

SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY  
Docket # SF-1221-23-0258-W-1  
Agency File B1  
Summary Page

**Case Title :** SHERMAN S. STARTZ v. DEPARTMENT OF THE ARMY

**Docket Number :** SF-1221-23-0258-W-1

**Pleading Title :** Agency File B1

**Filer's Name :** Gwendolyn L. Smith, Esq.

**Filer's Pleading Role :** Agency Representative

**Details about the supporting documentation**

N/A

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Online Interview

- 
1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

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2. Does your pleading assert facts that you know from your personal knowledge?

Yes

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3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

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# **BASIC LABOR AGREEMENT**

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**BETWEEN**

**U.S. ARMY ALASKA, U.S. ARMY GARRISON ALASKA, U.S. ARMY FIELD SUPPORT  
BATTALION-ALASKA, 59TH SIGNAL BATTALION, U.S. ARMY REGIONAL  
CONTRACTING OFFICE- ALASKA, MEDDAC-AK, and DENTAC-AK**

**AND**

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1834; AMERICAN  
FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1712; AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES**

**EFFECTIVE JUNE 17, 2022 THROUGH JUNE 16, 2028**

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## **PREAMBLE**

**Parties.** This Agreement is entered into by and between the U.S. Army Alaska, U.S. Army Garrison Alaska, U.S. Army Field Support Battalion-Alaska, 59th Signal Battalion, U.S. Army Regional Contracting Office-Alaska, MEDDAC-AK and DENTAC-AK (collectively referred to as the “Agency”) and representatives of the American Federation of Government Employees, American Federation of Government Employees Local 1712, and American Federation of Government Employees Local 1834 (collectively referred to as the “Union”). Jointly, the “Agency” and the “Union” will be referred to as the “Parties.”

**Purpose.** This Agreement has been negotiated to satisfy a mutual obligation to negotiate in good faith under the Federal Service Labor-Management Relations Statute. Both Parties are legally bound by its terms for the duration of the Agreement. Both Parties further agree to uphold the Army values.

**Complete Agreement.** This Agreement represents the complete agreement of the Parties and supersedes any and all past practices and previous agreements between the Parties. Any and all Memoranda of Understanding (MOUs), Memoranda of Agreement (MOAs), or other side agreements (written or unwritten to include any past practices) between the Union and the Agency are hereby rescinded with the effective date of this Agreement unless such past practices or agreements are expressly included in this Agreement.

## **ARTICLE 1** **UNION RECOGNITION**

1.1. **Recognition.** The Agency recognizes the Union as the exclusive representative of Agency employees at Joint Base Elmendorf-Richardson (JBER), Fort Wainwright, and Fort Greely for which the Union holds a current FLRA certification. The FLRA certifications in effect at the time of this Agreement are attached as Appendix D. Pursuant to 5 USC § 7114(a)(1), the Union is entitled to act for and negotiate collective bargaining agreements covering all employees in the units. The bargaining units do not include the following:

- a) Any management official or supervisor;
- b) Any confidential employee;
- c) Any employee engaged in personnel work in other than a purely clerical capacity;
- d) Any employee engaged in administering the provisions of 5 USC Chapter 71;
- e) Any employee engaged in intelligence, counterintelligence, investigative, or security work that directly affects national security;

f) Any employee primarily engaged in investigative or internal audit functions relating to the work of individuals employed by the Agency whose duties directly affect the internal security of the Agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

**1.2. Recognition Disputes.** Where informal attempts to resolve disputes concerning bargaining unit membership fail, the disputes will be submitted to the Federal Labor Relations Authority (FLRA). This provision does not require any attempt informally to resolve the issue prior to submitting to the FLRA.

## **ARTICLE 2** **PROVISIONS OF LAW AND REGULATIONS**

**2.1. Administrative Leave.** It is understood that the Administrative Leave Act of 2016 limits the total amount of administrative leave any employee may be granted in a calendar year. As such, any provision of this Agreement that would grant an employee administrative leave beyond the legal maximum becomes unenforceable at that point and such leave will no longer be granted even if the employee would otherwise be eligible for the leave under this Agreement.

**2.2. Compliance with Laws and Regulations.** In the administration of all matters covered by this Agreement, the Agency and the Union agree that all employees are governed by existing or future laws, statutes, executive orders, and government-wide rules or regulations. If a law, statute, executive order, or government-wide rule or regulation comes into conflict with the language of this Agreement during the life of the Agreement, the Parties will negotiate over and reconcile the language of the Agreement with the new law, statute, executive order, or government-side rule or regulation.

2.3. This Article shall apply to all agreements reached between the Parties during the term of this Agreement, including but not limited to supplemental, implementing or subsidiary agreements.

2.4. **Legal Notifications.** The Parties mutually agree to accept all legal notifications (FLRA pleadings, etc.) via email where such method is legally authorized.

2.5. **DoD and Army-wide Rules Regulations.** The Parties agree that this agreement may not conflict with any DoD or Army-wide rule or regulation. Accordingly, the Agency agrees to inform the Union of any change to DoD or Army-wide rules or regulations that conflicts with this agreement or that might otherwise impact conditions of employment. The Agency further agrees to negotiate with the Union over the impact and implementation of the new rules or regulations and to resolve any conflicts with this agreement.

## **ARTICLE 3** **EMPLOYEE RIGHTS**

3.1. **Training.** The Parties recognize that training constitutes an assignment of work. Accordingly, the Agency maintains discretion to determine what training to assign to employees, when to assign such training, where training will occur, and how much money to allocate to training programs. Notwithstanding any other provision of this Agreement, work schedules may be modified with at least seven (7) calendar days' notice to allow employees to attend a required training program that occurs outside of their regularly scheduled duty hours. Employees and the Union are free to provide feedback on training received and to recommend new training. No employee shall receive compensation or reimbursement for training expenses without advance approval, which may be granted or denied in the Agency's discretion.

3.2. **Details.** The Agency may, in its discretion, detail an employee to another position and determine which employees are qualified for a detail to another position. Competitive procedures are not required for details of 120 days or less. If the detail results in a promotion to a higher-graded position, the employee will be compensated at the higher grade for the duration of the temporary promotion and returned to his former grade at the conclusion of the temporary promotion. Unless the organization would be seriously handicapped in carrying out its functions or costs would be substantially increased, employees will receive no less than seven (7) calendar days' notice of a detail assignment, and the Union shall receive at least seven (7) calendar days' notice when an employee Union representative receives a detail assignment outside his or her current bargaining unit.

3.3. **Employee Assistance Program (EAP).** The Agency agrees to allow employee participation in the Army's EAP program, which may be changed or modified in the Army's discretion during the term of this Agreement. Employee participation in the EAP program does not excuse employee misconduct or poor performance but may be considered by the Agency when making disciplinary determinations. Employee participation in the EAP will be strictly confidential except when an employee consents to disclosure or where law or regulation authorizes disclosure such as instances where an employee threatens to harm someone or divulges information about child abuse. Employees who wish to utilize EAP services during duty hours may be required to request leave and receive approval in accordance with the provisions of this Agreement.

3.4. **Transit Subsidies.** Bargaining unit employees may participate in any applicable DoD or Army transit subsidy program under the same terms applicable to non-bargaining unit employees and which may be modified during the term of this Agreement.

3.5. **Union Participation.** In accordance with 5 USC § 7102, each employee has 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. Such right includes the right:

- a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees in accordance with law.

3.6. **Choice of Representative.** An employee has the right to bring matters of personal concern to the attention of his or her supervisor. The employee may elect to have Union representation or to represent himself/herself. The Agency will not designate a representative for an employee nor will the Agency require any employee or individual to serve as a representative of another employee. The Agency will not use a bargaining unit employee as a witness or observer when counseling another bargaining unit employee.

