



# LABOR-MANAGEMENT AGREEMENT

**BETWEEN the FEDERAL ENERGY REGULATORY  
COMMISSION and AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES LOCAL NO. 421, AFL-CIO**

**Effective August 19, 2024**

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**Dedication**

*This Labor Management Agreement is dedicated to  
Peter V. Black  
April 18, 1990 – December 28, 2023*

## **PREAMBLE**

This Labor Management Agreement (LMA) is entered into by and between the Federal Energy Regulatory Commission, herein referred to as (FERC) or (the Agency or Commission), and the American Federation of Government Employees, Local 421, AFL-CIO, herein referred to as (AFGE) or (the Union), also jointly referred to as the (Parties).

The Parties recognize the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them, safeguard the public interest, contribute to the effective conduct of public business, and facilitate and encourage the amicable settlements of disputes between employees and the Commission and between the employees' Union and the Commission, involving conditions of employment; and

That the public interest demands the highest standards of employee performance and work practices to facilitate and improve employee performance, and the efficient accomplishment of the operations of the Government; and

That a mutual commitment to cooperation promotes both the efficiency of the Commission's operations and the well-being of its employees; and

That employees will be respected in the implementation and application of this LMA as well as related personnel policies and practices.

As used, herein, "days" means "calendar days."

## **ARTICLE 1: RECOGNITION COVERAGE**

### **Section 1 - Definition of Bargaining Unit**

The Department of Labor on October 13, 1978, certified the Union as Exclusive Representative for a nationwide bargaining unit composed of all non-supervisory General Schedule (GS) and Wage Grade (WG) employees of the Employer including Professionals. While they may join the Union, employees engaged in personnel work in other than a purely clerical capacity; management officials and supervisors; confidential employees; and Security Personnel are excluded from the bargaining unit. In addition, all temporary employees on appointments not to exceed ninety (90) days and with no reasonable expectation of continuous employment are also excluded from the bargaining unit.

### **Section 2 - American Federation of Government Employees (AFGE) Exclusive Recognition (Union)**

- A. As the sole and exclusive representative, the Union is entitled to act for, speak for, and to negotiate agreements covering all employees in the bargaining unit. The Union is responsible for representing the interests of all employees in the bargaining unit without regard to labor organization membership, 5 U.S.C. §7114 (a).
- B. Due to the Union's exclusive recognition, the Commission will not deal directly with Bargaining Unit Employees (BUEs) on matters such as working conditions, personnel policy or practices, or by engaging in formal discussions without Union notification. The Union may participate in any formal discussions or meetings between BUEs and the Commission regarding working conditions and personnel policy or practices. This does not include work assignments or performance discussions.

### **Section 3 - Changes in the Bargaining Unit**

- A. Contraction or expansion of the unit may only be accomplished in accordance with existing statutory protocols identified in 5 U.S.C., Chapter 71.
- B. The Commission will provide the Union President or designee with written notice concerning the establishment, abolishment, or change in the status of Bargaining Unit (BU) position(s). Upon request by the Union, the Parties will meet within five (5) days to discuss and attempt to resolve the issue(s). If a matter concerning removal remains unresolved, either Party may file a clarification of unit petition with the Federal Labor Relations Authority (FLRA) in order for this determination to be made. The position will remain in the BU while the petition is being resolved. The FLRA will determine whether the removal of any position from the BU is appropriate.

#### **Section 4 – Bargaining Unit Members**

The Commission agrees to provide to the Local President or designee, on a biweekly basis throughout the fiscal year, a standardized list reflecting the name, grade, duty station, position title, and email address of each BUE. The Commission will also identify or provide a standardized list of all BUEs who have entered on duty within the last quarter. The Parties recognize that the listing will not be construed as action, or to confer action, by the Commission to unilaterally deny BU status to any employee.

## **ARTICLE 2: GOVERNING LAWS AND REGULATIONS**

### **Section 1 - Relationship to Laws and Regulations**

In the administration of all matters covered by this Agreement, the Commission and the Union shall be governed by all applicable Federal statutes, including those in effect on the date of this Agreement and those which are subsequently enacted. They also shall be governed by Government-wide regulations in existence at the time this Agreement was approved.

### **Section 2 - Precedence of Agreement**

Where any Commission guidance or regulation conflicts with this Agreement and/or supplemental Memorandums of Understanding (MOUs), this Agreement shall govern.

### **Section 3 - New or Changed Rules or Regulations**

- A. Except as may be required by law, new or changed rules or regulations issued after the effective date of this Agreement (including those which are prescribed by higher authority) which are in conflict with the provisions specifically contained in this Agreement may not be made applicable to BUEs during the term of the Agreement until the Parties have fulfilled their bargaining obligations. Should a provision of this Agreement be nullified or otherwise affected by appropriate authority (i.e., by federal statute or Government-wide rules or regulations implementing 5 U.S.C. §2302) after the effective date of this Agreement, either Party may reopen the specifically affected sections and all other provisions directly affected by those sections in accordance with Article 42, *Mid-Term Bargaining*, of the LMA.
- B. The Union will be notified by the Commission of the establishment of new conditions of employment or changes to established conditions of employment that are not in conflict with the provisions of this Agreement and that are within the provisions of the Labor Management Relations Statute and may impact upon working conditions of BUEs. The Union may bargain over the impact and implementation of such rules or regulations in accordance with Article 42, *Mid-Term Bargaining*, of the LMA.
- C. Any changes to rules or regulations, with respect to working conditions of BUEs, or amendments to this Agreement which are negotiated and agreed to by the Parties will be documented as an MOU and will become an integral part of this Agreement and subject to all the terms and conditions of this LMA.

## **ARTICLE 3: UNION RIGHTS AND RESPONSIBILITIES**

### **Section 1 - Exclusive Representative**

In accordance with 5 U.S.C. §7114(a)(1), "A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

### **Section 2 - Union Rights**

- A. In all matters relating to personnel policies, practices, and other conditions of employment, the Parties will have due regard for the obligations imposed by 5 U.S.C., Chapter 71, this agreement, and the concept of a cooperative working relationship.
- B. Each Party shall recognize and meet with the designated representative(s) of the other Party at mutually agreeable times, dates, and places, which may include virtual methods, that are reasonable and convenient.

### **Section 3 – Official Time**

Union representatives will receive official time for the performance of representational duties in accordance with Article 38, *Official Time and Duty Time*, of this contract.

### **Section 4 - Notification of Changes in Conditions of Employment**

The Commission shall provide reasonable advance notice to the Union President of proposed changes to personnel policies, practices, and other conditions of employment with a more than *de minimis* effect on BUEs. The Union will be notified in accordance with Article 42, *Mid-term Bargaining*. All notifications shall be in writing to the Union President providing sufficient information to the Union to understand the change(s).

