benefits. The Employer agrees to post, in conspicuous places, information regarding procedures for employees to report job-related illness or injury and to assist employees seeking benefits.

Counseling of employees who become ill or injured in the performance of their duties will normally include their right to file for compensation benefits, the type of benefits available, and the procedure for filing claims.

- 18.12 Occupational Health. The Employer, through the Federal Employee Occupational Health Program, will provide the following services to employees who elect to participate:
- a. eye and hearing testing;
 - b. blood pressure checks;
 - c. urine testing for sugar and albumen;
 - d. glaucoma testing;
 - e. allergy, hormone and vitamin injections, ordered by the employee's physician, when the employee supplies the serum and the Agency physician is available;
 - f. for female employees, breast examinations and Pap smears conducted by the Agency physician when he/she is available.
- 18.13 First Aid. The Employer agrees to provide first aid kits in each building with Census Bureau offices. These kits will be used only during hours when the Health Unit is not open or on instruction of medical personnel. In instances of major emergencies, the rescue squad will be summoned for transportation of the injured employee to the nearest health facility.
- 18.14 Smoking. The MOU signed by the parties on 7/22/87 is incorporated here by reference.
- 18.15 Temperature and Humidity.
- a. In all work areas under the Employer's control, temperatures and relative humidity will be kept within ranges required by applicable laws, rules, regulations or directive, or operational necessity. Deviations from such ranges will be corrected promptly.

- b. With respect to the Employer's worksites leased by or from the GSA, the Employer agrees to:
 - 1. take such independent action as may be within its authority to assure the maintenance of those temperature and humidity levels referenced in a. above; and
 - 2. promptly call to the GSA's attention its responsibilities under E.O. 12196 in the event of any deviations from said levels.
 - c. Should temperatures in the EDP secure area drop below 65° as a result of malfunction of air conditioning in the area, the Employer will correct the situation if possible.
- 18.16 Liberal Leave Policy. Where work areas under the Employer's control fall outside temperature ranges established by the GSA, the Employer agrees to institute a liberal annual and sick leave policy. Requests for annual leave will be granted barring critical work requirements. When the employee may be physically incapacitated or when existing medical conditions are being seriously complicated by temperatures outside the established ranges the employee may sign for sick leave.
- 18.17 Noise. In consideration of the right of employees to a work environment free of excess noise, any employee may request that the noise level in his/her office be scientifically monitored for an appropriate period of time. If the effective noise level is found to constitute a safety or health hazard, the Employer will take steps to reduce the noise level or relocate the employee(s).
- 18.18 Occupational Safety and Health Committee. The parties agree to establish a joint Committee, whose function shall be to:
- a. monitor the safety and health program and make appropriate recommendations to the Census Safety Coordinator;
 - b. monitor findings and reports of workplace inspections;
 - c. participate in periodic inspections to monitor inspection procedures;

- d. review procedures for handling safety and health suggestions from employees;
- e. comment on supplementary standards proposed by the Bureau; and
- f. review the Bureau's response to reports of hazardous conditions or program deficiencies. If half the Committee members of record are not substantially satisfied with the response, they may request the Secretary of Labor to conduct an inspection.

The Committee shall be comprised of three persons designated by each party, with the chair rotating annually between the parties. The Committee shall normally meet monthly or as necessary to carry out its function. Committee members will be provided appropriate training in accordance with OSHA guidelines. Members of the Committee may use reasonable amounts of official time for legitimate work of the Committee.

ARTICLE 19 — LEAVE

19.1 Annual Leave. Earning and using annual leave is the right of an employee. The use of leave, however, is subject to supervisory approval. Annual leave requested in advance will normally be approved, unless approval would adversely affect the ability of the office to do its work. If leave is disapproved, the employee may request the reason for the disapproval in writing.

Except in unforeseen circumstances, annual leave shall be requested sufficiently in advance of the beginning date to permit careful scheduling of leave for all employees concerned and in order to promote the efficient conduct of the work and the best interests of Census. Leave requests which do not meet this requirement may be disapproved when the employee's absence would be detrimental to the efficiency of the work unit.

Priority in scheduling annual leave will be based on the date of request, assuming all work-related factors are equal. Except in emergencies, leave which has been requested in advance and approved will not be cancelled by the Employer.

19.2 Sick Leave. Employees are entitled to sick leave which accrues in accordance with applicable laws. Supervisors may approve sick leave when requested by employees who are incapacitated for the performance of their duties and who have earned sufficient sick leave to cover the period of absence. Requests for unanticipated sick leave shall be made in the same manner as prescribed for the request of emergency annual leave. Anticipated sick leave may also be approved, when requested in advance, for visits to physicians, dentists, optometrists, chiropractors or other practitioners for the purpose of securing diagnostic examinations or treatment. When required by the exigencies of the situation, and in accordance with applicable regulations, a maximum of 30 days sick leave may be advanced to employees for a serious disability or ailment.

When absence from duty on sick leave exceeds 3 workdays, the employee must supply a medical certificate or other administratively acceptable evidence. This could be a statement signed by the employee stating the reasons why the employee did not have a physician.

19.3 Emergency Annual/Sick Leave.

a. Requests

An employee must request emergency annual/sick leave normally within 1 hour of the employee's scheduled starting time. If an employee is already at work and the need for such leave arises, the employee must request the leave as soon as he/she becomes aware of the need for it. In both instances, the employee must request and receive approval for the emergency leave from the immediate supervisor or his/her designee. Employees will be advised of alternative procedures to be followed for requesting leave when the immediate supervisor is not available.

b. Approval

Emergency annual/sick leave will be granted upon request when:

1. the employee's absence would not affect the efficiency of the work unit;
2. the supervisor is satisfied that the problem could not be controlled or prevented; and
3. the employee has sufficient accrued leave, as appropriate to the request, to cover the absence.

The Employer may require appropriate documentation for any such request. Both parties agree that requests for emergency annual/sick leave should be infrequent.

- 19.4 Visits to the Health Unit. An employee who becomes ill during the working hours may be excused for up to 1 hour upon request, without charge to leave, to visit the Health Unit. (This hour does not include a reasonable amount of travel time to and from the Health Unit.) When the absence exceeds 1 hour, the employee must contact his/her supervisor or designee immediately to request use of leave or leave without pay to cover the additional absence.
- 19.5 Parental Leave. Leave may be requested and granted for periods of absence associated with childbirth, adoption, or care of a newborn or newly adopted child (Maternity-Paternity leave). While the Employer's action on such requests will be governed by the same factors applied to leave requests generally, requests for annual and/or LWOP in connection with childbirth or child care for periods when the employee is not personally incapacitated, will be given special consideration if (a) the employee's total absence, including any period of incapacitation for a female employee, does not exceed 6 months and (b) management determines that the employee's absence will not significantly affect the work of the employing division or office. [When the period of incapacitation for a female employee exceeds 6 months (i.e., resulting in a total absence of more than 6 months) requests for additional leave will be governed by the same factors applied to other requests for sick leave and/or leave without pay.] Requests for extensions of LWOP not to exceed an additional 6 months will also be considered in appropriate circumstances.

A female employee may use sick leave to cover the time required for physical examinations and to cover any period of incapacitation due to pregnancy. Such sick leave may be used in connection with approved annual leave and LWOP.

The Employer will assure continued employment in his/her position or a position of like grade and pay, to the person who wishes to return to work following delivery, confinement, and/or child care under this Article unless termination is otherwise required by expiration of appointment, by reduction in force, for cause, or for other reasons unrelated to the absence.

19.6 Leave Without Pay (LWOP).

- a. Short Term. Consistent with work requirements and a good leave record the division may approve requested short periods of LWOP not to exceed 15 days in a calendar year.
- b. Long Term. The Employer may grant longer periods of LWOP; however, the employee may be asked to exhaust his/her appropriate existing leave first.

The Employer will not approve LWOP if such approval could result in restoration of leave to the same employee at the end of the leave year.

19.7 Early Dismissal. Upon a determination that hazardous weather conditions or emergencies such as fire, explosion, etc. justify the early closing of offices, except for essential employees, employees may be excused from duty without charge to leave for the period during which their offices are closed, subject to certain exceptions. Employees will be advised as soon as practicable of any early dismissal.

19.8 Absence for Voting. The Employer agrees that when practicable, employees will be excused to register or vote in national, state or local elections or referendums for periods of time necessary to ensure them an opportunity to vote in accordance with Office of Personnel Management (OPM) regulations. As a general rule, where the polls are not open at least 3 hours either before or after the employee's regular hours of work, they may

be granted an amount of excused leave which will permit them to report for work 3 hours after the polls open or leave work 3 hours before the polls close, whichever requires the lesser amount of time off. In the event of exceptional circumstances, where the general rule does not permit sufficient time to vote, additional time not to exceed 8 hours may be granted.

- 19.9 Bereavement Leave. In the event of death of any employee's relative (as defined in 5 USC 3110 and the Federal Personnel Manual, Chapter 310) the Employer will, subject to applicable regulations, make a special effort to grant the employee a minimum of 3 consecutive days of annual leave.
- 19.10 Leave Following Blood Donations. The Employer will continue its existing policy of authorizing a limited amount of official leave to blood donors. It is intended primarily to cover the time needed to donate blood, including travel time to and from local hospitals for emergency donations. Such leave may also be used to allow a period of recuperation for employees who feel ill or weak following blood donations. This policy is designed to allow employees interested in the needs of their community and their fellow citizens to donate blood without having to use their own earned leave.

The official leave policy is:

Official leave is granted for the period of time necessary to make the blood donations but not to exceed 4 consecutive hours. If the blood donation procedure progresses to the point of puncturing the arm, the employee is eligible for up to 4 hours of leave; however, if the donor is rejected or deferred prior to that step, there is not such eligibility and the employee must return to work. The leave begins when the employee leaves his or her duty station to keep the scheduled appointment and ends upon return to the worksite in accordance with the provisions of this Article. Any time off in excess of the approved official leave must be charged to annual, sick, or leave without pay. Employees must request and have additional leave approved by their respective supervisors in advance.