3.7. **Work Time.** Employees may not engage in Union activities during work time unless they have received advanced approval for official time in accordance with the terms of this Agreement.

3.8. **Weingarten Rights.** The Agency will inform employees annually each January of their rights under 5 USC § 7114(a)(2)(B), which shall include the following statutory language: An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if—

- a) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
- b) the employee requests representation.

3.9. **Voluntary Activities.** Employees may not be required to contribute money in the Combined Federal Campaign, purchase U.S. bonds in any bond drive, or donate blood in any organized blood drive. Participation or nonparticipation will not advantage or disadvantage employees.

3.10. **Employee Fitness.** The Agency agrees to allow bargaining unit employee participation in any established Army fitness program on the same terms applicable to non-bargaining unit employees. The Army fitness program may be modified or terminated at any time in the Army's discretion. Consistent with the Agency's right to assign work, the Agency is under no obligation to establish or maintain a fitness program in the absence of an Army-wide regulation.

3.11. **Resignation.** An employee may resign or retire, if eligible, consistent with prevailing laws, rules, and regulations.

3.12. **Pay Processing.** Employees are solely responsible for submitting an accurate record of time worked to their supervisor in the format required by the Agency, currently ATAAPS. Employees are also responsible for reviewing their leave and earnings statement and promptly reporting suspected inaccuracies. The Parties recognize that the Defense Finance and Accounting Service (DFAS) is a separate agency that is solely responsible for processing employee pay pursuant to 32 CFR Part 352a. Accordingly, any disputes involving payment delays, paycheck deductions, leave and earning statements and similar pay issues must be made directly to DFAS. Pursuant to 5 USC § 5536, employees may not receive any additional pay or allowances unless specifically authorized by law.

3.13. **Workers' Compensation.** The Agency agrees to abide by workers' compensation laws and will not discriminate against employees who file claims. Disputes over workers' compensation claims are excluded from the negotiated grievance procedures.

## **ARTICLE 4** **MANAGEMENT RIGHTS**

4.1. **Agency Notifications.** Notifications to the Agency shall be made via email or personal delivery to the applicable management and employee relations specialist and to the assigned labor attorney.

4.2. **Contracting Out.** The Agency may contract out any portion of its operations notwithstanding the impact on bargaining unit employees. The Agency will abide by applicable laws and regulations (including its own regulations) when contracting out. The Union will be notified as early as possible after the final decision to contract out work if that decision will impact the terms and conditions of bargaining unit positions or result in a reduction in force (RIF). In the event of a RIF, the RIF provisions of this Agreement shall apply.

### **4.3. Reduction in Force (RIF)**

- a) The Union will be informed of an impending RIF as early as possible.
- b) If requested, the Agency will brief the Union regarding the reasons for the RIF.
- c) The Agency agrees to afford impacted employees all applicable statutory and regulatory rights, including any right to participate in a program designed to assist in the placement of excess employees.

4.4. **Legal Rights.** The Agency retains the following rights outlined in 5 USC § 7106:

- a) To determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and in accordance with applicable laws;

- b) 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;
- c) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
- d) With respect to filling positions, to make selections from among properly ranked/certified candidates for promotion or any other appropriate source, and,
- e) To take whatever actions may be necessary to carry out the Agency mission during emergencies (as determined by the Agency).

4.5. Whenever language in this Agreement refers to specific duties or responsibilities of specific employees, supervisors, or management officials, it is intended only to provide a guide as to how a situation may be handled. It is agreed that the Agency retains the sole discretion to assign work and to determine who will perform those duties or functions.

4.6. Nothing in this Agreement shall preclude the Agency and Union from negotiating procedures and appropriate arrangements pursuant to 5 USC §7106(b)(2)-(3).

4.7. **Searches**. The Agency retains the right to monitor, inspect, and search any and all Agency property at any time, including but not limited to employee work spaces, desks, computers, telephones and lockers. If a non-criminal search is conducted while an employee is at the worksite, the impacted employee may be present for the search.

4.8. **Part-Time Employees**. The Agency may, in its discretion, hire employees into part-time positions or reclassify full-time positions into part-time positions. If an employee is hired or transferred into a part-time position, the Agency will notify the Union and the Agency agrees to negotiate over terms and conditions of employment specific to the new part-time position(s) in accordance with the terms outlined in Article 16.2 (Mid-term Negotiations). Negotiations are not required on any subject not specifically related to the terms and conditions of the new part-time position(s).

4.9. **Workplace Closures**. The Agency may, in its discretion, determine when to close a workplace or any portion of an installation or facility under its control. The Agency also may, in its discretion, determine when employees may be released prior to completing duty due to emergency circumstances. An Agency decision to close one workplace, facility or installation or to release one group of employees early due to emergency circumstances does not mandate that any other workplace, facility, or installation be closed or that any other group of employees be released early.

## **ARTICLE 5** **UNION RIGHTS**

5.1. **Union Notifications.** Notifications to the Union shall be made via email or personal delivery to the applicable local Union president, steward, or representative. All Union officers, stewards, and representatives shall be responsible for providing an accurate email address to the applicable management and employee relations specialist and to the assigned labor attorney. Failure to provide an accurate email address will result in the Union's waiver of any and all notification requirements under this Agreement.

5.2. **Polling.** The Union has the exclusive right to poll or survey bargaining unit employees about terms and conditions of employment covered by this Agreement. Notwithstanding the foregoing, the Agency maintains the right to conduct command climate surveys.

5.3. **Union Representation.** Pursuant to 5 USC § 7114(a)(2), the Union shall be given the opportunity to be represented at:

a) Any formal discussion between one or more representatives of the Agency and one or more bargaining unit employees concerning any grievance or any personnel policy or practice or other general condition of employment. Union participation during the discussion shall be in accordance with law (which may include the right to ask questions) and will vary based on the type of discussion. The right to be represented does not extend to informal discussions between an employee and a supervisor concerning a personal problem, counseling, or work methods and assignments.

b) Any examination of a bargaining unit employee by a representative of the Agency in connection with an investigation if:

i. The employee reasonably believes that the examination may result in disciplinary action against the employee; and,

ii. The employee requests representation. When a valid request for representation has been made, the Agency has the choice to: 1) grant the request; 2) discontinue the interview; or 3) offer the employee the choice to continue the interview without representation or have no interview at all.

5.4. **Bargaining Unit Information.** The Union shall be provided a list of the names, duty location and unit of assignment of all bargaining unit employees, if allowed by law, but no more than once per quarter. Information protected under 5 USC § 552a or other laws will not be disclosed to the Union without written consent of the employee(s).

5.5. **Identification of Stewards.** The Union shall supply in writing to the Agency a complete list of names, e-mail, work units, and building locations for all Union stewards. The list will be provided at least once annually at the beginning of the calendar year and

any time a change occurs. The Union has the exclusive right to designate stewards, and the Agency will not recognize any individual as a Union steward who has not been so designated by the Union to the Agency.

**5.6. Steward Selection.** For official time purposes, the Union may appoint one (1) steward for up to every fifty (50) bargaining unit employees within any work location and established schedule within the work location. There shall be no more than three (3) active stewards in any one work location.