### **Section 5 – Union Representation at Meetings and Formal Discussions**

- A. In accordance with 5 U.S.C. § 7114(a)(2)(A), Representation Rights and Duties, an officially designated Union representative will be allowed to attend any meeting between BUEs and management concerning a personnel policy or practice, a general condition of employment, or a grievance.

- B. The Commission will invite the Union to formal discussions and allow appropriate participatory rights during the meeting, which includes the Union introducing themselves.

### **Section 6 – Information**

In accordance with 5 U.S.C. § 7114(b)(4), the Commission agrees to provide the Union, upon request, with information that is normally maintained, reasonably available, and necessary for the Union to effectively fulfill its representational functions and responsibilities to the extent not prohibited by law, and does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. This information will be provided to the Union within a reasonable time and at no cost to the Union.

### **Section 7 – Union Employee Communication**

The Commission will not alter or censor the content of any direct communications between the Union and employees. However, Commission facilities may not be used for posting or distribution of libellous or defamatory material directed at Commission or Union officials or programs.

### **Section 8 - Surveys and Questionnaires**

The Commission will not communicate directly with BUEs through verbal or written surveys and questionnaires regarding conditions of employment without prior notification to the Union and bargaining, where appropriate. Participation in surveys will be voluntary, unless the Parties agree to require participation. Nothing in this section precludes the Union from the right to bargain over conditions of employment under the 5 U.S.C. Chapter 71.

### **Section 9 - Union Representatives**

The Union will designate its own representatives. The Union agrees to provide management and Workforce Relations or their designee with a complete list of names, email addresses, physical work address with cubicle/office location, and work telephone numbers of its Union Officials on an annual basis and/or when a change in Union Officials occurs. For changes in Union representation, the Union will provide notification to a designated management official in a timely manner, normally within twenty (20) days.

### **Section 10 - National and District Union Officials**

In addition to the officers, stewards (“steward” is used interchangeably with “union representative” herein), and unit members of Local 421, the Commission agrees to recognize the AFGE National and District officials who will be provided access to the physical office locations to conduct representational duties in accordance with Commission and/or local rules and regulations that apply to non-employees.

### **Section 11 - Distribution of Material for Representational Purposes**

- A. Union officials and stewards may distribute information for representational purposes.
- B. The Union is permitted to publish and update the names, work locations, and telephone numbers of the Union officials on the Union intranet page.
- C. Union officials and stewards are permitted to distribute materials via Commission email.
- D. The Union may distribute general information to employees on non-duty time.

**Section 12 - Other Committees**

The Union may appoint at least one (1) BUE to represent the Union on each current or newly established Commission committee that may affect working conditions and that does not involve the budget, mission, organization, or internal management. Union-appointed BUEs and Union officers who serve on committees will be on duty time. An example of this would be the Employee Resource Group Advisory Board.



## **ARTICLE 4: EMPLOYEE RIGHTS**

### **Section 1 – Right to Organize**

Each employee has the right, freely and without fear of penalty or reprisal, to form, join, assist, or act as a designated Union representative. This right consists of the lawful participation in all Union activities including presentation of its views to officials of the Commission, the President, Congress, or other appropriate authority.

### **Section 2 – Personal Rights**

To the extent allowable by law, the private lives, including personal speech in the workplace or outside of the workplace, of employees are their own affairs. The exception is if there is a nexus between the private speech or off-duty activity and the efficiency of the service, and where the private activities of employees demonstrates conduct unbecoming of a federal employee, affects performance or Management's trust, involves security or suitability, disrupts or adversely impacts the Commission, causes the employee's (or Commission's) impartiality in the performance of their duties to be questioned, and/or interferes with or adversely affects the mission of the Commission.

### **Section 3 – Employee's Right to Raise Concerns, Grieve or File a Statutory Appeal**

Employees who file a grievance, statutory appeal, anti-harassment policy petition, or participate in Alternative Dispute Resolution (ADR), will be assured freedom from any form of reprisal such as interference, coercion, discrimination, or intimidation.

### **Section 4 – Morale**

The Parties recognize that work performance may be enhanced when morale is high. Managers, supervisors, Union officials, and employees will endeavor to treat one another with respect and dignity.

### **Section 5 – Complying with Orders**

Employees recognize their responsibility to promptly comply with orders and instructions from their supervisors. If an employee reasonably believes that an order or instruction patently violates any law, rule, or regulation, the employee has the right to state such beliefs to the employee's supervisor. If the instruction remains unchanged, the employee has the right to raise the issue promptly and verbally to the next higher level of Management if available. In accordance with the Whistleblower Act, the Commission cannot retaliate against an employee's refusal to comply with the instruction that an employee that would require the employee to violate a law, rule, or regulation.

## **ARTICLE 5: MANAGEMENT RIGHTS**

### **Section 1 – General**

In accordance with 5 U.S.C. §7106(a), 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 shall be conducted;
  - (3) with respect to filling positions, to make selections for appointments from—
    - (a) among properly ranked and certified candidates for promotion; or
    - (b) any other appropriate source; and
  - (4) to take whatever actions may be necessary to carry out the agency mission during emergencies.

## **ARTICLE 6: USE OF FACILITIES & SERVICES PROVIDED BY THE AGENCY**

### **Section 1 - Union Office Space**

- A. The Commission recognizes the importance and value of the AFGE Local 421 mission and purpose. Accordingly, the Commission agrees to furnish office space at the Commission Headquarters to the Union appropriate for carrying out its representational and partnership duties in a location easily accessible to employees at no cost. Office space shall be sufficiently private to ensure confidentiality to the maximum extent possible. The office shall be of sufficient size for necessary storage of confidential materials. The office shall have a locking door to protect confidential employee information.
- B. The Commission agrees to furnish a secure space, such as a lockable cabinet for document storage, for each Regional Office appropriate for carrying out its representational and partnership duties in a location easily accessible to employees at no cost.
- C. The office shall be equipped with adequate information technology provided by the Commission. The Union will be provided a computer, printer, telephone, monitor and internet access equal to that of the location.
- D. To the extent that Union officials use Government Furnished Equipment (GFE) and software, both shall be maintained at the same level as available to Commission staff generally. Nothing herein is intended to impact or change the provisions of any other article in this Agreement.
- E. Requests for the use of official facilities will be made at least one (1) day prior, if possible, to the date of the meeting and will be in accordance with local procedures.