Supervisors are encouraged to be liberal in granting leave to blood donors. However, when the workload requires, supervisors may find it necessary to limit official leave to less than the 4-hour maximum, or may not be able to grant requests for additional leave.

If too many donors from a single branch or section are scheduled for approximately the same hours, a work problem may occur in the section. If this happens, the supervisor or the blood donor recruiter should contact Employee Services and Performance Branch, Personnel Division and arrange for alternate scheduling of some donors.

Intermittent employees who donate blood when scheduled to work get paid only for the time spent actually donating blood — no recuperative time is allowed.

- 19.11 Increments of Leave. Approved annual leave, sick leave, or leave without pay may be taken in 15 minute increments.

ARTICLE 20 — CHILD CARE CENTER

- 20.1 Agency Support. The Agency will continue to provide the space, general maintenance, and utilities consistent with applicable laws and regulations for the Child Care Center. The Agency will ensure that the space will meet the structural requirements and codes for a day care operation of 50-75 children.
- 20.2 Operating Funds. The parties agree that the Child Care Center will be financially self-supporting and managed by a non-profit organization of parent/employee volunteers which will oversee the operation of the program. Operating funds will come from fees paid by the users with additional fund-raising activities as determined necessary by the Child Care Center.
- 20.3 Advisory Committee. The parties agree to send a joint letter to the current Board of Directors of the day care center soliciting their interest in having a labor management committee serve in an advisory capacity to the Board. If the Board accepts the notion, they will determine in what capacity and to what extent they wish the committee to function.

The committee, if established, will consist of 4 members (2 from management and 2 from the Union). The chair will rotate annually with the initial chairperson decided by a flip of a coin.

ARTICLE 21 — PHYSICAL RELOCATIONS

21.1 General. Physical relocations during the term of this Agreement will be governed by the provisions of this Article.

21.2 Provisions. The Employer agrees to:

- a. Notify the Union of any physical relocation of 5 or more bargaining unit employees.
- b. Provide names of affected bargaining unit employees.
- c. Provide floor plans of the receiving area containing square footage of the room, and the location of work stations, furniture, and equipment.
- d. Place employees in space sufficient for the total number of employees. The total space will be determined using the applicable space standards, guidelines, and criteria in Federal Property Management Regulations (FPMR).

Administrative support allowances will be in accordance with the FPMR. The Bureau functions and needs, and physical variations in buildings may cause deviations in the determination of the amount of space assigned.

The space available for work stations will be distributed as equitably as possible among those bargaining unit employees occupying the area. In addition, the space will meet applicable standards and/or guidelines for safety, lighting, heating, cooling, ventilation, and access to electrical outlets necessary for work-related equipment.

- e. Insure that the new work space is suitably clean and ready for use at the time of the move.

NOTE: The provisions in d. and e. of this Article apply if management is moving only 1 employee.

- f. Meet within one day of a Union request to the LMRS to discuss any problems relating to the implementation of a physical move, special circumstances associated with a particular move, or alleged noncompliance with this Article.

Upon meeting the criteria in items a. - e. above, the Employer may implement the proposed relocation. Problems identified under item f. will not serve to delay implementation of the move unless a significant health or safety problem exists that will adversely affect employees.

Problems or allegations of noncompliance not resolved by the meeting required in item (f) may be submitted directly to arbitration.

- 21.3 Physical Moves - Detail or Reassignments. Any employee physically relocated from his/her usual worksite because of a detail or reassignment should normally be given at least 2 workdays advance notice of such a move.

ARTICLE 22 — REORGANIZATIONS

- 22.1 General. Reorganizations during the term of this Agreement will be governed by provisions of this Article.

- 22.2 Provisions.

The Employer agrees to:

- a. Notify the Union of all reorganizations, normally at least 15 workdays before the effective date of the reorganization.
- b. Provide to the Union both the current and proposed organizational charts, functional statements, and employee assignments.
- c. When notifying of a reorganization, the Employer will inform the Union in detail if any reorganization will adversely impact the grade levels of unit employees.

This detail will include the names of those employees whose grade levels are adversely affected.

- d. Prepare performance plans of affected employees at the employee's request and in accordance with the General Work Force performance appraisal system.
- e. Give serious consideration to any request for reassignment from any affected employee who is dissatisfied with his/her new assignment.
- f. Meet within one day of a Union request to the LMRS to discuss any problems relating to the implementation of a reorganization, special circumstances associated with a particular reorganization, or alleged noncompliance with this Article. Meetings under this section will not serve to delay implementation of a reorganization.

The Union and Employer agree that only reorganizations which adversely impact grade levels of unit employees will require negotiation.

Problems or allegations of noncompliance not resolved by the meeting required in item f. may be submitted directly to arbitration.

ARTICLE 23 — PROMOTION, ASSIGNMENT, AND DETAIL

23.1 Merit Assignment. The Employer agrees to adhere to the Merit Assignment Program set forth in Departmental Administrative Order 202-335 as supplemented herein with respect to bargaining unit employees, and as modified when necessary to conform to the Performance Management System negotiated under Article 26 of the Agreement. Each unit employee will be provided a summary of the Merit Assignment Program.

23.2 Vacancy Announcements

- a. Vacancy announcements will remain posted for the same length of time (at least 7 workdays) on all vacancy announcement boards.
- b. Each vacancy announcement will contain information which identify for the applicant:

1. the position and its major duties;
2. the number of vacancies;
3. the title, series, grade, known promotion potential (if any), organization, shift (if applicable) and duty station;
4. the qualification requirements, selective placement and quality ranking factors, and tests to be used, if any;
5. the area of consideration;
6. how and where to apply, and where to get additional information; and
7. opening and closing dates.

- c. The qualification requirements will normally be those set forth in the appropriate OPM qualification standard. Any additional requirements (i.e., selective placement factors) will be documented and approved by the Employer in accordance with applicable FPM regulations.
- d. Posted open, continuous vacancy announcements may be used where appropriate. Employees may obtain information concerning current or projected vacancies under such announcements by contacting the appropriate staffing specialist.

23.3 Merit Assignment Information Request. The Union may make requests for merit assignment records to LMRS under 5 U.S.C. Chapter 71. When the Union requests records under the provisions of this Article, the LMRS agrees to expedite the request. Any sanitizing of documents will be done in accordance with law and regulation.

23.4 Consideration While Absent. If an employee wishes to be considered for vacancies while being absent from work for some reason for 6 or more consecutive days, he or she is responsible for submitting a written request and SF-171 for such consideration to the Personnel Division.

- 23.5 Effective Date. A promotion resulting from the application of a new classification standard or correction of a classification error will normally be effected no later than the beginning of the second pay period following Employer's decision to promote the incumbent(s), provided he or she meets any applicable qualification, performance, or other requirements for the position in question.
- 23.6 Details. Details to higher graded position for more than 30 days will be accomplished by temporary promotion. Details among qualified employees will be accomplished without favoritism and for legitimate business reasons.
- 23.7 Release Date. Employees selected for other positions through the Merit Assignment Plan will normally be released no later than the beginning of the second pay period following the date of selection.
- 23.8 Notice of Ineligibility. The Employer agrees to ensure that notices of ineligibility under its Merit Assignment Program are prepared and dispatched promptly (i.e., normally prior to the issuance of a certificate). Employees who believe the notice to be in error should contact the Personnel Staffing Specialist for the division/office where the vacancy is located immediately upon receipt.

ARTICLE 24 — POSITION CLASSIFICATION

- 24.1 Position Descriptions. A position description states the principal duties, responsibilities, and supervisory relationships of a position for the purpose of classification, i.e., those duties and responsibilities which affect the series, title, and grade of the position. All positions will be classified in accordance with OPM regulations and applicable standards. Individual positions shall be classified or reclassified, with due regard for technical requirements, as promptly as practicable.
- 24.2 Information. Employees are entitled to discuss their position descriptions with their supervisors and/or their servicing personnel specialist if they have a question concerning the accuracy of the description or the proper classification of the position. The Employer recognizes its responsibility to advise employees of their

rights to appeal their position classification and the procedures for doing so. Each employee will be given a copy of his/her position description. When alterations are made, the employee will receive an amended copy.

- 24.3 Equal Pay for Equal Work. The Employer and the Union agree that the principle of equal pay for substantially equal work (i.e., comparable worth) will be applied to all position classification actions. When the application of new or revised classification standards results in an adverse impact on unit employees, the Union will be notified. The Union will have access to the Classification Standards in the Census Library which shall be kept as current as administratively practicable.
- 24.4 Effective Date of Reclassification Actions. A promotion resulting from the application of a new classification standard or correction of a classification error will normally be effected no later than the beginning of the 2nd pay period following management's decision to promote the incumbent(s), provided he or she meets any applicable qualification, performance, or other requirements for the position in question.
- 24.5 Notice of Audit. The Employer will provide timely notice of classification audits of bargaining unit employees conducted by the Department of Commerce (as part of its Personnel Management Evaluations) or by the Office of Personnel Management.

ARTICLE 25 — TRAINING AND UPWARD MOBILITY

- 25.1 Policy. The Employer will attempt, where feasible, to use to the fullest the present skills of employees by all means, including the redesigning of jobs.
- 25.2 Nondiscrimination. In the selection of employees for training, there shall be no discrimination because of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation.
- 25.3 Career Development Program. The parties agree to encourage career development. Normally within 2 weeks of a request, employees will be advised as to whether, and to what extent, they

meet the qualification requirements for a position, series or grade. The Employer will continue to provide career counseling to employees and to make available to employees information regarding training opportunities sponsored by the government and by outside sources (such as providing lists and catalogs of local training and educational services).