**5.7. Official Time.**

- a) With prior supervisory approval in accordance with the provisions of this Agreement, employee Union representatives may request and be granted reasonable amounts of official time under the provisions of 5 U.S.C. §7131(a) and (c) notwithstanding any other provisions of this Agreement.
- b) The total amount of official time provided to Union stewards, representatives or officials in any bargaining unit during a fiscal year shall not exceed one (1) hour per bargaining unit employee. For the purposes of this provision, the number of employees in each bargaining unit shall be provided to the Union within fifteen (15) calendar days of the effective date of this Agreement to determine the number of hours available during the current fiscal year and thereafter no later than 15 September of each calendar year to determine the total allocation of official time available to each bargaining unit for the following fiscal year beginning 1 October. In the event of a significant change in bargaining unit population due to a RIF or reorganization, the number of total available hours of official time shall be adjusted for the remainder of the fiscal year immediately following the effective dates of the RIF or reorganization that results in the population change.
- c) Provided that the Union has not used and is not anticipated to use more hours of official time in the fiscal year than the size of the bargaining unit as outlined in paragraph b, the Union may be granted an additional pool of hours up to, but not to exceed, the size of the bargaining unit of such official time under 5 U.S.C. §7131(d) for other representative purposes. Such time will be subject to prior supervisory approval in accordance with the provisions of this Agreement, provided the hours are determined to promote an effective and efficient government and be reasonable, necessary, and in the public interest. No one representative may use more than one-quarter of this total pool of hours. If official time used for representational purposes under 5 U.S.C. §7131(a) and (c) is anticipated to exceed the number of bargaining unit employees for the fiscal year, as determined by the Agency in its discretion, no 5 U.S.C. §7131(d) time will be granted.
- d) Use of duty time by Union officers, stewards, and representatives for Union activities must not interfere with the accomplishment of the mission. Accordingly, no employee shall exceed more than 25% of his or her scheduled duty time performing Union duties in any fiscal year unless explicitly authorized by this Agreement. In

applying this individual official time limitation, supervisors may deny official time requests that would cause an employee to exceed this 25% limitation during any individual pay period, or if the employee has spent more than 25% of his or her paid time performing Union duties during the period of the fiscal year immediately prior to the start of the pay period for which official time is being requested.

- e) Union officials may request annual leave and/or leave without pay to assist employees if official time is unavailable in filing grievances under the negotiated grievance procedure or may do so during non-duty time. No official time will be authorized.
- f) Any travel or other expenses associated with Union duties, Union training or Union representation are the responsibility of the Union.
- g) Official time shall not be granted to a Union representative or officer to perform representational duties in a bargaining unit to which he or she does not belong.
- h) A Union steward or official may not go off-post without express permission from his or her supervisor to do so.
- i) Employees who are not Union representatives are not entitled to official time, but they may request time off during the duty day to meet with a Union representative. The Agency maintains discretion to grant or deny such requests. Notwithstanding the foregoing, employees will not be charged leave for participating in FLRA or grievance proceedings.

**5.8. Advance Approval.** When desiring to leave their work area to transact appropriate labor/management business during working hours, stewards and Union officers or other employee Union representatives shall first request permission from their supervisor or designee to leave their work area using the request form at Appendix B, stating the general nature of the business to be transacted and the location of the area they desire to visit, and the approximate time of return. The supervisor will promptly respond to such requests unless workload conditions prevent it. Upon return to duty, the Union steward, official or representative will report back to the supervisor or designee.

**5.9. Coordination.** Prior to traveling to a work area other than their own, the Union steward or officer will contact the appropriate supervisor or Agency official to coordinate a time for the visit. Official time may be denied if advanced coordination has not been made.

**5.10. Official Time Record.** Any Union steward, officer or representative who has been granted official time shall complete an Official Time Record form at Appendix C by the end of the first week of the calendar month following the month in which official time was granted.

5.11. **No Internal Union Business.** Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

5.12. **Conflict of Interest.** When there is a conflict between a Union steward, official or representative's representational activities and his or her regular job duties, the Union steward, official, or representative shall not provide representation.

5.13. **Office Space.** Requests for permanent Union office space will be handled in accordance with the Agency's property management rules and procedures, which may be modified during the term of this Agreement at the Agency's discretion. The Union shall be responsible for rent, utilities, and any other costs, including the cost of equipment and services, associated with the office space. Any space provided is subject to audit requirements, the Agency's internal security requirements, and life, safety and health inspections. Agency officials will not be denied entry to the office space to ensure adherence to such requirements.

5.14. **Information Requests.** Except where specified differently in this Agreement, the Agency will respond to Union requests for information and provide requested information consistent with 5 U.S.C. § 7114(b)(4). The Union will exercise reasonable prudence in making timely requests for information consistent with 5 U.S.C. § 7114(b)(4) and will provide enough specificity in its requests for the Agency to determine the Union's particularized need for the requested information.

5.15. **Literature Distribution.**

a) **New Employee Orientation.** The Union may provide copies of written materials produced at its own cost to the Agency for the Agency's distribution to bargaining unit employees who attend a formal group new employee orientation program. The Agency will provide the Union a minimum of five (5) calendar days' notice prior to the start of each formal group new employee orientation program that includes bargaining unit employees.

b) **Non-Work Areas.** The Union may distribute literature to bargaining unit employees in non-work areas during non-work times provided the Union complies with the Agency's internal security requirements.

5.16. **Electronic Mail Usage.** Employee Union Representatives may use the Agency's email system consistent with the applicable DoD and Army email and acceptable use policies, which may be modified at any time by DoD and/or Army at their sole discretion.

**5.17. Withholding of Dues.**

- a) The Union and the Agency agree that any eligible employee who is employed in a recognized bargaining unit and who is a member in good standing of the Union may authorize an allotment of pay for the payment of dues for membership in accordance with 5 U.S.C. 7115, provided:
  - i. The employee continues his employment in the unit for which exclusive recognition has been granted by the Federal Labor Relations Authority;
  - ii. The employee has voluntarily submitted a request for such allotment of pay; and,
  - iii. The employee received sufficient net salary each pay period to cover the allotment after other legal and required deductions have been made.
- b) The Union agrees that it will be responsible, during non-work time of employees concerned, for procuring the prescribed allotment form (currently Standard Form 1187); distributing the form to unit members; certifying the amount of its dues; and informing and educating its members on the program for allotments for payments of dues, and the uses and availability of the required form.
- c) An officer of the Union will receive the forms from members who request an allotment. He or she will complete Section A of the authorization forms and submit them to the appropriate Human Resources (HR) specialist. Valid authorizations received will be promptly submitted to the payroll office and will become effective the next regular bi-weekly pay period after receipt in the payroll office. The amount of dues to be deducted each pay period shall remain as originally certified to on Standard Form 1187 by the appropriate Union official.
- d) When an allotment for deduction of Union dues has been started, it must remain in effect for a minimum period of one (1) year, as required by 5 USC § 7115(a). Any time thereafter, an employee may submit a revocation of his or her allotment. The revocation will be effective at the beginning of the first pay period following receipt in the payroll office. The revocation should be made on a Standard Form 1188 that will be provided to the employee by the Agency or the Union, upon request, for this purpose. Alternatively, the employee may submit a revocation by letter which contains the employee's name, social security number, and activity or other work site designation. It is the employee's responsibility to submit his or her written revocation directly to the HR Specialist on a timely basis. If the Union receives any written revocation of allotment, the Union will send it, within five (5) calendar days after receipt, to the HR Specialist.
- e) The Union shall be responsible for refunding any unauthorized deductions or excess payments either to the employee or the Agency, as required.

f) The Union will notify the HR Specialist within five (5) calendar days when an employee with a current allotment ceases to be a member in good standing. The payroll office will terminate the allotment upon receipt of the information. An allotment shall also be terminated when the employee leaves the unit as a result of any type of separation, transfer, or other personnel action; when this Agreement providing for dues withholding is suspended or terminated; or when the employee has been suspended or expelled from the labor organization. The allotments for all employees who are members of the Union will be terminated if the Union loses exclusive recognition.

g) Should the Union change its dues withholding rate(s), the Union will coordinate with the appropriate payroll office to adjust the withholding rates within the payroll system. Once the new withholding rates have been added within the payroll system, the new amount(s) shall become effective with the deduction allotment made on the first pay period after receipt of the notice of change by the payroll office, or at a later date if requested by the Union. Upon the Union's notification of a change in the amount of dues to be deducted, the Agency will make every effort to process the requested change in a timely manner.