### **Section 2 – Use of Official Facilities**

The Commission will, on an as-needed basis, provide conference rooms, auditorium, or virtual method(s) as available for discussions between employees and Union officials. The Commission will also provide suitable space for regular Union meetings at Headquarters and at Regional Offices, as available. The Union agrees to exercise reasonable care in use of such space and follow the same room reservation procedures as all other users. The Union will also have access to the same services routinely available at the Commission (teleconference, video conference, video equipment, presentation equipment, etc.).

### **Section 3 - Membership Drives**

The Commission agrees to provide adequate facilities for Union membership drives that are accessible to BUEs during break and lunch periods. The use and reservation of facilities will

follow Commission procedures. The Commission agrees that the Union may access employee meal or break areas during membership drives.

#### **Section 4 - Access to Documents and Information**

This Agreement will be made available online on the Commission's Intranet website. The Commission will provide the Union with an intranet page and a SharePoint (or its successor) page for the Union's exclusive use.

#### **Section 5 - Bulletin Boards**

A bulletin board (at least 20 in. by 30 in.) will be provided for the use of the Union at Headquarters and Regional Offices for the display of union literature, notices, and information of interest. It will be located in a busy and easily accessible location in the administrative portion of all buildings the Commission occupies. The Union will maintain the appearance of the bulletin board. The Union representative may authorize the posting of material by initialing the documents. Additionally, the Commission will provide space on the bulletin boards in each galley, or wherever bulletin boards are located in Regional Offices, of at least 9 in. by 13 in. The Union will have access to or the ability to have notices, communications and documents posted on an electronic bulletin board. Bulletin boards must not contain libellous or defamatory language; management may remove postings that do not conform to such standards. Management will notify the Union if they do so.

#### **Section 6 - Interoffice Communications System**

The Local, its representatives, and BUEs may use the interoffice mail, email, and video conferencing systems for regular representational communications (e.g., grievances, internal correspondence, and correspondence or memos to the Commission). The Union may send messages to multiple persons at the same time.

## **ARTICLE 7: GRIEVANCE PROCEDURE**

### **Section 1 - Purpose**

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable resolution of grievances for BUEs.

### **Section 2 - Definition**

A. A grievance means any complaint:

- (1) By any BUE concerning any matter relating to the employment of the employee;
- (2) By the Union concerning any matter relating to the employment of any BUE(s);  
or
- (3) By any BUE, the Union, or the Commission related to:
  - (a) The effect, interpretation, or a claim of breach of this Agreement; or
  - (b) Any claimed violation or misapplication of any rule or regulation affecting conditions of employment.

B. Grievances on the following matters are excluded from the scope of this procedure:

- (1) any claimed violation of subchapter III of Chapter 73 of Title 5, U.S.C. relating to prohibited political activities;
- (2) retirement, life insurance or health insurance;
- (3) a suspension or removal under 5 U.S.C. 7532 relating to national security;
- (4) an examination, certification, selection, or appointment;
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee;
- (6) non-selection for promotion from a group of properly ranked and certified candidates;
- (7) termination of a probationary employee during the probationary period, except where allowed by law;

(8) solely and in and of itself the award or failure to award any form of incentive pay, including cash awards, quality step increases, or recruitment, retention, or relocation payment; however, matters which touch upon awards may be grieved;

(9) the issuance of a preliminary warning, notice, or proposal of an action which, if effected, would be covered under this procedure or under a statutory appeals procedure; and

(10) matters which are not subject to the control of the Commission.

### **Section 3 – Protection from Reprisal**

- A. Employees and their representatives will be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal, consistent with 5 U.S.C. Chapter 71, and this Agreement, in seeking adjustment of grievances.
- B. The Parties recognize that dissatisfaction and disagreements arise in the workplace. The filing of a grievance will not be construed as reflecting unfavorably on the employee's conduct or performance.

### **Section 4 – Exclusivity**

- A. Grievances may be initiated by employee(s) covered by this Agreement and/or their Union representative or by the Commission. Representation of BUEs shall be the sole and exclusive province of the Union.
- B. Except as provided by law, this is the exclusive procedure available to employees, the Union, or the Commission for the resolution of grievances within its scope.

### **Section 5 - Representation**

- A. Prior to filing a grievance, an employee may elect to be self-represented or represented by the Union. When an employee elects to be represented by the Union, anyone whom the Union has designated in writing for a particular issue is the representative of the Union for that issue.
- B. In accordance with 5 U.S.C. Chapter 71, the Union has the right to be present during any proceeding under the negotiated grievance procedure. If the Union is not the designated representative, a copy of the grievance will be provided to the Union within seven (7) days of the filing date. The Commission will provide the Union reasonable advance notice of any grievance meeting/discussion when the Union is not the designated representative. A copy of each grievance decision will be forwarded to the Union President at the time the response is forwarded to the employee.

- C. The employee and/or the Union will submit a written notification to management identifying the selection of Union representation or their declination of Union representation.
- D. When an employee files a grievance, management will forward the written notification of the election or declination of Union representation to the Union President or designee.
- E. Where the grievant elects Union representation, any and all meetings and communication with regard to the grievance and any attempts at resolution shall be made through the designated Union representative. The BUE will be on official time.
- F. In situations where the grievant(s) and representatives are on different work schedules and/or locations, the Parties will make every reasonable effort to schedule all steps in the grievance process within the grievant's and representative's common work times; this may include adjusting either the grievant's or the representative's tour of duty.

#### **Section 6 – Resolution of Grievances and Employee Standing**

- A. The Parties will attempt to resolve grievances at the lowest possible level.
- B. The Union and the Commission agree that grievances should be settled in an orderly, prompt, and equitable manner.
- C. In cases of group grievances, the Union may select spokesperson(s) from the grieving group who can serve as a group representative to assure efficient use of government time.
- D. Grievances can be initiated by one (1) or more employees. When two (2) or more employees have similar grievances (the dissatisfaction expressed, and the relief requested are the same), the Parties will, by mutual agreement, process the grievances concurrently.
- E. Nothing in this Agreement will be read to prohibit any party from making an offer of settlement. Normally, settlement offers will be responded to within ten (10) days. Unless otherwise agreed, pending settlement negotiations do not toll grievance deadlines. All resolutions achieved through settlement will be recorded in writing.

#### **Section 7 – Grievability/Arbitrability Questions**

In the event either Party should declare a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. The Parties agree to raise any questions of grievability or arbitrability of a grievance prior to the deadline for the written answer in the final step of the grievance procedure. All disputes of grievability/arbitrability as a threshold matter shall be presented jointly with the merits issue(s) in the related grievance.