- 25.4 Notification of Training. Employees who apply for training will be notified as far in advance as practicable (normally within 2 weeks of a properly initiated request) of their selection or non-selection for training.
- 25.5 Upward Mobility. The parties recognize the need for upward mobility opportunities, particularly for lower-grade employees. The Employer agrees to continue an active Professional Careers Program and related upward mobility opportunities to the extent funding allows. Participants in the program are normally provided a training agreement which outlines their responsibilities, a target position and a target date for successfully completing the program. The Employer agrees to provide the employee some work time necessary to take part in the training and course work.

ARTICLE 26 — GENERAL WORKFORCE PERFORMANCE APPRAISAL SYSTEM

The following sections are included in the contract for informational purposes. The parties did not negotiate this language. These sections are quotations from Department Administrative Order (DAO) 202-430. The parties understand that violations of the DAO are grievable unless otherwise excluded.

- 26.3
- 26.8 a., b. and c.
- 26.13 d. and f.

- 26.1 Objectives. The Agency's General Workforce Performance Appraisal System serves as the basis for:
- a. Establishing critical elements and related performance standards for each covered position, which, to the maximum extend feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position;

- b. Using performance plans to communicate Agency goals and objectives and to identify individual accountability for their accomplishment;
- c. Using performance appraisal results as a basis for providing information to employees on their performance and how it may be improved; and for training, rewarding, reassigning, promoting, reducing in grade, retaining, granting within-grade increases, and removing employees; and
- d. Evaluating and improving individual and organizational accomplishments.

26.2 Coverage.

- a. The system applies to all headquarters employees under the General Workforce Appraisal System.
- b. An employee who is serving on a detail continues to occupy the position from which detailed. General workforce employees detailed to PMRS positions continue to be covered by the General Workforce Performance Appraisal System during the term of the detail. General workforce employees temporarily promoted to PMRS positions are covered by the PMRS system for the period of their temporary promotion.
- c. General workforce employees whose service is temporarily interrupted by service in any Federally-sponsored program (e.g., Intergovernmental Personnel Act) which calls for the employee's return to the same or like position continues to be covered by the General Workforce Performance Appraisal System while on the Federally-sponsored assignment.

26.3 Responsibilities of Rating Officials. Rating officials (supervisors) of general workforce employees will:

- a. Inform employees of the overall mission, objectives, goals, long-range plans, and activities of the work unit and parent organization and inform employees of their related duties and responsibilities;

- b. Encourage employee participation in developing performance plans;
- c. Provide employees with written performance plans which identify the critical (and noncritical) elements and performance standards related to their specific duties, responsibilities, and expected levels of performance;
- d. Collect data to determine if performance standards are being met;
- e. Conduct and document at least one formal progress review around the mid-point of the appraisal period and additional reviews as necessary;
- f. Modify performance plans, as necessary;
- g. Participate in the pre-appraisal discussion, if one is requested by the employee;
- h. Complete performance appraisals which includes determining, documenting, and evaluating employees' actual accomplishments;
- i. Confer with approving officials about their organization's performance and about the ratings they plan to assign their employees, and get the approving official's approval before discussing those ratings with employees;
- j. Determine preliminary ratings for employees, and discuss the final appraisal with the employee;
- k. Sign and date performance plans, performance appraisals, and ratings; and
- l. Recommend personnel actions (including awards) and/or training based on the employee's level of performance of work in relation to the performance standards.

26.4 Responsibilities of General Workforce Employees.

General workforce employees should:

- a. Work with their supervisors in developing their performance plans;
- b. Collect data to demonstrate that performance standards are being met;
- c. Compare accomplishments with appropriate performance standards;
- d. Participate in the mid-cycle progress review and request additional reviews, as necessary;
- e. Participate in the performance appraisal process with the rating official (including scheduling a pre-appraisal meeting if they wish);
- f. Sign and date performance plans, performance appraisals and ratings, to acknowledge receipt;
- g. Prepare written comments when disputing a rating; and
- h. Seek development opportunities to enhance performance.

26.5 Timetable of Performance Management Activities.

- a. Employees covered by this system are normally appraised annually under the following fixed appraisal period: October 1 - September 30.
- b. The minimum performance appraisal period is 120 days.
- c. Performance plans for all covered employees must be established and approved at the beginning of the appraisal period, usually within 30 days of the beginning of the period.
- d. When an employee enters a covered position or changes positions after the start of the appraisal period, a performance plan must be established and approved within 30 days of the effective date of the appointment to the new position.

- e. When an employee is detailed or temporarily promoted to a covered position within the Department and serves in the position for 120 days or more, he or she must have an approved performance plan within 30 days of the beginning of the detail.
- f. Interim summary performance ratings are required when an employee changes positions after serving in a covered position for at least 120 days, or when an employee serves on a detail or temporary promotion within the Department of at least 120 days during the appraisal period. The interim rating must be completed within 30 days of the change of position or end of the detail or temporary promotion.
- g. When a covered employee has not served 120 days of the appraisal period in his/her current position of record, the employee's interim rating becomes his/her final rating of record for the appraisal period (see 26.5b and 26.15). In these situations the time remaining in the current cycle (from the date he or she entered into the current position of record through the end of the appraisal cycle) will be incorporated into the next appraisal cycle and his or her work for that period will be evaluated at the end of that cycle. The employee's performance plan should reflect those dates.
- h. Appraisals and annual ratings of record must be completed within 30 days of the end of the appraisal period, except that employees who are unrateable at the end of the appraisal period because they have not served in a covered position for at least 120 days of the appraisal period must be rated after completing 120 days in their current covered position.
- i. Performance ratings of record for general workforce employees are effective on the last day of the appraisal cycle (September 30) each year. For those employees who enter into a covered position within the last 120 days of the appraisal period (see h above), the rating of record is effective the first day of the first pay period after the employee completes 120 days in the new position.

26.6 Performance Appraisal Process. The appraisal process involves three distinct stages: performance planning, progress re-

view, and appraisal. Each covered employee must normally receive a performance rating annually. The appraisal process is used to communicate organizational goals, reinforce employee accountability for meeting these goals, and track and evaluate individual and organizational results.

- 26.7 Performance Planning. Approximately four weeks before the start of the appraisal period, rating officials (supervisors) and employees should begin developing written performance plans for the next appraisal period. The process should involve both the supervisor and employee. Performance plans must be recorded on form CD-396, "Performance Management Record."

Performance plans must be completed and signed by the rating official, approving official, and employee at the beginning of the appraisal period, normally within 30 days. Management will provide a copy of the signed plan to the employee. If the rating official is not the same person as the supervisor or if there are any changes, the employee may request clarification.

- 26.8 Performance Plans.

Performance plans must include:

- a. Critical (and noncritical) elements which reflect the employee's major duties and responsibilities and which are consistent with current job assignments and with the level of duties described in the employee's position description. (Although the Department discourages inclusion of noncritical elements in performance plans, occasionally a rating official may need to include some. If included, noncritical elements should represent no more than 15 percent of the total plan; additionally, no single noncritical element may be weighted more than 10 percent nor weigh more than any critical element in the plan.)

Organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results. Elements may be drawn from a number of sources including: mission and functional statements, position descriptions, management-by-objectives

(MBO's) and other planning documents, operating budget justifications, and affirmative action plans. An employee's responsibility for accomplishing part or all of an MBO must be included as a critical element or a major activity of a critical element. If the element relates to a Secretarial level objective, it must be designated on the CD-396 as critical and checked as an MBO.

Elements must include only those aspects of the work over which the employee has control. An objective, specifying the overall result each element is expected to accomplish, along with the major activities the employee must undertake to accomplish each element, must be communicated in writing in the employee's performance plan. Developing generic critical (and noncritical) elements is strongly encouraged.

- b. Weights must be assigned to each element on the basis of the amount of time required to accomplish the element and/or its importance. The total of the weights must be 100%.

Assigning weights to the major activities listed under an element is not permitted. Non-critical elements may be included in performance plans, but must be assigned very low weights and represent no more than 15 percent of the total plan. In no case may a noncritical element be assigned a higher weight than any critical element included in the performance plan.

- c. Performance standards must be used to evaluate levels of accomplishment for critical (and any noncritical) elements.

Standards should define performance in terms of results (what is to be accomplished) and process (how it is to be accomplished). (Note: The results may already be expressed under the major activities listing. In such a case they do not need to be repeated as standards since they are already specified for the employee.) The generic performance standards (GPS) contained in Appendix A are defined at each of the five required rating levels and must be used to evaluate the performance of all employees covered by this system. Supplemental standards, as needed, should be developed for each critical (and noncritical) element.

Specific quantitative, timeliness, cost effectiveness, and/or qualitative standards, if they apply to a particular critical element and if they will be used to evaluate an employee's performance, should be included as supplemental standards. (If these standards are specified in operational manuals or other documents made available to the employee, those documents may simply be referenced in the performance plan.) Such standards need be written only at the Fully Successful level since the GPS are written at all five performance levels and refer generically to different levels of quality, timeliness, quantity, and cost-effectiveness.

- 26.9 Resolving Disagreement of the Performance Plan. If a rating official and covered employee disagree on the contents of the performance plan, the rating official and employee should attempt to resolve the disagreement informally. However, Management retains the right to make the final decision regarding the contents of the plan. The contents of performance plans may not be grieved.
- 26.10 Factors in Developing Performance Plans. When developing performance plans, the following factors should be considered:
- a. Criticality/Relevance. Have appropriate critical elements been identified? Are the elements derived from the overall mission of work unit?
 - b. Comprehensiveness. Does the plan cover all of the employee's major duties and responsibilities?
 - c. Clarity. Are critical elements and performance standards clearly and fully described?
 - d. Quantification. Can achievements be measured with the standards identified?
 - e. Consistency. Are performance plans for similar positions comparable in all important aspects?
- 26.11 Movement From One Covered Position to Another. When an

employee enters a covered position or moves from one covered position to another after the start of the appraisal period, and when an employee serves on a detail of 120 days or more, a performance plan must be established and approved for the employee, following the guidelines in this Article.