#### **5.18. Distribution of Agreement.**

- a) Electronic Copy. An electronic copy of the BLA will be provided to any bargaining unit employee who requests one. The Agency may satisfy this requirement, in its discretion, by providing an electronic copy of the BLA that is available online or in a manner that is otherwise accessible to bargaining unit employees.
- b) Written Copy. The Union may provide written copies of this Agreement produced at its own cost to the Agency for the Agency to distribute to bargaining unit employees who attend a formal group new employee orientation program. The Agency will provide the Union a minimum of five (5) calendar days' notice prior to the start of each formal group new employee orientation program that includes bargaining unit employees.

### **ARTICLE 6** **EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

6.1. **Non-discrimination.** The Agency will not discriminate against employees because of race, color, religion, sex, national origin, reprisal, disability, age, sexual orientation, gender identity, status as a parent, or other legally impermissible basis.

a) Reasonable Accommodation. The Parties recognize that the Agency has an obligation to provide reasonable accommodations to employees with disabilities and that this Agreement is not intended to prevent an employee from receiving a reasonable accommodation. As such, a reasonable accommodation may be implemented even if it causes a conflict with this Agreement. In addition, any conflict between a reasonable accommodation and language elsewhere in this Agreement shall be resolved in favor of providing reasonable accommodation notwithstanding its impact on other employees.

- b) EEO Official Time. An EEO complainant or his chosen representative may receive a reasonable amount of official time in a duty status to prepare an EEO complaint, respond to Agency and EEOC requests for information related to a complaint, or to participate in EEO proceedings. The Agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.
- c) Exemption. Disputes concerning equal employment issues cannot be grieved under this Agreement if they can be raised as part of the Army's EEO complaint process.

## ARTICLE 7 HOURS OF WORK AND WORK ASSIGNMENTS

- 7.1. **Definitions.** The administrative workweek means any period of seven consecutive 24-hour periods designated in advance by the head of the Agency under 5 U.S.C. 6101. Currently it is agreed that a period of seven (7) consecutive days, beginning at 0001 hours on Sunday and ending at 2400 hours the following Saturday, constitutes an administrative workweek.
- 7.2. **Notice.** Employees will be notified of their work schedules at least seven (7) days in advance of the administrative workweek and receive two (2) consecutive days off, except when the Agency head determines that the Agency would be seriously handicapped in carrying out its function or that costs would be substantially increased.
- 7.3. **Normal Tour of Duty.** Except for employees assigned to locations that require 24-hour staffing or shift work, the normal basic tour of duty for full time employees who are not on an authorized alternative work schedule will consist of five (5) consecutive eight (8) hour days, excluding any unpaid meal period, between the hours of 0600 and 1800, Monday through Friday. This subsection is not intended to preclude regular Saturday/Sunday scheduling for certain functions and locations that require seven-day-a-week operations.

### 7.4. **Meal and Rest Periods.**

- a) With the exception of firefighters and where prohibited by law, the normal basic tour of duty will provide for an unpaid meal period of not more than one (1) hour. The Agency retains the sole right to determine when a meal period is scheduled, unless an employee is on an approved flexible work schedule, but will schedule meal periods at or near the mid-point of the shift or tour of duty. Employees may not work during the established meal period in order to shorten the workday and may be subject to recall during the meal period at the Agency's discretion provided the employee is compensated for work performed that is not *de minimis* in nature.
- b) The Agency may also, in its discretion, schedule paid rest periods for employees in which employees remain in a duty status. When provided, such rest periods shall not exceed fifteen (15) minutes in length nor shall an employee be authorized more than

one such rest period in any four-hour period of work. During such paid rest periods, employees may be assigned work when the mission requires as determined solely by the Agency. Such paid rest periods will not be used to start or end the workday or as a continuation or extension of the meal period.

- c) Except where prohibited by law, the Agency maintains the right, in its discretion, to set geographic and location restrictions for employees on meal periods and/or rest periods.

7.5. **Temporary Duty (TDY) Schedules.** When TDY, employees will work the normal duty hours of the installation or organization to which they are TDY, or will work a tour of duty established by the supervisor.

7.6. **Shift Work.** When the accomplishment of the Agency mission requires that there be more than one shift in a day, the Agency retains the right to establish multiple shifts and to determine manning levels, start, and stop times for each shift.

7.7. **Shift Seniority.** When making assignments among equally qualified employees in like positions, service computation date (SCD) for leave shall be utilized to allow more senior employees to choose amongst available shifts. No employee will be bumped from his or her shift to create an available shift for a more senior employee.

7.8. **Alternate Work Schedules (AWS).** Employees may work an AWS in accordance with the following:

a) **Definitions.** There are two types of AWS: a compressed work schedule and a flexible work schedule. Per 5 USC § 6121, a compressed work schedule for a full-time employee is an 80-hour biweekly basic work requirement that is scheduled for less than ten (10) workdays. A flexible work schedule is a work schedule pursuant to 5 USC § 6122 in which employees may vary their start and stop times subject to a core hours requirement in order to earn credit hours that reduce the length of the workweek or another workday.

b) **Establishment of an AWS.** An AWS may be established in one of two ways:

i. **Direct Request.** Individual employees may directly request to be placed on an AWS within two (2) calendar weeks of entry on duty into a new position or once per year during the month of January. The Agency will respond to an employee request to be placed into an AWS within two (2) calendar weeks of receiving the request. The Agency may deny a requested AWS if it determines that granting the requested AWS would cause an adverse Agency impact. The Parties mutually agree that whether or not an AWS causes an adverse Agency impact is fact specific and may vary depending on the workplace and the type of position involved. Factors that justify a decision to deny a requested AWS include, but are not limited to, the following:

i. a likely reduction in productivity;

- ii. a diminished level of customer service;
- iii. an increase in cost (to include overtime and premium pay such as night differential); and,
- iv. inability to meet minimum staffing levels as determined by the Agency in its discretion.

ii. Agency Determination. When the Agency determines, in its discretion, that the mission can best be accomplished through the use of flexible or compressed work schedules, it may establish such schedules and assign employees to them upon seven (7) calendar days' advanced notice to the employees and the Union. If the Union demands bargaining prior to the expiration of the seven-day notice period, implementation of the AWS will be delayed pending bargaining over the impact and implementation of the proposed schedule in accordance with the terms of this Agreement.

c) Authorized Schedules. The Agency retains the sole right to determine the core hours applicable to employees on a flexible work schedule. In addition, employees on a flexible work schedule, by law, may not accumulate more than 24 credit hours. Schedules that are a combination of a flexible and compressed work schedule are also impermissible.

d) Termination of an AWS. An AWS may be terminated by the Agency for the following reasons:

- i. Employee misconduct or poor performance as demonstrated by an adverse action or an unsatisfactory performance appraisal or Performance Improvement Plan (PIP);
- ii. Whenever the Agency can demonstrate an adverse Agency impact; or,
- iii. A determination under 5 USC § 6122(b).

e) Notice. The Agency will provide the impacted employee(s) and the Union seven (7) calendar days' advanced notice of the termination of an AWS. If the Union demands bargaining prior to the expiration of the seven day notice period, implementation of the change will be delayed pending bargaining over the impact and implementation of the proposed schedule in accordance with the terms of this Agreement.

f) Reserved Rights. Notwithstanding any other language in this Article, the Parties mutually acknowledge that the Agency has the discretion to determine the hours of operation and the number of employees required to be on duty at any time. The Agency may deny any request for an alternate work schedule that would result in more

employees on duty at any time than required or that would result in an inability to meet minimum staffing levels as determined by the Agency.