## **Section 8 - Time Limits**

- A. All time limits in this article may be extended by mutual agreement. Timeline extensions must be in writing through email. Per the timelines set in this article, deadlines must be on a business day (no weekends or Holidays).
- B. Through mutual agreement of the Parties, the grievance timeline(s) may be placed in abeyance to allow the Parties to discuss or resolve the issue(s) prior to filing a grievance.
- C. Failure on part of the Commission to meet any of the time requirements of the grievance procedure will advance the grievance to the next step, or if at the third (3<sup>rd</sup>) Step the Union may invoke Arbitration.
- D. If the grievant and/or the Union, after receiving a decision, fails to timely advance the grievance to the next step, the grievance shall be terminated.
- E. A grievant that misses the deadline for timely filing or advancing a grievance due to circumstances beyond their control may request a “waiver in writing” to file with the Deciding Official. Such requests will be determined on a case-by-case basis. The grievant may be required to provide documentation in support of the request. If the request is granted, all applicable timelines will run from the date of the approval.

## **Section 9 - Complaint or Grievance Options**

- A. An aggrieved BUE affected by matters covered under Sections 4303 and 7512 of Title 5, United States Code, may raise the matter under the appropriate statutory procedure or negotiated grievance procedure, but may not do both. A BUE shall be deemed to have exercised their option under this provision at such time as the BUE raises an issue under the applicable statutory procedure or negotiated grievance procedure whichever event occurs first.
- B. An aggrieved BUE affected by a prohibited personnel practice under 5 U.S.C. 2302(b) may raise the matter under the appropriate statutory procedure or under this procedure, but may not do both. A BUE shall be deemed to have exercised their option under this provision at such time as the BUE initiates an action under the applicable statutory procedure or files a grievance in writing under this procedure, whichever occurs first.
- C. Complaints of employment discrimination may be raised as a grievance or as a statutory equal opportunity complaint, but not both.
- D. Dispute Resolution Service (DRS) processes, including mediation, may be used at any stage in a grievance upon mutual agreement of the Parties. If DRS/mediation is used, the grievance time limits are paused until the conclusion of the DRS process.



## **Section 10 - Procedures for Employee Grievances**

- A. The written grievance should normally contain a description of the matter(s) being grieved, including:
- (1) The article(s) of the Agreement, law, rule, or regulation alleged to have been violated, or to the employment condition in dispute;
  - (2) statement that this is a grievance filed under the Negotiated Grievance Procedure;
  - (3) statement of the circumstances giving rise to the grievance including the date, if applicable, of the alleged violation;
  - (4) the name of the management official(s) or others alleged to have committed the action grieved;
  - (5) name and position title of the grievant(s) with work telephone number(s) and email address;
  - (6) name of Union representative (if any); and
  - (7) the desired relief.
- B. Grievance meetings under this procedure normally will be face-to-face, or upon mutual agreement by the Parties, via virtual methods.
- C. The grievant and the Union representative will meet with the designated management official and a Commission representative (if one is designated). The Union and management shall be permitted to have an equal number of representatives during meetings or discussions at all formal steps of the grievance procedure. If a Commission representative is designated, the Union will be apprised who the representative will be. Normally, this notice will occur not less than four (4) days in advance of the meeting.
- D. Grievances may be hand-delivered or delivered through email. The recipient of the grievance shall sign and date the grievance if hand-delivered or reply via email. If the grievance is delivered via email and an acknowledgement of receipt of the grievance has not been received within ten (10) days, the Parties will assume the grievance has been delivered and received. Timelines will be preserved if the serving Party is able to show the grievance was delivered via email.
- E. Management officials designated to be Deciding Officials will have the authority to resolve the grievance. The designee will not be someone who decided the issue at a previous step.

- F. Grievances should normally be resolved at the lowest level possible. However, there may be times when a grievance may be more appropriately decided at a higher supervisory level (e.g., when grieving an annual rating).
- G. All grievance decisions will be in writing and state the issue being grieved, facts and/or evidence considered in reaching the decision, a summary of the findings, the rationale for the decision, and whether the requested relief is granted.
- H. Additional supporting facts within the scope of the initial claim may be added at the 2nd and 3rd steps of the grievance process.

### **Section 11 - Grievance Process**

Grievances should normally be resolved at the lowest level possible. However, there may be times when a grievance may be more appropriately decided at a higher supervisory level (e.g., when grieving an annual rating).

#### **Step 1:**

- A. The grievance will be presented in writing to the first-level supervisor within twenty (20) days of the date that the employee (when self-representing) or Union became aware of the grievable act or occurrence. Timelines will be suspended if the act or occurrence is of a continuing nature.
- B. The **Step 1** management official or designee receiving the grievance will meet with the grievant and/or representative, at the request of any Party, within ten (10) days of receipt of the grievance. The **Step 1** official will provide the **Step 1** response within twenty (20) days from the date of the meeting.
- C. The grievance response will include the designation of the next level deciding management official to whom the grievance would be advanced. The **Step 2** management official will normally be the Office Director.

#### **Step 2:**

- A. If the grievance is not satisfactorily resolved at **Step 1**, it may be presented to the **Step 2** management official or designee named in the written decision letter within twenty (20) days of receipt of the response. The **Step 2** management official receiving the grievance will meet with the grievant and/or representative, at the request of any Party, within twenty (20) days of receipt of the grievance. The **Step 2** official will provide the **Step 2** decision within twenty (20) days from the date of the meeting, or twenty (20) days from the date of the decision if no meeting is held.

#### **Step 3:**

- A. If no satisfactory resolution is reached in **Step 2**, and the employee desires further consideration, a written request should be submitted to the Executive Director or their designated representative. Such request must be made within twenty (20) days after the decision rendered in **Step 2**. A decision will be rendered within twenty (20) days.
- B. If the grievance is not satisfactorily resolved in **Step 3**, the grievance may be referred to arbitration as provided in Article 8, *Arbitration*. Only the Union or management can refer a grievance to arbitration.

### **Section 12 - Employer/Union Grievance Procedure**

Union/Commission grievances over interpretation or application of this Agreement or interpretation, application or implementation of any law, rule or regulation affecting conditions of employment not concerning the employment of any specific employee will be resolved through the following procedure:

- A. The Union or the Commission may initiate a grievance by submitting it in writing to the appropriate management official or Union President or either's designee, as appropriate, within twenty (20) days after the incident occurs, or within twenty (20) days after the Union or the Commission first became aware of the incident. Timelines will be suspended if the act or occurrence is of a continuing nature.
- B. The grievant must state the Article(s) and Section(s) of the Agreement that has/have been violated to include but not limited to any law, rule, regulation, or agency policy and how the LMA or any law, rule, regulation, or agency policy has been violated, a description of all the facts the grievant is relying on to support their grievance along with any documentation supporting the grievant's position and the relief being sought.
- C. The Parties will then meet within twenty (20) days of receipt of the grievance to discuss and attempt to resolve the matter. A written decision on the grievance will be issued by the responding party within twenty (20) days of the meeting by the Union or the Commission. Any resolution must be in writing. If the grievance is not settled by this method, the grieving Party may invoke arbitration within twenty (20) days after receipt of the final decision. If the responding Party fails to issue a decision, the grieving Party may invoke arbitration within twenty (20) days after the deadline for the responding Party's decision.