26.12 Progress Reviews.

- a. At a minimum, rating officials must conduct a formal progress review with their employees at approximately the midpoint of the appraisal period. Covered employees may also request (or supervisors may schedule) additional progress reviews. The progress review must include discussion of:
 1. The employee's progress toward meeting the objectives of the elements included in his or her performance plan;
 2. The identification of any performance deficiencies and recommendations on how to improve them by the rating official; and
 3. The need for changes in the plan based on changes in responsibilities. A rating official must submit any recommended changes in performance plans in writing to the approving official and gain his/her approval of the change. Those changes must then be signed and dated by both officials and attached to the plan.
- b. There must be a record of the progress review. Both the supervisor and employee should date and initial the performance plan to indicate the review took place.
- c. Progress reviews should also be scheduled and conducted for employees who enter covered positions after the start of the appraisal period. These progress reviews should be completed near the midpoint of the shortened appraisal period.
- d. A progress review must also be initiated by the rating official if an employee's performance on one or more critical elements falls below the Fully Successful level. In such a case the

rating official must discuss the instances of less than Fully Successful performance and outline in writing what is required by the employee to bring his or her performance up to the Fully Successful level.

26.13 Appraisal. Every employee who occupies a covered position on the last day of the appraisal cycle and who has been in a covered position for at least 120 days during the appraisal cycle must receive an annual performance appraisal rating of record, in accordance with the following:

- a. Rating officials must confer with the approving official about their organization's performance and gain approval of the ratings they recommend for their employees before discussing those ratings with employees.
- b. The rating official initiates the appraisal by providing advance notice to the employee of the date and time for the formal appraisal meeting.
- c. The employee may schedule a pre-appraisal meeting with the rating official to:
 1. Present his or her assessment of results achieved against the standards set in the performance plan;
 2. Inform the rating official of aspects of his or her work of which the rating official may not be aware; and
 3. Identify objectives he or she would like to include in the performance plan for the next period.

During this pre-appraisal meeting, the rating official may ask questions to clarify his or her understanding of the employee's performance.

- d. Once the advance notice of the formal appraisal meeting has been given, and after any pre-appraisal meeting, the rating official (after conferring with the approving official) prepares and discusses with the employee a written performance rating. This rating must be based on an assessment of the employee's

performance against the standards set at the beginning of the period (or as modified and documented during a progress review) in the performance plan and must include a written rating for each individual performance element based on the following:

Outstanding (5)	Meets or exceeds standards written at this level.
Commendable (4)	Meets standards written at this level.
Fully Successful (3)	Meets standards written at this level.
Marginal (2)	Meets standards written at this level.
Unacceptable (1)	Meets (or falls below) standards written at this level.

- e. Each critical (and noncritical) element must be rated using the above five-level element rating scale. Ratings of elements above and below Fully Successful must be supported by a narrative justification. If an element is rated as Fully Successful, the rating official need only document in writing that: (1) the Fully Successful standards were met, and (2) that the rating was discussed with the employee, unless the employee requests written justification of the Fully Successful rating. In such a case, the rating official must provide written justification of the rating.
- f. To obtain the overall summary rating, each element must be rated using the five-level element rating scale (Outstanding = 5, Commendable = 4, Fully Successful = 3, Marginal = 2, and Unacceptable = 1). (No fractional scores or weights may be used.) Then each individual element rating is multiplied by the weight assigned to that element (e.g., critical element #1 is weighted at 30% and receives a rating of Commendable or 4; $4 \times 30\% = 120$ points). The points assigned the individual elements are then totalled to determine an overall summary rating based on the following scale:

Outstanding	460 - 500
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Commendable	380 - 459
Fully Successful	290 - 379
Marginal	200 - 289
Unacceptable	A summary rating of Unacceptable must be assigned to any employee who is given an Unacceptable rating on one or more critical elements.

- g. Interim ratings for service in other covered positions within the Department during the appraisal period must be considered in determining the employee's final rating of record. Interim ratings are developed during the rating cycle to document the performance of an employee who changes positions or who is detailed during the year provided the employee has served in the position or on the detail for at least 120 days. The final rating of record is determined as follows:
1. The rating official for the employee's position of record appraises the employee on the work done in the position of record if the employee has served in that position for at least 120 days of the appraisal period. (If the employee has not served in the position of record for 120 days, see Section 26.15 or 26.16 as appropriate.)
 2. Double the score assigned for the position of record.
 3. Add the doubled score to any other interim rating scores received during the appraisal period.
 4. Divide the total score from 3 above by the number of positions occupied for 120 days or more during the appraisal cycle plus 1, e.g., if the employee occupied two positions for 120 days or more of the appraisal cycle, the total score in 3 would be divided by three. This number becomes the final rating score. (Scores with decimals should be rounded to the next highest number.)

The recommended rating would be 440 or Commendable.

Example 2:

Interim rating score:	390 x 1 = 390
Interim rating score:	375 x 1 = 375
Position of record rating score:	450 x 2 = 900
	1,665

$1,665 \div 4 = 417$

The recommended rating would be 417 or Commendable.

In computing a final performance rating using this formula, the rating assigned by the supervisor of the position of record (the one that is to be doubled) must be checked carefully to make sure that a noncritical element is not given more weight (because of the doubling) than any critical element in the other interim ratings. If, because of the doubling, the noncritical element score exceeds that of any of the critical element scores, the point score of the noncritical element must be reduced to its original total (before the doubling) and the summary point total adjusted appropriately.

- h. If an employee has served in a covered position for more than the minimum appraisal period in another Federal agency, that agency is required to provide an interim summary rating of performance and forward it to the Department's employing office with the Employee's Official Personnel Folder. The rating official must consider the interim rating when determining the employee's rating of record at the end of the appraisal cycle. If an employee has served on a detail to another Federal agency for more than 120 days during the appraisal cycle, or an assignment in a Federally-sponsored program such as an Intergovernment Personnel Act (IPA) or Executive Exchange, the personnel office must make a reasonable effort to obtain an interim summary rating from the other agency on the employee's performance on the detail or assignment. If the interim rating is obtained, it must be considered in deriving the employee's rating of record at the end of the appraisal cycle. If the employee has served for the entire rating cycle on detail to another agency and an appraisal of performance cannot be obtained despite reasonable efforts, the employee's current rating

of record must be extended. If the employee has no current rating of record, he or she must be considered unrateable and treated as though Fully Successful.

26.14 Rating.

- a. The employee should sign the rating to indicate that it has been discussed. (If the employee refuses to sign, the rating official should so note.) A copy must be given to the employee.

If the employee disagrees with the rating, he or she may comment in writing to the approving official within 5 working days of receipt of the appraisal and rating. If the approving official changes a rating at this point, he/she must document the reasons for the change on form CD-396A and provide a copy to the employee.

- b. An employee may request a reconsideration of his/her rating by an official in a position higher than the approving official. Such reconsideration requests must be processed under the negotiated grievance procedure.
- c. The summary rating given at the end of the annual appraisal period, or at the end of the extended appraisal period, in cases where the employee has not served in a covered position for at least 120 days of the appraisal period (see Section 26.15) becomes the employee's rating of record.

26.15 Interim Rating as Rating of Record. If a covered employee has not served in his/her position of record for 120 days of the appraisal period, but has served in another covered position for which an interim rating was prepared, the interim rating will become the employee's rating of record for the appraisal cycle.

26.16 Rating - Less Than 120 Days in Covered Position. Employees who are serving in covered positions on the last day of the appraisal period, but who are unrateable because they have not served for at least 120 days during the appraisal period in a covered position must be given an annual rating of record in accordance with the provisions of this Article as soon as they have served the minimum period. An employee may be unrateable because of entry into a covered position within the last 119 days of the appraisal period; time in a non-pay status; long term training; service on a Federally sponsored program such as an IPA or President's Executive Exchange assignment for which appraisal information is not available; the employee's supervisor leaving the agency where no other higher level supervisor can reasonably appraise the employee's performance; service on detail to another Federal agency for which performance appraisal information is not available; or approved absence creditable under appropriate regulations.

26.17 Extending Current Rating. The current ratings of record of employees who are unrateable on the last day of the appraisal period are extended if they are not then working in a covered position which can provide the basis for appraisal (e.g., they are continuing on long-term training) and are not expected to return to such a position within 120 days. If these employees have no ratings of record, they are treated as though Fully Successful.

26.18 Interim Summary Ratings.

- a. When an employee who has served in a covered position for more than 120 days in the appraisal period changes to another covered position within the Department, an interim rating must be completed by the employee's former supervisor and signed by the appropriate approving official. Interim ratings must also be completed when an employee completes a detail or temporary promotion within the Department of more than 120 days in a covered position. In such cases, the rating must be based on the elements and standards established for the position the employee is leaving. Copies of the interim rating must be given to the employee, the gaining supervisor, and the servicing personnel office of

the gaining organization.

- b. When an employee transfers from Commerce to another Federal agency after serving in a covered position in Commerce for more than 120 days, the employee's supervisor and the approving official must complete an interim rating. The interim rating must be transferred with the employee's OPF to the gaining agency or department for consideration in the employee's next rating of record.
- c. Interim ratings are not ratings of record for reduction in force or other purposes.

26.19 Rating Below the Fully Successful Level. When an employee is rated below the Fully Successful level, the operating unit must attempt to help the employee to improve performance. Assistance may include, but is not limited to formal training, on-the-job training, counseling, and closer supervision.

26.20 Performance Appraisal of a Disabled Veteran. As provided in Executive Order 5396, the performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment.