7.9. **Telework.** Employee telework requests will be handled in accordance with DoD and Agency policy, which may be unilaterally modified during the term of this Agreement. Notwithstanding the foregoing, an employee who requests to telework and is denied shall be given the reasons for that denial, and an employee who is removed from telework shall be given the reasons for that removal. In addition, the Agency will make reasonable efforts to provide teleworking employees with advance notice when they are required to report to a location other than their alternate duty station.

7.10. **Overtime Work.**

- a) The Agency has the right to assign overtime work and to determine which employees are qualified to perform overtime work. If the Agency decides to assign overtime work to bargaining unit employees, management will make an effort to distribute overtime work equitably among qualified bargaining unit employees.
- b) The Agency will provide employees advance notice of an overtime work assignment when possible.
- c) Employees will only be compensated for pre and post-shift activities when required by law, which generally requires no compensation for activities that take ten minutes or less. In no event will an employee be compensated for his or her travel from home to work or vice versa.
- d) The Agency has the sole right to determine the amount of overtime work required, including the amount of call-back overtime. Notwithstanding the foregoing, employees who are called back to perform overtime work will be paid in accordance with law, which may require a minimum amount of compensation for call-back overtime. However, in no event will employees be compensated simply for being placed in an on-call status unless required by law.
- e) Compensatory time off will be offered to eligible employees in lieu of overtime pay in accordance with law.

7.11. **Holidays.** The occurrence of holidays may not affect the designation of the basic workweek.

7.12. **Leave.**

a) **Annual Leave.**

- i. Employees shall earn, accrue, and use annual leave in accordance with applicable laws and regulations. Annual leave will be charged in 15-minute increments.

The use of annual leave is an entitlement of the employee, subject to the leave being scheduled and approved in advance.

ii. All annual leave requests will normally be submitted at least fourteen (14) calendar days in advance, unless leave is required due to a valid personal or family emergency situation or the Agency has established a longer time period for the submission of non-emergency leave, which it may do at its discretion. Requests for annual leave will be submitted in accordance with policies established by the Agency.

iii. When conflicts in scheduling periods of leave occur between employees who perform the same/similar duties and request leave at the same time, and the conflict cannot be resolved by mutual agreement, the supervisor will approve leave using employee seniority as determined by service computation date (SCD) for leave.

iv. Requests for unscheduled annual leave will be held to a minimum, except for valid personal or family emergency situations. When circumstances arise requiring the use of annual leave not previously approved, the employee may not presume automatic approval of requests for annual leave. The employee must contact his or her supervisor to request and obtain approval for the use of annual leave. If the immediate supervisor is not available, the next level supervisor will be contacted. Telephone calls from other than the employee themselves will not meet the requirements of this notification. Employees may not use texts or emails for this required contact unless specifically authorized by their supervisor. If there is doubt as to the validity of the emergency request, the supervisor may require the employee to submit documentation to support the approval of leave for that purpose. The Agency reserves the right to disapprove a request for emergency annual leave and may place the employee in an AWOL status. This status may be changed to approved leave if the employee provides acceptable justification, as determined by the supervisor in his or her discretion, for the absence upon return to duty. Emergency leave requests will be considered on an individual basis.

v. The Agency reserves the right to cancel previously scheduled or requested annual leave in accordance with appropriate laws and regulations when a work requirement necessitates such action. The supervisor will notify the employee(s) affected as soon as possible after a situation develops which requires rescheduling or cancellation of leave.

vi. Failure to obtain approval for use of annual leave as established by this Article may result in the employee being charged absent without leave and appropriate disciplinary action being initiated.

b) Advanced Annual Leave. The Agency may, in its discretion, grant or deny an employee's request for advanced annual leave. In no event shall an employee be approved advanced annual leave in an amount that would exceed the total amount of annual leave the employee would accrue within the leave year. Employees can apply for advanced annual leave using the same procedures applicable to requests for the

use of accrued annual leave. Upon separation, an employee who is indebted for unearned leave may be required to refund the amount indebted or the indebted amount may be deducted from any pay due.

c) Sick Leave.

i. Employees shall earn, accrue, and use sick leave in accordance with applicable laws and regulations. Sick leave will be charged in 15-minute increments, and is subject to the approval of the appropriate supervisor or designee.

ii. Employees requesting sick leave for medical appointments that cannot otherwise be scheduled outside the employee's tour of duty will submit sick leave requests to their supervisor normally not less than 14 days in advance of the planned sick leave. The supervisor will approve, disapprove, and/or adjudicate leave requests as required and resolve schedule conflicts. Employees may be required to provide medical documentation showing they attended an appointment.

iii. When circumstances arise requiring the use of sick leave not previously approved, the employee may not presume automatic approval of requests for sick leave. The employee must contact his or her supervisor to request and obtain approval for the use of sick leave. If the immediate supervisor is not available, the next level supervisor will be contacted. Telephone calls from other than the employee themselves will not meet the requirements of this notification unless the employee is incapable of calling themselves. Employees may not use texts or emails for this required contact unless specifically authorized by their supervisor. The request for sick leave should be made as soon as possible and be made in advance of the start of the work shift whenever possible. In other circumstances, contact should normally be made within thirty minutes after the beginning of the employee's scheduled tour of duty. If the immediate supervisor is unavailable, the next level supervisor or designee will be contacted. Employees will not presume their request for sick leave is approved by merely leaving a message for their supervisor, they must speak with him/her. Upon returning to work after an injury or illness, it is the employee's responsibility to inform his/her supervisor of any medical condition (including use of medications) which may affect the employee's ability to perform their assigned duties or would impact the health, safety, and security of others.

iv. The Agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. Periods of absence on sick leave in excess of three (3) consecutive work days must ordinarily be supported by a medical certificate to be filed upon return to duty. In lieu of a medical certificate and at management's discretion, an employee's signed statement explaining the nature of his/her illness may be accepted when it is unreasonable to require a medical certificate because the illness does not require the services of a physician or other extenuating circumstances considered valid by the approving official. In accordance with 5 CFR §630.405, management may also require a medical certificate or other administratively acceptable evidence for an absence of any duration when management determines it is

necessary. An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the Agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the Agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

v. At a minimum, medically acceptable documentation to support a sick leave absence must: 1) be on letterhead or other official documentation acceptable to the Agency, and signed by an appropriate medical practitioner; 2) state when the employee was seen and whether or not the employee is incapacitated for duty; and 3) provide the date the employee is expected to return to duty.

vi. Failure to obtain approval for use of sick leave as established by this Article may result in the employee being charged absent without leave (AWOL) and appropriate disciplinary action being initiated.

d) Advanced Sick Leave. The Agency may, in its discretion, grant or deny an employee's request for advanced sick leave. In no event shall an employee be approved advanced sick leave in an amount that would exceed the total amount authorized by law or regulation (5 CFR § 630.402). Leave will not be granted for any reason not explicitly authorized by law or regulation. Employees can apply for advanced sick leave using the same procedures applicable to requests for the use of accrued sick leave with the exception that supporting evidence must be presented at the time of the initial request. Advanced sick leave may be liquidated by subsequently earned sick leave or by a charge against annual leave (provided this action is completed prior to the time the leave would be forfeited and the annual leave would have been granted). Upon separation, an employee who is indebted for unearned leave may be required to refund the amount indebted or the indebted amount may be deducted from any pay due.

e) Court Leave. An employee who is summoned to serve as a juror in a judicial proceeding or as a witness is entitled to paid time off without charge to leave. The employee is responsible for informing his or her supervisor if he or she is excused from jury service for one day or more or for a substantial part of a day. Additionally, an employee who is summoned as a witness in a judicial proceeding in which the federal, state, or local government is a party is entitled to court leave. However, an employee who is summoned as a witness in an official capacity on behalf of the federal government is on official duty, not court leave. Any fees payable for such service must be collected and turned in to the employing Agency. Any payments designated as expenses by the court or other appropriate authority will be retained. An employee who wishes to be excused from returning to duty after being on court leave may request annual leave or leave without pay for duty periods impacted by the court leave.