### **Section 13 - Information Requests**

In accordance with 5 U.S.C. §7114), upon receipt of a written request, management will provide a written response within twenty (20) days. Management will provide the information as requested or management will provide a written response to the Union as to why the information was not provided as requested or request an extension of time for response. The preferable

method of delivery is email. All requests will be submitted to the Director of Workforce Relations (or designee).

## **ARTICLE 8: ARBITRATION**

### **Section 1 - Notice to Invoke Arbitration**

Only the Union or management may refer to arbitration any grievance that remains unresolved after the final step under the procedures of the Article 7, *Grievance Procedure*. A notice to invoke arbitration shall be made in writing to the opposite Party (Union President or designee or the Director of Workforce Relations or designee), within twenty (20) days after receipt of the decision rendered in the final step of the grievance procedure or twenty (20) days following the date the response was due. If arbitration is not invoked within the twenty (20) days, the decision will be final and binding.

### **Section 2 - Selection of Arbitrator**

- A. On or after the date of the notice to invoke arbitration, the Party invoking arbitration will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons to act as an arbitrator. Fees associated with obtaining said list will be shared by the Parties.
- B. The Parties shall normally meet within twenty (20) days after receipt of such list to select an arbitrator (this may be done by telephone or other various means of communications). If the Parties cannot mutually agree upon an arbitrator to hear the case, the Parties will alternately strike names from the panel until one (1) name remains. The remaining arbitrator will be selected.
- C. The Parties agree that if the striking method is applied, who will strike first will be determined by coin flip. There must be representatives from both Parties physically, or virtually, present to witness the coin flip. The winner of the coin flip may strike first or require the other Party to strike first. The remaining person shall be the duly selected arbitrator.
- D. If the moving Party refuses, delays or fails to participate in the selection process within the aforementioned time frame, the grievance/ arbitration appeal will be considered terminated and withdrawn.
- E. If the non-moving Party refuses, delays or fails to participate in the selection process within the aforementioned time frame, the moving Party may select the arbitrator from the list and unilaterally set the arbitration date.
- F. Following the selection, the Parties will, within twenty (20) days, notify FMCS of the name of the arbitrator selected.

- G. Once selection of an arbitrator is made, the moving Party shall have the responsibility of contacting the selected arbitrator and obtaining available dates for the hearing. Once available dates are received from the arbitrator, the Parties will mutually agree on a specific date for the hearing. If for any reason the selected arbitrator becomes unavailable and is unable to reschedule within a reasonable time frame, then a new list will be generated in accordance with Section 2.A of this Article.
- H. The time limits under this Section may be extended by mutual agreement, which will not be considered a delay.

### **Section 3 - Procedures for Arbitration Hearing**

- A. The procedures used to conduct an arbitration hearing shall be determined by the arbitrator, with agreement of the Parties.
- B. The Parties agree to follow these general guidelines:
  - (1) Both Parties shall be entitled to call and cross-examine witnesses before the arbitrator. All BU witnesses called for the arbitration will be on official time.
  - (2) When necessary, management will allow a change of schedule for BU witnesses so that they are on duty status during the arbitration hearing.
  - (3) The grievant will be granted adequate official time to prepare for arbitration and shall be on official time for the duration of the hearing.
  - (4) Both Parties shall be entitled to call technical advisors to participate in the arbitration. All BU technical advisors will be on official time.
- C. Observers may be permitted upon mutual agreement. The Union may request official time for the observers in accordance with Article 27, *Training*, and Article 38, *Official Time and Duty Time*, of this LMA.
- D. The arbitration may be at the location of the affected employee or through virtual methods with mutual consent. If either Party wishes to have a change of venue from the Agency-provided facility, the requesting Party is responsible for the fees and costs associated with the change.
- E. The Parties will attempt to submit a joint statement of the issue or issues to the arbitrator. If the Parties do not agree to file a joint submission, each shall make a separate submission to the arbitrator and to the other Party. The arbitrator shall determine the issue or issues to be heard.
- F. The Parties agree to exchange witness lists. Witness lists will be exchanged not later than fifteen (15) days prior to the scheduled arbitration. The Commission will arrange to have

all employee witnesses available for the hearing and confirm with the Union or employee at least seven (7) days prior to the hearing that it has done so or not been able to do so.

- G. If either Party discovers a witness after witness lists are exchanged, the Parties agree to provide notification as soon as reasonably possible and the witness will be released, if practicable. If key witnesses are not available, the Parties will reschedule the hearing for another date.
- H. The Parties will be entitled to submit post-hearing briefs (including one rebuttal brief per Party) or closing statements. It is further agreed that all documents given to the arbitrator are also provided to the opposing Party's representative at the same time.
- I. The arbitrator will be requested to render a decision within sixty (60) days. An arbitrator will not add to, subtract from, change or modify any provisions of this Agreement. The arbitrator shall have full authority to provide a remedy appropriate to resolve the grievance, including but not limited to an award of back pay, restoration of leave or other benefits, interest, and reasonable attorney fees or other monetary or non-monetary make-whole remedy to the extent authorized by controlling law and regulation. The arbitrator's decision shall be final and binding. However, either Party may file an exception to the arbitrator's award in accordance with applicable law and regulation(s). Any dispute over the interpretation of an arbitrator's award shall be returned to the arbitrator for clarification.
- J. The time limits in this Article may be extended by mutual agreement.

#### **Section 4 - Costs**

- A. All fees and expenses of the arbitrator will be shared equally by the Commission and Union.
- B. If prior to the arbitration hearing, the Commission and the Union resolve the grievance, any cancellation fees shall be borne equally by the Commission and the Union. After scheduling the hearing, if either Party requests the hearing to be postponed, all resulting costs, if any, will be borne by the Party requesting the postponement.
- C. If the Parties mutually agree to a verbatim transcript, the cost of the court reporter and the official transcript will be shared equally. In the absence of mutual agreement, the Party requesting a verbatim transcript will bear the cost of the court reporter and the official transcript and no copy will be available to the other Party. Either Party may, by mutual consent, use audio equipment to record the proceedings at their own expense.
- D. Attorney Fees and Expenses
  - (1) The Commission is responsible for reasonable attorney fees and expenses as awarded by an arbitrator, consistent with the Back Pay Act and 5 C.F.R. § 550.807.