26.21 Within-grade Increases.

- a. Federal Wage System. An employee who is otherwise eligible receives a within-grade increase if his or her performance is satisfactory or above, as provided in 5 U.S.C. 5343; i.e., the employee's most recent rating of record is Fully Successful or above.
- b. General Schedule. An employee who is otherwise eligible receives a within-grade increase when his or her performance is at an acceptable level of competence. This means that an employee's most recent performance rating is at least Fully Successful and that during the period of time since that rating the employee has continued to perform his or her responsibilities in a manner warranting an increase in

basic pay. When an acceptable level of competence determination is not consistent with the employee's last performance rating of record or when an employee does not have a rating of record as recent as the completion of the latest performance appraisal cycle (as specified under 5 CFR 531.403(c)(ii)), an additional and more current performance rating must be prepared, which becomes the rating of record for purposes of granting or denying the within-grade increase only.

- c. Within-grade Increase Denials. Denials of within-grade increases will be effected in accordance with the applicable OPM regulations.

26.22 Actions Based on Unacceptable Performance.

- a. An employee whose performance is unacceptable must be reassigned, removed, or changed to a lower grade.
- b. An action based on unacceptable performance may be taken at any time, either during or at the end of the appraisal cycle, provided the requirements of Section 26.23 of this Article are met.

26.23 Taking an Action Based on Unacceptable Performance. Before an employee may be removed or demoted for unacceptable performance under the provisions of 5 CFR, Chapter 432, the employee is entitled to:

- a. Be informed in writing of the critical element(s) on which his or her performance is deficient;
- b. Be assisted to improve his or her performance to an acceptable level; and
- c. Be given the opportunity to demonstrate acceptable performance as follows:
 1. An employee whose performance is unacceptable must be notified in writing that his or her performance is unacceptable and that the opportunity to improve is being given.

The written notice must also inform the employee of the critical elements on which performance is unacceptable and the performance standards required for retention. (This may be done simply by reference to the performance standards in the performance appraisal plan; or by defining a more specific set of tasks to be completed during the opportunity period, with specific standards of timeliness, quantity, or quality, etc. Such standards must be consistent with, i.e., not more stringent than, the more generic standards stated in the plan.) This formal notice recorded in writing should be preceded by some informal, oral feedback to the employee about his or her unacceptable performance. However, an oral warning preceding the written one is not required by the Plan.

2. When a supervisor is affording an employee whose work is unsatisfactory an opportunity to demonstrate acceptable performance, the supervisor first will meet with the employee to discuss the matter. Normally, it is at this meeting that the supervisor will provide the employee with the written notification of his/her opportunity to improve. If the employee wishes, the employee may have union representation at this meeting. The supervisor will consider any comments and/or suggestions from the employee or the employee's representative on how the employee can be assisted to improve.
3. When the employee is notified in writing of his or her unacceptable performance, the clock starts on the reasonable time granted to demonstrate acceptable performance, unless a later date is specified in writing. Neither the law nor regulation specifies what that period of time must be. It depends on the nature of the job, the level of the position, and the consequences of unacceptable performance. In any case, the period of time allowed must be commensurate with the requirements of the position. The notice need not specify the exact period (for example, 60 days). However, it is a good practice to specify a minimum period to display improvement; e.g., not less than 30 days.

4. Managers may include the following in their notices:
 - a. Specific examples, arranged by performance element, of past incidents (within the last year) of unacceptable performance;
 - b. Where relevant, a description of the negative consequences of the performance deficiencies;
 - c. A suggestion of steps the employee may take which would be expected to lead to improved performance, e.g., better work organization, time management, more thorough proofreading, more follow-up;
 - d. A statement of the steps the agency intends to take (or to offer) to assist the employee to improve, e.g., to sponsor training, offer counseling or personal assistance, or monitor work more closely; and
 - e. An explicit statement of the possible consequences of failure to improve within a reasonable period of time, i.e., removal, demotion, or reassignment.

In all cases the employee will receive sufficient information so that he/she will know the areas of deficiency and what is needed to improve.

- 26.24 Reduction in Grade or Removal Based on Unacceptable Performance. If an employee's performance is unacceptable during the opportunity period, the employee must be reassigned, reduced in grade, or removed. An employee who is being reduced in grade or removed under the provisions of 5 CRF, Chapter 432 is entitled to the following before being removed or reduced in grade: (1) a 30-day advance written notice of the proposed action identifying specific instances of unacceptable performance and the critical elements on which performance is unacceptable; (2) at least seven calendar days to respond to the notice orally and/or in writing and to furnish affidavits in support of the reply; (3) to be represented; and (4) to receive a written decision specifying the reasons for the action taken.

26.25 Training and Information. The Employer is responsible for communicating the purpose and procedures of the General Workforce Performance Appraisal System by establishing appropriate training and orientation programs. These programs must emphasize performance plan development, supervisory/management responsibility for carrying out the program, and the linkage between performance ratings and employee recognition and other personnel decisions. The Employer agrees to provide information on the General Workforce Performance Appraisal System to employees.

26.26 Record Keeping.

- a. Copies of covered employee's performance ratings of record, including the performance plans on which they are based, must be placed on the left side of the employees' Official Personnel Folders (OPF), unless Department operating units are granted a written exception to establish separate Employee Performance Folders (EPFs) by the Director of Personnel.
- b. Performance ratings of record and the performance plans on which those ratings were based must be retained for three years.
- c. Performance records that are superseded, e.g., through an administrative or judicial procedure, must be destroyed.
- d. Except where prohibited by law, automated records may be retained longer than three years for purposes of statistical analysis as long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.
- e. When an employee transfers from one operating unit into another also within the Department, or to another Federal agency, the following performance records must be transferred with the employee's OPF: (1) performance ratings of record that are three years old or less; (2) the plan on which the most recent rating of record is based; and (3) the interim rating prepared when the employee changes positions.

- f. Disclosure of performance-related information must be made only as permitted by the Privacy Act and as required by 5 U.S.C. 7114(b)(4).

26.27 Definitions for the General Workforce Performance Management System.

Agency is the Bureau of the Census.

Appointing Authority is a Secretarial Officer or the head of a primary operating unit or an official so designated by the Secretary of Commerce.

Appraisal is the act or process of evaluating the performance of an employee against the prescribed performance standard(s).

Appraisal Period means the period of time established by the General Workforce Performance Appraisal System for which an employee's performance will be reviewed.

Approving Official is normally the supervisor who assigns, controls, and is responsible for the work of the rating official, usually the rating official's immediate supervisor. However, operating units or departmental offices may designate a higher level official in the management chain as the approving official provided this designation does not conflict with any other provision of this document. The approving official is responsible for assigning the final performance rating.

Critical Element is a component of an employee's position consisting of one or more duties and responsibilities, which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

Fully Successful is level 3 of the five-level element rating scale and reflects good, sound performance, i.e., the expected level of performance.

Generic Performance Elements are performance elements which apply to a group of employees in an organization.

Generic Performance Standards (GPS) are performance standards which define work behaviors or activities which, if engaged in by employees, lead to a certain level of quality in products or services. The GPS are written so that they may apply universally to large groups of employees.

Interim rating is a summary rating developed during a rating cycle to document the performance of an employee who is changing positions (if the employee served in the position for 120 days or more) or completing a detail or temporary promotion of 120 days or more. The interim rating is not a rating of record but is factored into the final summary rating assigned the employee at the end of the rating cycle. The interim rating is completed on form CD-396, "Performance Plan, Progress Review, and Appraisal Record," by the losing supervisor, signed by the losing approving official, and forwarded to the gaining supervisor. A copy is also given to the employee.

Major Activity is a task, duty, or project which needs to be accomplished in support of a critical element.

Non-critical Element is a component of an employee's job which does not meet the definition of a critical element, but is sufficiently important to warrant written appraisal.

Performance is an employee's accomplishment of assigned work as specified in the critical and noncritical elements of the employee's position, as measured by the performance standards.

Performance Award is a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

Performance Award Budget is the amount of money allocated by an agency for distribution as performance awards to covered employees.

Performance Management is the systematic process by which the Agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in accomplishment of its mission and goals.

Performance Plans are documents that define the critical (and noncritical) elements against which a covered employee's performance will be appraised and establish performance standards for those elements.

Performance Standards are statements of the expectations or requirements established by management for a critical (or noncritical) element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Pre-appraisal Meeting is a meeting with the rating official scheduled at the option of the employee prior to the formal appraisal meeting. At the pre-appraisal meeting the employee can: (1) present an assessment of his or her own performance during the appraisal period; (2) cover aspects of his or her work of which the rating official may not be aware; and (3) identify objectives he or she would like to include in the next cycle's performance plan.

Progress Review is a formal meeting between the rating official and employee at which the employee's progress toward meeting the objectives in his or her performance plan is discussed. The need for any changes to the plan may also be discussed at this meeting as well as any performance deficiencies the supervisor has noted along with recommendations for improving them.

Rating (also referred to as "summary rating") is the written record of the appraisal of each critical and noncritical element and the assignment of a summary rating level.

Rating Official is the person responsible for informing the covered employee of the critical elements of his/her position, establishing performance standards for those elements, ap-

praising performance and assigning the recommended performance rating. Normally, this is the employee's immediate supervisor.

Rating of Record is the summary rating, under 5 U.S.C. 4302, required at the time specified in the General Workforce Performance Appraisal System or at other times specified for special circumstances.

Unacceptable is level 1 of the five-level rating scale or two levels below Fully Successful. It reflects unacceptable performance in accordance with 5 U.S.C. 4301(3).

- 26.28 Implementation Date. The performance appraisal provisions of this Article become applicable to each employee at the beginning of his/her next appraisal cycle after the parties sign the agreement. The Agency will have a minimum of 120 days to implement this section of the contract.

The Union will be notified of the training schedule for employees on the new performance system and will have the opportunity to attend these sessions.