Alternatively, the supervisor may consider adjusting the work schedule temporarily to accommodate duty periods that are impacted by court leave.

- f) Firefighting and Rescue Work. Employees will be provided leave for volunteer firefighting and rescue work in accordance with applicable laws and regulations, which may be unilaterally changed during the term of this Agreement. Any such absence will be supported by a statement from the employee's fire chief or unit commander certifying to the required service and the time and date involved.
- g) Blood Donors. Employees who volunteer as blood donors, without compensation, may be authorized a maximum of four (4) hours of excused absence on the day blood is donated, provided advance notification (5 work days) and approval by the supervisor is given. The time is to be used to travel to and from the blood center, to donate the blood, and for recuperation following donation. This provision is not intended to cover an employee whose donations involve the need for recurring absence over an extended period or situations in which the employee has blood stored for his/her own use. The Agency reserves the right to review an employee's blood donor card or request other proof of donation.
- h) Voting Leave. Employees scheduled to work on an election day who are eligible to vote in such election may be granted the minimum time of excused absence necessary to provide them three hours within which to vote either immediately after the polls open or before they close, whichever requires the lesser amount of excused absence. Employees are not entitled to an automatic three hours off on voting days; the three hours is the amount of time that employees should have available to vote either before reporting to work or after departing work. Since most voting locations have both early and extended hours, the need for granting excused absence will be rare since most employees will not require any excused absence in order to have three hours within which to vote. Supervisors may grant excused absence for voting on a case-by-case basis where the employee can demonstrate the necessity. Under exceptional circumstances where the above rule does not permit sufficient time to vote, such as when an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the particular circumstances in his or her individual case, but the time excused shall in no case exceed one day. Employees who are in a leave status for any portion of Election Day will not be granted excused absence for voting.
- i) Leave Without Pay (LWOP). LWOP is a temporary non-pay status and absence from duty that, in most cases, is considered at the employee's request. Except where employees have an entitlement to LWOP under the law, LWOP may be granted or denied at the Agency's discretion. LWOP may affect an employee's entitlement to, or eligibility for, certain federal benefits.
- j) Other Leaves. Nothing in this Article shall be deemed to excuse the Agency from complying with any law or government-wide regulation relating to leave that is

applicable to bargaining unit employees even if such leave is not explicitly referenced in this Agreement.

k) **No Conversion of Leave.** An employee who is absent for duty on one form of approved leave (such as annual or sick leave) is not entitled to substitute the approved form of leave for any other form of leave (such as LWOP or administrative leave) unless mandated by law. For example, employees may not substitute administrative leave for sick leave or vacation even if other employees who reported for duty while the employee was on vacation were provided administrative leave for an early closure.

7.13. **Wage Surveys.** The Parties mutually recognize that the Department of Defense (DoD) is responsible for conducting wage surveys in Alaska. As such, the Agency has no control over how these surveys are conducted or who participates in the survey. Notwithstanding the foregoing, the Agency will release employees who are chosen to participate in the committee proceedings without a loss of pay unless exceptional circumstances require their presence at their regular jobs.

## ARTICLE 8 SAFETY AND OCCUPATIONAL HEALTH

8.1. **Responsibility for Safety.** All employees must observe safe working practices and wear prescribed personal protective clothing, equipment and devices when performing assigned functions and promptly correct or report to the appropriate supervisor any unsafe condition or acts.

8.2. **Drug Testing.** The Agency may drug test employees and implement procedures to implement its drug-testing program in its discretion but consistent with the DoD Civilian Employee Drug-Free Workplace Program which may be modified by DoD during the term of this Agreement. Refusal of an employee to submit to a drug test is grounds for disciplinary action against the employee.

8.3. **Safety Equipment.** The Agency will pay for safety equipment only when the government receives the primary benefit, and the equipment is not a personal item that should be furnished by the employee.

8.4. **Smoking and Vaping.** The Agency may, in its discretion, designate buildings and/or Agency property as non-smoking and establish smoking and vaping policies provided they are not inconsistent with any agreement negotiated separately during sub/specialty negotiations pursuant to the ground rules for this Agreement.

8.5. **Refusal of Work.** An employee has the right to refuse a work assignment only when the employee has a reasonable belief of imminent risk of death or serious bodily harm and does not have sufficient time to seek redress through normal abatement procedures.

8.6. **Compliance with Safety Laws.** Maintaining a safe and healthy work environment is a shared value of the Union and Agency. Accordingly, the Agency agrees to abide by all health and safety laws applicable to bargaining unit employees, including DoD procedures established pursuant to 29 CFR § 1960.46 to protect employees who participate in occupational safety and occupational health program activities or who file a report of an unsafe or unhealthful working condition. The Agency welcomes feedback from employees and the Union at any time about potential safety violations, environmental hazards, or unhealthy working conditions. The Agency will respond directly to the employee or Union representative who brought the concern in a timely manner.

8.7. **Medical Information.** The Agency agrees to abide by any applicable laws related to employee medical information.

## ARTICLE 9 PERFORMANCE MANAGEMENT

9.1. **Appraisal System.** The Agency retains discretion to determine employee performance standards and to establish a performance appraisal system to evaluate employees. The Agency further retains the right in its discretion to change its performance appraisal system during the term of this Agreement. Notwithstanding the foregoing, employees and the Union will be given reasonable advance notice of any change in the performance appraisal system as well as the opportunity to provide feedback on any change in the appraisal system.

9.2. **Disputed Ratings.** Disputes over employee performance ratings shall not be subject to the negotiated grievance procedure.

9.3. **Position Classification.**

a) **Changes in Job Description.** Directly-impacted employees and the Union will be notified of changes in bargaining unit job descriptions.

b) **Classification Appeals.** Employees have the right to appeal their own position classifications, as outlined in regulation, but the classification of a position is not grievable under this Agreement unless it results in a reduction in grade or pay. Employees may choose to designate a representative in the classification appeals process who is not a Union steward, officer, or representative provided that the person selected would not cause a conflict of interest or position and can be released from duties without compromising the priority needs of the Agency or unreasonably increasing Agency costs. In such cases, the Agency may deal directly with the employee and his or her chosen representative. If an employee chooses to be represented by a Union representative, the representative must follow the official time procedures outlined in this Agreement if he or she wishes to provide representation during duty hours. Consistent with this Agreement, the Agency may request written

authorization from the employee before recognizing a representative. An employee will not be discriminated against for filing an appeal.

c) Performance of Other Duties as Assigned. The assignment of duties to an employee is not limited by the content of his or her position description. The Agency maintains the sole right to assign duties to an employee even if those duties are not listed in a position description. Employees may also voluntarily request work assignments not listed in their job descriptions, but the Agency maintains discretion to grant or deny such requests.

d) Desk Audits. The Agency may, in its discretion, conduct a desk audit. Union representatives are not entitled to be present during a desk audit.

**9.4. Merit Promotion.** The Agency will use competitive merit promotion procedures when required by law. The Agency has the sole right to determine which candidate to select for any position. No employee is entitled to a promotion or temporary promotion.

**9.5. Awards.** The Agency may, in its discretion, establish programs to reward bargaining unit employees for performance (time off awards, financial awards, etc.). In the event such reward programs are established, the Agency has the discretion to determine the amount of money allocated for the provision of awards and to establish the criteria for granting such awards. However, the Union may be provided the awards criteria upon request in accordance with the terms of this Agreement and may provide feedback on the awards program for the Agency's consideration.