### **Section 5 - Scope of Proceedings**

The Parties agree that the issue(s) to be arbitrated shall be no broader in scope than the issue(s) presented during the last step of the grievance procedure, except that the Parties would not be precluded from introducing procedural and background material that is necessary and relevant as determined by the arbitrator. Additional supporting documents or other evidence within the scope of the initial claim which were not made a part of the last step of the grievance processes will not be allowed to be submitted at the hearing, unless they were not available at the time of the last step of the grievance process or if there is good cause to allow their admission as determined by the arbitrator. The arbitrator has the authority to make all grievability and/or arbitrability determinations. Any issue of grievability/arbitrability must have been raised in writing by **Step 3** of the *Grievance Procedure* (Article 7). Any allegations of grievability/arbitrability will be heard as threshold issues in the hearing. If the arbitrator determines the grievance is arbitrable, the merits of the grievance will be heard (if the grievance is determined not to be arbitrable, the grievance will not be heard). There will be no separate hearing for grievability/arbitrability issues, except by mutual consent.

### **Section 6 - Official Time/Duty**

- A. A reasonable amount of official time for arbitration preparation will be granted to the Union representative. The Union representative will be on official time during the hearing.
- B. The grievant(s), the Union representative, and technical advisor, if any, and all employees identified as witnesses shall be excused from duty and granted official time and travel and per diem expenses to the extent necessary to participate in the arbitration proceeding, either as a Party, technical advisor, or to testify as a witness, without loss in pay.
- C. All official time will be recorded using the time codes specified in Article 38, *Official Time and Duty Time*.



## **ARTICLE 9: LABOR - MANAGEMENT FORUM**

### **Section 1 – Purpose**

The desire and intent in this Article is to describe and encourage an effective labor- management relationship. The Commission and the Union are committed to working together at all levels to improve public service, ensure a quality work environment for employees, foster a cooperative, constructive working relationship between employees and management, establish an atmosphere of mutual respect and trust, and to improve the morale of the employees.

### **Section 2 – Annual Labor-Management Forum meeting**

On an annual basis, or more frequently as mutually agreed, an informal meeting may be held, at either Party's request, between Union and Management officials. An agenda will be set by mutual agreement and can include pre-decisional matters, such as job-related training and education, use of telework, and promotion. Normally, some senior management officials, as well as first-line supervisors, will attend to discuss agreed-upon agenda. These meetings will not be used to address individual grievances, but may include discussions of correction of conditions causing grievances and misunderstandings. These meetings will also not be a substitute for formal negotiations and will not be considered a waiver of either Parties' rights under the statute.

## **ARTICLE 10: EMPLOYEE NOTICES AND ORIENTATION**

### **Section 1 – Representation Rights**

On an annual basis, the Commission will, in accordance with 5 U.S.C. §7114 (a)(2)(B) and (a)(3), notify employees of their Weingarten Rights, established by the Supreme Court, in 1975 in the case of J. Weingarten Inc.

### **Section 2 - Frequency of Employee Orientation**

The Commission shall provide the Union a list of BUE who entered on duty (EOD) and are scheduled to attend orientation as soon as reasonably possible. When available, the list will include the following information: name, grade, title, email address, EOD date, bargaining unit status, and organization.

### **Section 3 – New BUE Orientation**

- A. The Commission will provide adequate advance notice to the Union when new employees are scheduled for orientation. During orientation the BUE will be provided with Union contact information.
- B. The Union will be provided official time to address BUEs during New Employee Orientation (NEO), normally from the block of official time provided. Normally, the Union's presentation time will be scheduled as NEO or a BUE does not attend the NEO, the Union may request official time to meet with the employee as soon as possible to relay the content of the Union's NEO briefing.
- C. The Union may attend NEO either in-person or virtually. If virtually, the Commission will provide the necessary technology and support for the Union to make a virtual presentation.
- D. After NEO, Stewards or Union officers may introduce themselves to new employees at the worksite or virtually and inform them of their availability for representation functions, so long as there is no undue disruption of work activities.

## **ARTICLE 11: WORKSPACE MOVES**

### **Section 1 - Notification**

The purpose of this Article is to outline a clear process for how workspace will be assigned. The Parties agree that management will first determine the need for employee reassignments to vacant workspace, consistent with organizational needs, budgetary limitations, and departmental guidelines, prior to considering any employee request to move in vacant workspace.

### **Section 2 - Management Initiated Moves**

- A. A BUE who is reassigned to a new workspace will receive at least one (1) full pay period advance notice of the change. If management is unable to meet this obligation, they will notify the Union and provide a business-based reason.
- B. The Commission will provide moving boxes in advance of any scheduled move and move all boxes to the new workspace at the election of the employee.
- C. The Union may recommend suggestions regarding workspace moves. If the Commission determines the suggestion meets organizational needs, at its sole discretion, the initial proposed workspace move will be cancelled or altered.
- D. Barring an urgent situation or work requirement, workplace moves at the Branch level or higher, the Commission will provide the Union a copy of the proposed layout in thirty (30) days prior to the move.

### **Section 3 - Employee-Initiated Moves**

When an assigned workspace becomes vacant, a BUE may make a written request to move into that vacant workspace which will be considered by the Commission. If the request is consistent with operational requirements, and budgetary constraints the request may be approved. Barring any job functional requirements, when more than one (1) employee requests to move into the vacant assigned space, the higher-graded employee will be given preference, and within the same grade level, the employee with earliest FERC EOD will be given preference. If the EODs are identical, the Commission will utilize a random pick/draw method to break the tie, with a Union representative present. Requests for employees to exchange work locations are subject to the same constraints as individual moves to vacant space in accordance with Article 12, *Dynamic Seating/Hoteling*, of this LMA.

## **ARTICLE 12: DYNAMIC SEATING/HOTELING**

### **Section 1 – Definition**

Dynamic seating or Hoteling is an alternative work arrangement in which employees work in one primary facility part of the time and at one or more approved alternative worksites the rest of the time (i.e., teleworking from home).

### **Section 2 – Permanent Office Space**

Assignment of BUEs to dedicated permanent office space will be in accordance with the provisions of this Article.