ARTICLE 27 — DISCIPLINE

- 27.1 Purpose. The parties agree that the purpose of discipline is not solely to punish the employee, but to affect the employee's behavior in ways positive for both the employee and the Agency. No part of this Article is to be construed as a waiver of management's right to discipline.
- 27.2 Cause. Disciplinary action shall be taken in accordance with law, rule and regulation.
- 27.3 Factors for Appropriate Penalty. The parties agree to implement the theory of progressive discipline. (This does not apply to performance based cases.) In implementing this theory and in deciding what action may be appropriate, the Employer will give consideration to the relevance of any mitigating and/or aggravating circumstances.

The parties agree that penalties will be consistent with Departmental Administrative Order 202-751, Appendix B except for Item 42 which deals with falsification. For intentional falsification the penalty for the Census Bureau is removal.

27.4 Procedures.

- a. In the case of proposed suspension for more than 14 days, removal, or reduction in grade or pay, an employee as defined in 5 U.S.C. 7511 is entitled to:
 1. an advanced written notice of at least 30 days stating the specific reasons for the the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed;
 2. a reasonable time, not less than 10 workdays, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer (except when the crime provision is applicable);
 3. be represented by an attorney or other representative; and
 4. a written decision and the specific reasons therefore at the earliest practical date.
- b. In the case of a proposed suspension for 14 days or less, an employee as defined in 5 U.S.C. 7501 is entitled to:
 1. an advance written notice stating the specific reasons for the proposed action;
 2. 10 calendar days to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer (except when the crime provision is applicable);
 3. be represented by an attorney or other representative; and

4. a written decision and the specific reasons therefore at the earliest practical date.
- c. In the case of a. or b. above, the employee and/or his representative will, upon request, be given a copy of any supportive material relied upon by the Employer in proposing the action;
- d. The employee will be given a second copy of the notice of proposed action noted "Optional Representation Copy."
- e. Records of Infraction, Form BC-290, are not themselves disciplinary but may be the basis for a disciplinary action. To ensure employees fully understand this, management will include the following statement on the form, "The information on this form may be used as a basis for disciplinary action. You may have Union representation on this matter." Use of a BC-290 is discretionary on management's part. However, if a BC-290 is issued, the employee will have 5 workdays to respond.

Within 90 days the division will normally make a decision on whether to initiate (by forwarding a BC-290 to Personnel) a disciplinary action based on the infraction. If the decision is made not to initiate discipline, the record of infraction normally will be destroyed. It will not be destroyed (a) if the reason discipline is not initiated is for reasons outside the Bureau's control (e.g., Inspector General investigation) or (b) if the employee claims a handicapping condition and management delays taking discipline as part of an accommodation agreement.

ARTICLE 28 — UNFAIR LABOR PRACTICE CHARGES

The Union and Employer recognize the mutual benefits to be gained from in-house resolution of Unfair Labor Practice (ULP) charges. Toward this end, the parties agree to the following:

- a. The Union and the Employer agree to provide each other with a copy of any ULP charge 30 days before the charging party files it with the FLRA.

- b. The Union and the Employer agree to provide the other party in writing with the specific event(s) that caused the ULP charge to be submitted and suggested ways to correct the alleged violation.
- c. The Parties agree to conduct an investigation of the alleged violation and meet with the charging party to discuss its findings within 15 days of receipt of the charge.
- d. The Parties agree to take action appropriate to correct and/or prevent recurrence of the violation or problem which precipitated the charge. When either party takes such action, the other party not to grieve the matter and not to file the ULP with the FLRA.

No part of this Article is to be construed as a waiver of either party's right to file an unfair labor practice charge in cases where the issue is unresolved and the statutory time limit (180 days) would otherwise be violated.

ARTICLE 29 C REDUCTION IN FORCE (RIF)

29.1 General.

- a. The parties acknowledge and agree to the following terms and conditions, including those in Title 5 C.F.R. Part 351, RIF. The Agency agrees to provide the Union written notification, as specified elsewhere in this bargaining Agreement, when it wishes to implement any RIF. The written notification will specify the action, the management reason(s) for the action, (see 5 C.F.R. 351.201(a)), and the approximate number of employees to be affected. If more than one reason is invoked for any Agency action(s), the Agency will relate the number of employees so affected with each separate reason cited for the action(s).
- b. The Agency will provide the Union with complete information regarding surplus positions as soon as practicable, but not later than 10 work days prior to employees' receiving a specific RIF notice.
- c. The Agency will, on a continuing basis, provide the Union with the latest information available regarding any applicable action,

including the full bump/retreat chain. This shall include at least a weekly briefing session. The information provided shall be that information available to the Agency at the time which has a reasonable bearing on the impact and/or implementation of any RIF.

- d. In addition to information relating to the management reasons for the RIF, the following information will be provided to the Union as far in advance as practicable of the issuance of specific notices to affected employees. A Practicable@ is defined in this context as meaning at the time that the information is available to management for planning the impact and/or implementation of the action.
1. copies of any memoranda from higher authority requiring the action or containing directives concerning its implementation;
 2. organizational components and competitive levels affected;
and
 3. effective dates of each action.
- e. The Agency will attempt, to the maximum extent feasible, to minimize displacement or separation of adversely affected employees by taking every possible, prudent action to retain employees in their present positions.

29.2 Retraining and Performance Standards.

- a. Employees assigned to other positions as a result of any RIF will be counseled individually by their new supervisor(s).
- Supervisors will discuss training needs with the employee(s) on a continuing basis and will provide, to the maximum extent practicable, whatever on-the-job training is needed for the employee to perform the new job in a satisfactory manner within 120 days.
- b. Employees who have duties different from those previously performed will receive first consideration in any Agency sponsored training course, if such training can be reasonably

related to the employee's new position.

- c. New work performance appraisal plans of not less than 120 days duration will be constructed for all employees affected by reassignment or displacement. At the employee's request, these plans will facilitate adaptation to the new position and may be accompanied by Individual Development Plans containing a citation of training needs of the employee so that he/she may perform the new job in a satisfactory manner. Special attention will be focused on training which bears on the critical aspects of the new job and on scheduling such training expeditiously.
- d. The Agency will make available to employees receiving specific notice of separation reasonable in-house training resources in fields where outside employment prospects appear encouraging, and where it is practical for the Bureau to provide such training. The Agency will provide the Union with a monthly statement of actions taken under this section. Additionally, the Agency will provide the required Job Training Partnership Act (JTPA) program information to employees in their specific RIF notices. During the 4 weeks following a RIF, it will continue to provide such training to separated employees to the extent such training is legal, pertinent, and not repetitive.

29.3 Competitive Area.

- a. The competitive area is defined as the entire Washington, D.C. metropolitan area.
- b. The Agency will not assign employees into or from the competitive area for the purpose of coercing any employee's resignation or retirement.
- c. To the maximum extent that they can be avoided or delayed until after an announced RIF or other applicable action is completed, no transfers or details will be made into or out of a competitive area, if the transfer or detail affects in any way a competitive level involved in the RIF or other applicable action.

29.4 Competitive Levels.

a. Criteria used for establishing competitive levels:

A competitive level consists of all the positions in a competitive area which are in the same grade (or occupational level) and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that an agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

1. **Undue interruption:** Undue interruption is a degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a low priority program or to a vacant position.
2. **Qualification considerations:** Competitive level determinations are based on each employee's official position, not the employee's personal qualifications.

b. As soon as practicable following a request, the Union will be furnished a copy of the competitive level documentation; an employee may also request and receive information pertinent to his/her case.

c. No later than 10 workdays from the time an employee receives a specific RIF notice, the employee may review a listing of the competitive level in which he/she has been placed, consistent with the Privacy Act, as well as an explanation of the competitive level structure.

29.5 Retention Registers.

- a. Employees who have been affected by a RIF, and their respective representatives will, upon 24 hours notice, be given the opportunity to review competitive level (retention) registers, regulations, or other records pertaining to their respective cases. Requests to review such information should be directed to the Chief, Employment & Compensation Branch, Human Resources Division. Employees will be considered to have been affected at the time they receive their specific RIF notice. However, an employee may at any time review his/her competitive level.
- b. The employee may review retention registers listing:
 1. employees in his/her competitive level;
 2. employees in competitive levels who may be reasonably entitled to displace him/her;
 3. employees in competitive levels to which he/she reasonably may have assignment (bump/retreat) rights; and
 4. other competitive levels, if any, reasonably related to the employee's situation.
- c. Following receipt of a specific notice, an affected employee has the right to see the full bump/retreat chain pertaining to his/her situation and all information therein.

29.6 Assignment.

- a. The parties agree to establish an Advisory Assignment Review Committee whose functions shall be to monitor the subsequent assignment of employees affected by one of the actions covered by this Article and to recommend settlements of problems where appropriate.
- b. The Committee's function with respect to a given employee(s) shall cease 6 months from the effective date of the action affecting him/her.

- c. The Agency will designate a management official, with sufficient authority to secure necessary information, to chair the Committee. Each party shall designate 2 further members.
- d. The Committee members, or other designees, shall meet weekly for 90 days and biweekly thereafter for a 90-day period, unless a majority of members agree to an alternate arrangement.
- e. The Committee will be kept advised of vacancies that the Agency is seeking to fill. The Committee will be advised of the Agency's action with respect to all assignment actions (i.e., position changes, details, etc.) as soon as practicable. The Committee will also be advised of any employee requests under Section 29.6 g and the Agency's action thereon. The Committee is intended as a good faith attempt by both parties to study and recommend, in an expeditious manner, reasonable and acceptable solutions to problems which have arisen.
- f. The Committee may note any problems it perceives and make its recommendation(s) for addressing such problems. Such recommendation(s) shall not be construed to prejudice the respective position of either party, or the employee(s) involved, in grievance(s) or appeal(s) which may ensue.
- g. The parties recognize that an employee may be dissatisfied with his/her offer of assignment. Where the employee accepts the offer but, remains dissatisfied following a reasonable trial period of at least 30 days, the employee may forward a written request for reassignment to the Chief, Human Resources Division, who will forward it to the Assignment Review Committee in accordance with Section 29.6 e. The employee may request to discuss the matter orally with the Committee, indicating the reasons for such request. The Agency will, for a period of 6 months, give serious consideration to any such request prior to considering other reassignment eligibles except as may otherwise be authorized by regulation.
- h. The Agency will, to the maximum extent feasible, assign an affected employee to any position for which the employee:

1. meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;
2. is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;
3. meets any special qualifying condition which the OPM has approved for the position; and
4. has the capacity, adaptability, and special skills needed to satisfactorily perform the duties of the position without undue interruption.