#### **9.6. Disciplinary/Adverse Actions.**

a) Management Right to Discipline.

i. Disciplinary Discretion. The Agency has the right to discipline employees in its discretion for both performance-related and non-performance related conduct. The Agency also retains discretion to determine who shall be the proposing and deciding official in an adverse action.

ii. Adverse Actions. Adverse actions will only be taken for such cause as will promote the efficiency of the service.

iii. Timeliness. While there is no deadline by which an adverse action must be taken, the Agency will attempt to initiate an adverse action in a reasonable amount of time after it becomes aware of an alleged offense and has had a full opportunity to investigate the alleged offense.

b) Representation. When an employee contesting a disciplinary or adverse action chooses not to be represented by the Union, the Agency may resolve the dispute directly with the employee and his or her chosen representative.

- c) **Written Authorization.** The Union must provide written authorization from an employee before the Agency is obligated to provide any information to the Union about a disciplinary or adverse action against the employee. The written authorization must specify in detail the documents the employee authorizes the Agency to release directly to the Union representative. Notwithstanding the foregoing, nothing in this Article prevents the Agency from denying the Union's information request on grounds other than the lack of employee authorization.
- d) **Last Chance Agreements.** The Agency may, in its discretion, choose whether or not to offer a last chance agreement to an employee. If the employee has not chosen to be represented by the Union, the Agency may negotiate the last chance agreement directly with the employee and his or her chosen representative. Notwithstanding the foregoing, the Union will be notified and given an opportunity to be present at any meeting in which an employee is offered a last chance agreement. An employee's signature on a last chance agreement will not be considered an admission by the employee.

e) **Disputed Actions.**

i. **Response Period.** An employee will be provided seven (7) calendar days to respond to a proposed adverse action. The proposal letter will provide contact information for the deciding official to whom the response should be delivered.

ii. **Exemption from Grievance Procedure.** Disputes over disciplinary and adverse actions are exempt from the negotiated grievance procedure if they can be brought in an alternate forum, but the employee may be represented by a Union representative for the purpose of responding to a proposed disciplinary or adverse action and in any complaint or appeal to a third party related to a disciplinary action (MSPB, EEOC, etc.).

f) **Written Records.**

i. **Disciplinary Actions.** Employees who are disciplined may receive, upon request, a copy of any documents or files that provided a basis for the disciplinary action. The Agency may redact information from the documents provided as necessary to comply with the Privacy Act or other laws. Except where explicitly required by law, no obligation exists to provide documents or files directly to an employee until such time as adverse action is taken against the employee based on those documents or files.

ii. **Personnel Records.** The Parties acknowledge that an employee's official personnel record is maintained electronically by OPM (the electronic Official Personnel Folder (E-OPF)) and can be accessed by employee's electronically. As such, the Agency is not required to provide copies of documents contained in the E-OPF. If an employee believes that a document in his or her E-OPF is inaccurate, the Agency may provide information to an employee about how to correct his or her record.

## **ARTICLE 10** **NEGOTIATED GRIEVANCE PROCEDURES**

**10.1. Scope.** This grievance procedure shall be the exclusive procedure available to bargaining unit employees, the Union, and the Agency to resolve a dispute concerning the interpretation or application of this Agreement, but a grievance may also be brought for any purpose outlined in 5 USC Part 71 unless otherwise excluded by this Agreement.

### **10.2. Employee Grievances.**

a) **Step One.** Within fifteen (15) calendar days of a dispute, the aggrieved employee(s) must provide a detailed written description of his or her grievance to the immediate supervisor and a copy to the appropriate HR specialist. The employee may do so with or without Union representation. The written grievance must describe the basis for the dispute, cite the specific articles of the BLA alleged to have been violated, and the remedy sought. Unless the supervisor lacks the authority to resolve the grievance at his or her level, in which case the employee(s) will be obligated to proceed to step two in a timely manner upon notification of the lack of authority, the supervisor shall arrange a meeting with the employee no later than fifteen (15) calendar days after receipt of the grievance. The Union shall be afforded the opportunity to have one representative attend the grievance meeting. If the grievance was not filed by a Union representative, the Agency will notify the Union of the grievance meeting no less than five (5) calendar days prior to the meeting. No later than ten (10) calendar days after the grievance meeting, or ten (10) calendar days after receipt of the grievance if the supervisor lacks authority to resolve the grievance, the supervisor will provide a written response to the aggrieved employee(s). Failure of a supervisor to provide a timely response shall obligate the employee(s) to proceed to step two in a timely manner.

b) **Step Two.** If the Parties cannot resolve the dispute at step one, the grievance may be forwarded to the appropriate directorate/department head or equivalent within five (5) calendar days of the unsatisfactory step one response, or within five (5) calendar days of the deadline for the step one response if no timely response is received. All forwarded step two grievances will include the step one response, if such a response was received. Unless the directorate/department head or equivalent lacks the authority to resolve the grievance at his or her level, in which case the employee(s) will be obligated to proceed to step three in a timely manner upon notification of the lack of authority, the directorate/department head or his or her designee shall arrange a meeting with the employee no later than twenty-one (21) calendar days after receipt of the step two grievance. The Union shall be afforded the opportunity to have one representative attend the step two grievance meeting. If the grievance was not filed by a Union representative, the Agency will notify the Union of the grievance meeting no less than five (5) calendar days prior to the meeting. No later than ten (10) calendar days after the grievance meeting, or ten (10) calendar days after receipt of the grievance if the directorate/department head or equivalent lacks authority to resolve the grievance,

the directorate/department head or equivalent or his or her designee will provide a written response to the aggrieved employee(s). Failure of a directorate/department head to provide a timely response shall obligate the employee(s) to proceed to step three in a timely manner.

c) **Step Three.** If the Parties cannot resolve the dispute at step two, the grievance may be forwarded to the appropriate O-5 or O-6 level commander within five (5) calendar days of the unsatisfactory step two response, or within five (5) calendar days of the deadline for the step two response if no timely response is received. All forwarded step three grievances will include the step one and step two responses, if such responses were received. The O-5 or O-6 level commander or his or her designee may decide the grievance based upon the written record or, at his or her discretion, arrange a meeting with the employee no later than twenty-one (21) calendar days after receipt of the step two grievance. If the commander or designee decides to issue a decision based on the written record, such written decision will be issued no later than thirty (30) calendar days after receipt of the step two grievance. The Union shall be afforded the opportunity to have one representative attend the step three grievance meeting if one is held. If the grievance was not filed by a Union representative, the Agency will notify the Union of the grievance meeting no later than five (5) calendar days prior to the meeting. No later than twenty-one (21) calendar days after the grievance meeting, if one is held, the commander or designee will provide a written response to the aggrieved employee(s). Failure of a commander or designee to provide a timely response shall start the deadline for the Union to request arbitration the day immediately after the deadline for a response.

10.3. **Union Grievances.** Any grievance by the Union against the Agency shall be filed directly at step two. No more than one employee may present a grievance on behalf of the Union.

10.4. **Agency Grievances.** Any grievance by the Agency against the Union shall be filed directly with the applicable local Union president or representative. Within ten (10) calendar days of receipt of the dispute, the Union shall arrange a meeting with the Agency. Such meeting shall occur no later than thirty (30) calendar days after receipt of the grievance. No later than ten (10) calendar days after the grievance meeting, the Union will provide a response. Failure of the Union to respond in a timely manner shall be considered a denial and shall start the deadline to request arbitration the day immediately after the deadline for a response.