- (1) Employees who are scheduled to be in the office forty (40) hours or more per pay period, will be assigned an office within their Program Office's floor (i.e., 7<sup>th</sup>-10<sup>th</sup>).
- (2) Window offices will be assigned based on employees' grade and seniority (FERC EOD date). Employees may be assigned a window office only if they would normally be eligible based on the Commission criteria.
- (3) When offices are assigned, every effort will be made to assign an office near the employees' Senior Leadership (SL) and Senior Executive Service (SES).
- (4) The Union will be provided a list of employees with office type and grade who are assigned an office.

### **Section 3 - Dynamic Seating/Hoteling Reservation System**

- A. When working at the primary facility, those employees not assigned permanent office space will use non-dedicated, non-permanent workspaces assigned for use by the Dynamic Seating/Hoteling Reservation System on an as-needed basis. The reservation system shall be administered in accordance with the provisions of this Article.
  1. Office space will become available for reservation beginning at 9am on the 1st Tuesday of the pay period for the following pay period. Employees may schedule workspace(s) any time after their respective window opens:
    - (a) 1st Tuesday – All employees at the GS 15 level
    - (b) 1st Wednesday – All employees at the GS 14 level
    - (c) 1st Thursday – All employees at the GS 13 level
    - (d) 1st Friday – All remaining Federal employees (GS 1-12)

2. Employees will be able to reserve a workspace up to one (1) pay period at a time and be able to reserve an office in real time via GFE laptop or smartphone, or other electronic device via web browser, if allowed by system/security requirements.
  3. Staff not permanently assigned an office may reserve any available office space within their Program Office's allocated space.
    - (a) If a Program's Offices space is full, employees must first reserve flexible workspace on their floor.
    - (b) If full, employees may reserve any unallocated flexible workspace on any floor.
- B. The Commission will aim to keep Program Offices contiguous, such that the offices designated to each Program Office are on the same floor and adjoining one another. To promote collaboration, subject to availability, employees are encouraged to reserve seating in the vicinity of their organizational executive (e.g., Division Director).
- C. The reservation system includes a "cancel" function, and employees shall be encouraged to cancel reservations as soon as they become aware that they no longer need it (e.g., unanticipated leave).
- D. The reservation system allows employees to view where employees have reserved offices.
- E. The Parties share an interest in providing sufficient collaborative space to support the mission. The Commission will periodically review the utilization of workspace to maximize collaborative opportunities (including underutilized conference room space). If underutilization of workspace is identified, the Commission will provide the Union a copy of the review report and meet with the Union to discuss the findings. The Commission will provide an initial assessment of space utilization six (6) months after full implementation.

#### **Section 4 - Accommodations/Amenities in Workspaces**

- A. The Commission will supply a hanger or hook for the wardrobes in each office and workstation.
- B. The Commission will continue to ensure that employees are considered for reasonable accommodations in accordance with applicable law. This may require that the Commission provide an assigned office when the accommodation warrants.
- C. The Commission will provide daily cleaning of all hard surfaces in offices used for hoteling. Each hoteling office will be equipped with disinfectant wipes, and employees

will be encouraged to wipe down shared surfaces. Hand sanitizer stations will be maintained in each elevator lobby.

- D. For hoteling employees that do not park vehicles in the building, the Commission will provide the option for individually assigned lockers on the third floor (the lockers will be large enough to hang one coat or suit jacket) for secure, long-term storage of work and personal items, such as files, books, clothes, and medication, to be used on a regular and recurring basis, subject to General Services Administration (GSA) guidelines. The Commission will also look to identify areas on other floors to install lockers, where feasible.
- E. For use by all employees, the Commission will provide:
  - (1) A softphone with a current government extension that can be accessed on their GFE laptop;
  - (2) The option for an individually assigned keyboard and mouse; and
  - (3) as appropriate, the option for Branch/Section- or Division-level communal storage (e.g., filing cabinets and bookshelves for shared reference materials).
- F. Employee time spent reserving an office, finding and setting up hoteling offices, and other administrative tasks related to the hoteling should be done during their tour of duty and will be considered duty time.
- G. The Commission will periodically review workspace occupancy rates (percentage of time occupied/time available) to promote the optimum use of space at an economical cost and to maximize the productive use of space.

## **Section 5 – Consultation and Review**

- A. The Commission will periodically review workspace occupancy rates (percentage of time occupied/time available) to promote the optimum use of space at an economical cost and to maximize the productive use of space. If underutilization of workspace is identified, the Commission will supply the Union with a copy of the report and this matter will be referred to the *Labor-Management Forum* (Article 9). If any changes are proposed to this LMA, the Union does not waive bargaining over those changes.
- B. Should employees be required to return to the office by legislation or Executive Order, the Commission will include the Union in pre-decisional planning. At a minimum, this will include a meeting between the Executive Director (which shall not be delegated) and the President of the Union prior to the implementation of such legislation or Executive Order.

## **ARTICLE 13: REASSIGNMENT**

### **Section 1 - General**

- A. Reassignment is the change of an employee from one position to another without promotion or change to a lower grade or level. The regulation 5 C.F.R. Part 335 authorizes reassignments of Federal employees. Because they are permanent, all reassignments will be documented in the employee's electronic Official Personnel Folder (e-OPF).
- B. Reassignments may be either Management-directed (e.g., in order to avoid reduction in force (RIF) actions or when an employee's skills are better utilized in another equivalent position) or voluntary (employee-initiated). A voluntary reassignment may also occur as an accommodation of last resort under the reasonable accommodation process.
- C. Barring immediate work requirement or specific Commission considerations, an employee being involuntarily reassigned to a new position normally will be given notification within two full pay periods in advance.
- D. The BUE will receive an SF-50 (a standard form) in their e-OPF from the Commission documenting the reassignment, normally within thirty (30) days after being reassigned. The BUE will receive a copy of the new position description (PD) in their e-OPF for the new job within thirty (30) days after being reassigned.

### **Section 2 - Management-Directed Reassignment**

- A. "Management-directed reassignment" is any action initiated on behalf of the Commission to reassign an employee to a different position when the Commission has an organizational reason for the reassignment. A management-directed reassignment may be either within or outside of the employee's geographical location.
- B. When deciding to reassign an employee, the Commission will be guided by objective considerations in support of the Commission's mission, and/or to promote the efficiency of service.
- C. Where there is flexibility and no management preference expressed for which employees are assigned to specific teams, the Office will, in accordance with the staffing plan, offer qualified employees the opportunity to express their preference regarding the reassignment within seven (7) days of the announcement. All other things being equal, seniority (FERC EOD date) will be the final tiebreaker. The reassignment opportunity will be given to the most senior qualified volunteer.
- D. When the employee is reassigned to a new position of record, the employee will be

given a reasonable period to demonstrate proficiency, normally not less than ninety (90) days, during which time the employee's performance would not be rated. BUE employees will have access to sufficient training, in the Commission's determination (i.e., computer-based training, formal training and/or on-the-job training), to allow the employee to become proficient.