It is understood that minimum education requirements prescribed by OPM may not be waived under this section.

1. The Agency may assign an employee to a vacant position without regard to OPM's standards and requirements for the position if:
 2. the employee meets any minimum education requirement for the position;
 3. it determines that the employee has the capacity, adaptability, and special skills required for the position; and
 4. it is satisfied that he/she is able to do the work without undue interruption to the work program.

It is understood that minimum education requirements prescribed by OPM may not be waived under this section.

29.7 Salary Retention and Severance Pay.

- a. Salary retention for affected employees will be based on applicable law and regulation. Employees who have served at least 52 consecutive weeks in a higher grade position who are placed in a lower grade position as a result of a RIF shall be entitled to retain their grade and pay in accordance with the

provisions of 5 U.S.C. 5362 and 5363.

- b. Eligible employees who are separated as a result of the RIF will be paid severance pay in accordance with applicable rules and regulations.

29.8 Employee Information.

- a. The Agency shall inform employees of any RIF and why they may be affected as soon as such information is available. Specifically, the Agency shall inform all employees of plans or requirements it is acting upon, the extent of the affected area, the regulations governing the planned action, and the kinds of assistance provided for affected employees.
- b. In the case of a RIF the Agency will establish a RIF Information Center to facilitate the dissemination of information of value to affected employees. The Center's hours of operation shall be established as to accommodate any off-shift employees who may be affected by the RIF. Any employee affected by a RIF shall be allowed a reasonable amount of time to visit the RIF Center and use its facilities. Each employee receiving a specific RIF notice will be notified of the Center's existence and the services offered.
- c. The Agency will offer each affected employee a personal interview with a personnel specialist at the Center; first priority, however, will be given those receiving specific notice of separation. The purpose of such interviews shall be to treat each affected employee as an individual to the extent possible, to resolve special problems or refer the employee to the appropriate office, and to give special assistance in the completion of necessary forms (see Section 29.10b), updating of resumes, or other matters.
- d. General information concerning the conversion of insurance policies will be made available through the RIF Information Center. Any employee involved in a RIF shall be allowed a reasonable amount of time to visit Human Resources Division or the RIF Center, whichever is appropriate, for the purpose of consultation on the subject of his/her rights regarding conversion of insurance policies in accordance with the

provisions of 5 CFR 351.

- e. Information assembled by the Outplacement Committee referenced in Section 29.10 on job opportunities outside this Agency and sources of placement information, (e.g., other agencies, trade associations, job banks, etc.) will be placed in the RIF Information Center and employees will be allowed a reasonable amount of time to make use of the information.
- f. Upon request, the Agency agrees to schedule meetings of affected employees (generally on a division-wide basis) to explain the contents of this Article and to answer questions concerning it. The Union will be given at least 24 hours notice of such meetings; the Agency will make a reasonable attempt to stagger the scheduling of the meetings. Affected employees, @ for purposes of this section, means those who receive specific RIF notices or reassignment letters.

29.9 Notice.

- a. The Agency will provide to affected employees a specific written notice at least 60 full days before the effective date of release. The Agency also intends to notify employees who will be reassigned without release from their competitive levels no later than the issuance of specific notices.
- b. The specific notice shall state:
 - 1. the action to be taken, the reasons for the action, and its effective;
 - 2. the employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last 4 years;
 - 3. any offer of assignment, including the grade, job series, and name of the organizational unit (below the division level) of the new assignment offer;
 - 4. the reasons for retaining a lower-standing employee in the same competitive level under 5 CFR 351.607, Permissive continuing exceptions, and 351.608, Permissive temporary

exceptions;

5. the employee's rights to appeal the action to the Merit Systems Protection Board and applicable time limits governing that right; and
6. other pertinent information as defined in 5 CFR 351.802, Content of Notice.

The employee will be provided with an extra copy of the specific notice for possible referral to the Union or other employee representative. This copy will be noted AOfficial Representative's Copy.@ The Union agrees not to request copies under Chapter 71 or any other provisions.

- c. The Agency will issue a memorandum to all employees affected by a RIF strongly advising them to update their resume on a timely basis. This memorandum shall be issued no later than the time at which the specific notice is issued and will explain the possible consequences of not having an updated resume in the employee's Official Personnel Folder.
- d. The employee will be afforded 10 workdays from receipt of the initial offer of assignment under Section 29.9b but not for succeeding offers to consider the offer.

29.10 Employment Assistance.

- a. An Outplacement Committee will be activated as soon as practicable consisting of a qualified management employee to act as head of this Committee with two additional members appointed by management and two employees appointed as members by the Union. The purpose of this Committee will be to review and monitor all activities under section 10 of this Article. For a period of 6 months after the effective date of a RIF, the Committee shall meet weekly, unless a majority of Committee members agree to alternate scheduling.
- b. The Agency will provide eligible current employees selection priority for internal vacancies through the Career Transition Assistance Plan (CTAP); and priority consideration will be provided in other federal agencies for displaced employees

through the Interagency Career Transition Assistance Plan (ICTAP). Employees seeking selection priority consideration under the CTAP and ICTAP must apply for a specific vacancy, and must be considered well qualified for the vacancy. Eligible applicants who are deemed well qualified will receive priority consideration for selection. In addition, the Agency will assist eligible employees in registering under the Reemployment Priority List and the Agency's Priority Placement Program. Information and assistance on each of these programs will be made available to employees through the Career Resources Center.

- c. The acceptance of temporary employment will not affect an employee's continuing right to be considered for permanent or non-temporary employment under the above programs.
- d. At their request, all employees receiving specific notice of separation will be scheduled for seminars on personal marketing and interviewing skills, resume preparation, and stress management. The purpose of these sessions shall be to help affected employees assess themselves in terms of the contemporary labor market, to build job-seeking skills, and to reduce stress. The Union may designate an official to attend such seminars.

The Agency also agrees to canvas other affected employees for interest and to offer sufficient additional seminars as needed. A record will be maintained for the Outplacement Committee of the announced days and times of the meeting, and the employees who attend.

- e. The Agency's Career Resource Center is available to assist employees with career counseling, career assessment, career development and training, and provides a wealth of information on career topics and internet vacancy sites such as the USA JOBS, Federal Jobs Digest, and FedWorld Federal Jobs Search.
- f. Per Article 29.2(d) above, as part of the specific RIF notice, employees will receive the required JTPA program information. Employees who are unable to find other employment will be informed, on the basis of information obtained from the local

State Employment Security Office, as to any benefits to which they may be entitled. A list of employees counseled will be maintained by the Agency for the use of the Outplacement Committee.

29.11 Details.

The retention standing of all employees on detail, including merit detail, will be based on their permanent positions C not on positions to which they were detailed.

29.12 Records.

- a. The Agency will maintain intact all registers and records relating to the retention standing of affected employees for at least 1 year, or until such time as all grievances or other litigation concerning the RIF or other applicable action have been concluded. Current and former employees will be granted full, complete, and unabridged access to such records as bear on their respective cases (see Article 29). Union officials and stewards will be granted access to all records in their entirety.
- b. The Union and the Agency will protect the confidentiality of any Privacy Act information available under this Article and take sufficient precautions to secure such information from unauthorized disclosure. Release of information to employees by either party shall be in accordance with the Privacy Act, Freedom of Information Act and this Article.

29.13 Merit Assignment Plan.

- a. Employees who are downgraded through a RIF are entitled to priority placement consideration for re-promotion under the Agency's Priority Placement Program.
- b. Nothing in this Article, nor any of the personnel actions which are the subject of this Article, shall affect any employee's rights to encumber a position description properly classified according to OPM regulations.

29.14 Employment Freeze.

- a. The Agency will to the maximum extent feasible refrain from filling any vacancies with persons not employed by the Agency at the time of any RIF.

This freeze shall last for as long as this Article is applicable to the situation. The Agency agrees to maintain a list of individuals hired during the period this Article is applicable.

- b. During a RIF the Agency will, to the maximum extent feasible given mission requirements, freeze promotions and transfers in the affected competitive levels until the RIF has been completed.

29.15 Rating of Record.

- a. For RIF purposes, ratings considered ratings of record are: (1) the rating given at the end of the appraisal period (normally on an annual basis); (2) the rating given at the end of an extended appraisal period (extended because a newly appointed employee did not serve 120 days in his/her current position); (3) the approved rating following an opportunity to demonstrate acceptable performance as provided in 5 U.S.C. 4302(B)(6).
- b. An employee must not be assigned a new rating of record for the sole purpose of affecting his/her RIF retention standing.
 1. The Agency agrees to give 16 years of credit to a meets or exceeds rating level under the Census Bureau's two level system. A transferred rating from another agency in a five level system will be given credit as follows: level 5 (outstanding or equivalent) will receive 16 years credit; level 4 (commendable or equivalent) will receive 15 years credit; and level 3 (fully successful or equivalent) will receive 14 years credit. For other patterns; for example, a 4 level system, the highest rating allowed will receive 16 years of credit, descending in one point increments to a level 3 (fully successful) level.

ARTICLE 30 – FURLOUGH

Any furlough of unit employees will be implemented in accordance with the following provisions.