10.5. **Arbitration.** If a dispute remains unresolved after completion of the grievance process, arbitration must be demanded by either the Union or the Agency no later than thirty (30) calendar days after the conclusion of the grievance process or right to arbitrate is waived. The following procedures and terms shall apply to arbitration:

a) The Party demanding arbitration shall request a list of arbitrators from the Federal Mediation and Conciliation Service (FMCS) and provide a copy of the list to the other Party. If the Parties cannot agree on an arbitrator from the list provided, then each Party

will strike one name from the list of arbitrators provided until an arbitrator is selected with the Agency making the first strike.

- b) Any arbitration pursuant to this provision will be held in Alaska at either JBER, Fort Wainwright, or Fort Greely respectfully based on the underlying dispute and the location of the grievant(s) and other witnesses. If the Parties cannot agree on which installation should host the arbitration, the Parties shall provide written briefs and evidence to the arbitrator who shall make a final and binding decision on the location of the arbitration.
- c) The arbitration costs shall be shared equally by the Parties but each Party's own expenses related to the arbitration, including attorney fees, shall be borne solely by them. It is understood that where there is not mutual consent for obtaining a transcript, either Party may elect to obtain such transcript at their own expense; however, the other Party may not be privileged to such transcript except where they have equally shared the total cost of obtaining the transcript.
- d) The arbitrator's award shall be limited to a make whole remedy. No punitive damages or interest may be awarded.
- e) The arbitrator's decision shall be final and binding. However, neither Party is precluded from filing exceptions to an arbitrator's award in accordance with law and regulations.
- f) The arbitrator will have the authority to resolve any disputes over arbitrability.
- g) There will be no *ex parte* communications with the arbitrator.

10.6. **Exclusions.** The following matters are explicitly excluded from the grievance procedure:

- a) Any claimed violation of subchapter III of chapter 73 of Title 5 of the United States Code relating to prohibited political activities;
- b) Retirement, life insurance, or health insurance;
- c) A suspension or removal under 5 USC § 7532 relating to national security;
- d) Any examination, certification, or appointment;
- e) The classification or re-classification of any position which does not result in the reduction in grade or pay of an employee;
- f) The content or interpretation of any (e.g., DoD, IMCOM, DA) regulation, provision(s) of law, or regulations of appropriate authorities outside of the organization, regardless of whether such policies, laws, or regulations are quoted, cited, otherwise incorporated, or referenced in this Agreement;

- g) Resignation, termination or removal of term or temporary employees; termination of temporary promotions; termination of probationary or trial period employees; termination of employees serving under excepted appointments; or a decision not to extend any term or temporary employee;
- h) Non-adoption of a suggestion;
- i) Failure to receive or disapproval of a performance or other discretionary award to include time off and honorary awards and the amount thereof;
- j) Performance warnings, expectations, counseling, appraisal ratings, or placement of an employee on a Performance Improvement Plan (PIP);
- k) Requirement to submit to a fitness for duty examination;
- l) Agency investigations into loss or damage to government appropriated and non-appropriated fund property to include findings of pecuniary liability for damage to government property as provided in AR 735-5, Property Accountability Policies;
- m) Any warning notices, oral or written counsellings or admonishments, or letters of caution or requirement;
- n) Notices of proposed disciplinary or adverse action and final disciplinary or adverse actions that are appealable to the MSPB;
- o) Agency's decision on requests for Voluntary Separation Incentive Pay (VSIP) or Voluntary Early Retirement Authority (VERA);
- p) The decision by either Party to not extend the time limits of the grievance procedure;
- q) Actions where there are no damages;
- r) Equal Employment Opportunity complaints or allegations;
- s) Any matter appealable to the MSPB;
- t) Allegations of mismanagement;
- u) A personnel action voluntarily requested by an employee;
- v) Any assignment of duty that is part of an employee's job description;

- w) Complaints over which the Agency has no obligation to consult with the Union, any matter raised as an unfair labor practice charge, and any matter not subject to the control of management;
- x) FLSA claims;
- y) Class actions;
- z) The determination of performance standards and critical elements;
- aa) Wage or salary rates or schedules established by appropriate authority;
- bb) Employee performance ratings;
- cc) Any issue previously decided in an earlier grievance proceeding;
- dd) Furlough of thirty (30) days or less, imposed by higher authority;
- ee) Failure to recommend and/or disapproval of discretionary funding programs where the Agency has no influence over the selection process (e.g., student loan repayment, tuition reimbursement, etc.);
- ff) Issues related to covered employees seeking placement in positions outside the bargaining unit; and,

**10.7. Timelines.** All timelines in this Article (negotiated grievance procedures) may be extended by mutual written agreement of the Parties. Absent such agreement, failure of an employee or Party to meet a deadline shall terminate the grievance procedure. If the deadline to file a grievance, a response to a grievance, or to move to the next step in the grievance process falls on a Saturday, Sunday, or legal holiday, the deadline will be extended to the first calendar day immediately following the original deadline which is not a Saturday, Sunday, or legal holiday.

**10.8. No Temporary Duty (TDY) Travel.** TDY travel will not be authorized for any bargaining unit employee to participate in the grievance or arbitration process in any capacity.

## ARTICLE 11 DURATION AND CHANGES

**11.1. Renegotiation and Rollover.** This Agreement shall remain in full force and effect for a period of six (6) years from its effective date. Either Party to this Agreement may give written notice to the other, not less than sixty (60) calendar days and not more than one hundred and twenty (120) calendar days prior to the anniversary date, of its desire to modify or extend this Agreement. In the event such notice is given by either Party, ground rules negotiations will commence within thirty (30) calendar days of notification.

If neither Party serves notice to re-negotiate this Agreement, the Agreement shall be automatically renewed for a one-year increment, subject to Agency Head Review. Any provision of a rolled over agreement that is contrary to law or government-wide regulation is no longer binding and shall be unenforceable under the negotiated grievance procedure. The Agency also reserves the right to withdraw from any agreements on permissive subjects.

**11.2. Mid-Term Negotiations.** Any negotiations during the term of this Agreement are subject to the following conditions:

- a) If the Union does not request bargaining within seven (7) calendar days of being notified of a proposed change to a term or condition of employment, the Union waives its right to bargain over the change. Negotiations must begin within fourteen (14) calendar days of the Union's notification of its demand to bargain or the Union waives its right to bargain over any proposed changes.
- b) The Agency is not required to negotiate over topics or subjects covered by this Agreement, including topics upon which the Agency has been granted discretion to act.
- c) No Agency official has the authority to negotiate an agreement with the Union without the express consent of the appropriate O-5 or O-6 level commander. Any agreement negotiated by an Agency official without such consent is invalid and unenforceable.
- d) Any negotiations during the term of this Agreement are subject to the official time provisions of this Agreement. In no event shall the number of bargaining unit employees receiving official time for mid-term negotiations exceed the number of individuals on the Agency team.
- e) Any modifications or additions to this Agreement (including side agreements, MOUs or MOAs) during the term of the Agreement are invalid and unenforceable unless reduced to writing and submitted for Agency Head Review.

**11.3. Reopener.** Either Party may propose negotiations during the term of this Agreement to re-open, amend, or modify this Agreement, but neither Party is obligated to agree to such negotiations and such negotiations will only proceed with the mutual agreement of the Parties. A Party's decision not to agree to re-open the Agreement is not subject to the grievance procedure.

**11.4. Effective Date of Agreement.** This Agreement is subject to Agency Head Review and is effective upon that approval or on the 31st day after the date of execution.

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### **Union Rights (Article 5)**

## **Certificate Of Service**

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Western Regional Office	Agency File B1	e-Appeal / e-Mail
Sherman S. Startz Appellant	Agency File B1	e-Appeal / e-Mail
Pacific Region Agency Representative	Agency File B1	e-Appeal / e-Mail