- a. The Employer agrees to notify the Union as soon as possible of any decision to furlough.
- b. The Employer agrees to provide a copy of the notice of furlough to the Union prior to distribution to unit employees.
- c. The Employer agrees to implement any furlough in accordance with all applicable laws, rules, and regulations.
- d. The Employer agrees to provide to employees information on the status of health benefits and life insurance while in furlough status.
- e. The Employer agrees to provide information that will assist employees in applying for unemployment benefits.
- f. The Employer agrees to request that State Employment Officials come to the Agency to answer questions and assist employees in applying for benefits to the extent such officials are available.
- g. The Employer will notify all employees that it may not legally accept voluntary services from employees while they are in furlough status.
- h. All employees in travel status or on assignment outside of the Washington metropolitan area will be allowed sufficient time to return to Washington and will be paid to do so.
- i. All time limits dealing with any represented matter shall be extended beyond the reopening date of the Agency, if shutdown is required. Otherwise, the time limit shall be ex-

tended beyond the return to duty date of the employee, representative, or manager involved, whichever is latest. The length of the extension will equal the total length of the furlough days plus 1 day.

- j. Special arrangements will be made to allow employees to enter Federal Building 3 for the purpose of picking up checks and/or transacting business at the Credit Union and the bank if these institutions are otherwise open.

ARTICLE 31 — CONTRACTING OUT

- 31.1 A-76 Study. When the Employer decides to review a particular function for possible contracting out pursuant to OMB Circular A-76, which may adversely affect bargaining unit employees, the Employer agrees to notify the Union. The Union and the Employer encourage employees of the affected area(s) to make recommendations, furnish information and cooperate with the members of the review team assigned to review the function(s).
- 31.2 Recommendations. Once notified under the provisions of Article 31.1, the Union may at any time provide written recommendations to the LMRS for trimming costs in the area under review. The LMRS will forward the comments to the review team which will consider them as part of their review function of the area.
- 31.3 Decision. When the Employer decides to contract out a particular area(s) containing bargaining unit employees, as the result of an A-76 study, the Employer will notify the Union. Any request by the Union to bargain the impact and implementation of the decision to contract out will be handled in accordance with Article 2.
- 31.4 Impact. The Employer will attempt to reduce any adverse impact on employees whose positions are contracted out. Employees who are separated as a result of the decision to contract out, will receive the same consideration as any employee separated according to the provisions found in Article 29 of this agreement.
- 31.5 Information to the Union. When the Employer is conduct-

ing an A-76 study in anticipation of contracting out the function, the Employer agrees to provide information to the Union which can be released legally.

- 31.6 Walk Through. The Union may have a representative on any "walk through" by bidders of the function undergoing a cost study. The representative's role will be as a silent observer. After the walk through, if the Union has any questions/problems they will submit them to the LMR office which will see that the Union receives an appropriate response.

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MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding (MOU) addresses the impact and implementation of 41 CFR Part 101.20 (FPMR Amendment D-85), Smoking Regulations, promulgated by the Public Buildings Service, General Services Administration. These regulations took effect on February 6, 1987. This MOU has been agreed upon by the Bureau of the Census (the "Agency") and its exclusive representative, AFGE Local 2782, AFL-CIO (the "Union"). It is the intent of this MOU to recognize the rights, needs and concerns of all unit employees, both smokers and non-smokers, with regard to smoking as defined by the GSA regulations.

Article I. Definitions

- A. Ventilation: the process of supplying and removing air by natural or mechanical means to and from any space. Such air may or may not be "conditioned", i.e., heated or cooled. Applicable GSA, NIOSH, and OSHA regulations will continue to be applied, as well as, any applicable changes to these regulations.
- B. Office: a space enclosed by floor to ceiling walls and one or more closeable doors leading into the area.
- C. Service Area: office space area frequented by other employees or the public. Such areas include , but are not limited to, administrative liaison offices and certain areas of Personnel, Finance, and Data User Services Divisions.

Article II. Smoking is permitted in the following public areas:

- A. In accordance with GSA approval, smoking is permitted in the currently designated smoking area in the cafeteria in F.O.B. #3.
- B. The following restrooms in F.O.B. #3.
 - 1. First Floor:
 - a. Wings 4 and 6
 - b. Front corridors between Wings 3 & 4, and 6 & 7
 - c. One of CSvD's sets of restrooms as determined by the Chief, CSvD.

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2. Second Floor:
 - a. Wings 1, 3, 5, & 7
 - b. Front corridors between Wings 3 & 4, and 6 & 7
 3. Third Floor:
 - a. Wings 2, 4, & 6
 - b. Front corridors between Wings 1 & 2, and 4 & 5
 4. In the G-200 Wing of the basement.
- C. The following restrooms in F.O.B. #4.
1. First Floor:
 - a. Wing 2
 - b. Front corridor between Wings 1 & 2
 2. Second Floor:
 - a. Wing 1
 - b. Front corridor between Wings 2 & 3
 3. Third Floor:
 - a. Wing 2
 - b. Front corridor between Wings 1 & 2
- D. In accordance with currently applicable lessor rules and all state, county, and/or local ordinances, the restrooms of Census-occupied floors of outlying buildings, i.e. Scuderi, Suitland Professional Center, and Iverson Mall.
- E. Adequate ventilation must exist.
- F. The Agency will provide adequate ash trays or receptacles in the "designated smoking areas."

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- G. The Agency may post appropriate signs in areas where confusion exists as to whether smoking is permitted.

Article III. Smoking in Offices

- A. Smoking is permitted in offices when ALL of the following conditions are met:
1. All occupants agree to make their office a "designated smoking area";
 2. A "DESIGNATED SMOKING AREA" sign is displayed on each door leading into the designated smoking office;
 3. Adequate ventilation exists so as to limit the involuntary exposure of non-smokers to second-hand smoke to a minimum;
 4. The office is not a service area;
 5. Smoking is not permitted when anyone not stationed in the designated smoking office is present unless that person agrees to allow smoking; and
 6. All doors connecting a designated smoking office with other space are kept closed while the occupant(s) is/are smoking. In addition, the closing of such doors must not considerably interfere with air circulation provided by heating and air-conditioning units.
- B. If any of the above criteria in Article IIIA cease to exist in a designated smoking office, the area must become non-smoking. ASD will be notified of such changes, as well as, of the initial designation of smoking offices.
- C. It is the parties' interest and intent to minimize the unhealthy effects of smoking violations on employees, as well as, to minimize disruption to the work. When violations can be quickly

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alleviated or corrected, responsive measures will generally be taken as soon as possible. Before entering a designated smoking office, employees may request that a window be opened or a ventilating device be used to clear the air.

- D. Both parties encourage all employees, smokers and non-smokers alike, to familiarize themselves with these rules and this MOU, and be cooperative and sensitive to the needs of others.

- Article IV. The Agency will provide the Union an initial list of designated smoking areas under Article IIIA as soon as it becomes available and will provide an updated list on a quarterly basis.
- Article V. When planning future use of office space, the Agency will consider the possibility of creating designated smoking areas in order to minimize possible disruption to work that the new rules and regulations may generate. The Agency will also consider establishing "Designated Smoking Areas" in non-work areas not otherwise specified in this MOU.
- Article VI. An all-employee memorandum explaining the new smoking regulations will be distributed as soon as possible.
- Article VII. New employees will be advised of the smoking regulations in the Agency's orientation sessions.
- Article VIII. Supervisors will be reminded of their obligations under the smoking rules during the first year of implementation.
- Article IX. It is the Agency's intent to continue providing voluntary smoking cessation programs. An all-employee memorandum will be distributed as soon as possible that advises employees of some of the resources available to assist smokers who wish to reduce or stop the smoking habit.
- Article X. Article 20.14, (Smoking) of the Labor Agreement will

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continue in force to the extent not contradictory to this MOU and GSA regulations. Accordingly, the last paragraph of Article 20.14 will be dropped. All other portions of Article 20.14 will remain in effect, including that referring to the opportunity, within practical limits, for smokers to be relocated.

Article XI. An employee's status as a smoker or a nonsmoker will not be inappropriately used as a basis for personnel actions (i.e., ratings, merit assignment, and work assignment).

Employees will have the right to smoke provided they comply with the provisions of the GSA regulations and this MOU.

Unit employees may use the negotiated grievance procedure or invoke the language of Article 20.3 of the Labor Agreement to address complaints regarding these regulations or this MOU.

Article XII. Discipline

- A. The Agency recognizes that certain actions which are prohibited under these new rules, were permissible in the past and not subject to disciplinary measures. The Agency also recognizes that the new rules may impact upon some employees' long-standing habits. Accordingly, and to facilitate the period of transition, the Agency should consider counselling before taking disciplinary action(s), as well as, consider taking lighter initial disciplinary action(s).
- B. Unit employees will continue to be covered by Article 29, Discipline, of the Labor Agreement. Article 29, in part, requires adherence to the principles of progressive discipline and just cause when taking disciplinary action.

Article XIII. In accordance with Article 20 of the Labor Agreement, the Occupational Safety and Health Committee will continue to function in its monitoring and advisory roles with respect

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to safety and health. The Committee may make recommendations for changes to this MOU and the implementation of the GSA smoking regulations as they concern health and safety. Such recommendations will go to the ASD through the Health and Safety coordinator, and to the Labor Management Relations Staff and to the Union. If the Agency implements such changes it will notify the Union in accordance with Article 2.4. This does not apply to areas outside the control of the Census Bureau.

Article XIV. The parties will meet periodically, upon request, to discuss problems that may arise concerning the implementation of this MOU. Further, the parties recognize that this MOU is open for rebargaining during future renegotiations of the current Labor Agreement which is set to expire on July 19, 1987.

FOR THE UNION

FOR THE AGENCY

DATE

DATE

The Bureau of the Census and American Federation of Government Employees, Local 2782 agree that the union membership having ratified the negotiated labor-management agreement and the Department having approved it, the agreement becomes effective October 1, 1990.

Memorandum of Understanding

FOR THE AGENCY

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Chief Negotiator

Sandra T. Duckett

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