- E. The Commission may subject Union officials to reassignment but may not do so as a form of reprisal. The Commission will provide the Union President advanced written notice before conducting a reassignment of a Union Officer, Official, or Steward.
- F. The Commission may consider documented reasons that a branch or division reassignment may cause a BUE undue personal or professional hardship.

### **Section 3 – Voluntary Reassignment**

Employees may request a reassignment to another vacant position for which they are qualified. All such requests are subject to the Commission's right to assign employees work, and to determine the personnel by which Commission operations shall be conducted. Such requests will be considered by the Commission, and a good faith effort will be made to balance the needs of the BUE(s) with the Commission's needs. Voluntary reassignments will be processed in accordance with applicable laws, rules, regulations, and this LMA.

### **Section 4 - Relocation Expenses**

An employee affected by a management-directed work location reassignment may be entitled to relocation expenses.



## **ARTICLE 14: REORGANIZATION**

### **Section 1 – Definition**

**Reorganization** - A reorganization is the elimination, addition, or redistribution of duties and reporting relationships within an organization that affects one (1) or more positions, including the restructuring of the Commission's components.

### **Section 2 - Communications and Bargaining with the Union**

- A. The Commission will announce reorganizations to staff at least twenty (20) days prior to the proposed effective date.
- B. The Commission will forward a completed, written Reorganization package to the Union no less than twenty-five (25) days prior to the effective date, with the exception of emergency situations. A Reorganization package will contain: the current and new mission functions of the organization; a crosswalk detailing the current and new structure of the organization; specify BU status; and specify whether there are changes in BUE pay, grade, physical office location or duty station. The Union agrees to withhold consulting with BUEs until after the staff announcement.
- C. Upon request, a briefing will be provided to the Union, expounding on the specifics/parameters of the proposed reorganization. If the Union requests a briefing, the briefing will normally take place within three (3) days of the request.
- D. Consistent with 5 U.S.C. §7114(b)(4), the Commission will provide the Union with the information necessary to conduct bargaining. The Commission will bargain to completion appropriate arrangements for BUEs impacted as a result of a reorganization. The status quo will be maintained to the extent required by law.

## **ARTICLE 15: HOURS OF WORK AND OVERTIME**

### **Section 1 - Purpose**

This Article shall be administered in accordance with Title 5 U.S.C. Chapters 61, Title 5, CFR, and this Agreement. The purpose of this Article is to prescribe the policies covering hours of work for all employees in accordance with applicable law and regulation.

### **Section 2 - Definitions**

- A. **Tour of Duty** is the hours of a day and the days of a workweek that constitute an employee's regularly scheduled workweek (e.g., Monday-Friday, 8:00 a.m.-4:30 p.m.).
- B. **Alternative Work Schedule (AWS)** is an umbrella term that refers to both compressed work schedules and flexible work schedules, as described below.
- C. **Flexible Work Schedule (FWS)** is a work schedule established under 5 U.S.C. §6122, that-
  - (1) In the case of full-time employees, have an eighty (80)-hour biweekly basic work requirement that allows employees to determine their own schedules within the limits set by the Commission; and
  - (2) In the case of part-time employees, have a biweekly basic work requirement of less than eighty (80) hours that allows employees to determine their own schedules within the limits set by the Commission.
- D. **Compressed Work Schedule (CWS)** is an AWS that contains core hours on fewer than ten (10) workdays in the biweekly pay period. An employee may vary the number of hours worked on a given workday, or the number of hours each week. For example,
  - (1) A 5/4/9 schedule is a work schedule in which a full-time employee works eight, 9-hour days and one, 8-hour day for a total of eighty (80) hours in a biweekly pay period.
  - (2) A 4-10 schedule is a work schedule in which a full-time employee must work 10 hours a day, forty (40) hours a week and eighty (80) hours a biweekly pay period.

### **Section 3 – General Provisions**

- A. Normally, operational hours will be 5:00a.m. to 10:00p.m. local time, Monday-Friday.

- B. Core hours are the time periods during the workday, workweek or pay period that are within the tour of duty which an employee covered by an AWS is required to be present for work.
- C. Core hours will be Monday-Friday, 10:00a.m.–2:00p.m. local time.
- D. Basic work requirement means the number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, and compensatory time. For full-time employees, the basic work requirement is eighty (80) hours per biweekly pay period. A part-time employee's basic work requirement is the number of hours the employee is scheduled to work in a biweekly pay period.
- E. Employees are expected to submit an accurate biweekly timesheet (Quicktime or its successor) and will not be required to document the start and end time of each day's work.
- F. Participation in AWS is voluntary.

#### **Section 4 – Change of Schedules**

- A. Management-directed changes: Notice of management-directed permanent changes in an employee's biweekly schedule to meet programmatic needs will be provided to the Union in accordance with Article 42, *Mid Term Bargaining*, of this LMA.
- B. Employee-driven changes: Employees may request to permanently change their work schedules. Such requests will normally not exceed four (4) per year. Requests must be in writing and submitted to the supervisor at least one (1) pay period before the effective date of the change, which is the first full pay period following approval of the request by the supervisor. The employee's supervisor or timekeeper will notify payroll of the change in the employee's work schedule.

#### **Section 5 – Meal Periods**

- A. All employees are required to take a non-paid meal period of at least thirty (30) minutes, normally scheduled between 11:00 a.m. and 2:00 p.m. (or near the mid-point of the tour of duty).
- B. The meal period may not be the first or last thirty (30) minutes of the scheduled shift.

#### **Section 6 – Breaks**

Normally, two (2) breaks of fifteen (15) minutes will be provided for employee(s) working a minimum of an eight (8) hour workday. Break periods should not interfere with work (e.g.,

scheduled meetings, deadlines, etc.). Additionally, breaks cannot be added to the start or end of tour of duty or combined with the meal period.

### **Section 7- Flexible Work Schedules (FWS)**

- A. **Flexible Work Schedules (FWS)** are consistent and repetitive work schedules which differ from the Commission’s basic work schedule (i.e., Monday-Friday 8:00a.m. – 4:30p.m.). This consistent and repetitive schedule does not need to be the same each day and does not need to be continuous. This allows for maximum flexibility to employees not working on a compressed work schedule.
- B. An employee may request a FWS by submitting a written request to their first line supervisor. All written requests will be subject to supervisory approval/disapproval within fifteen (15) days of receipt of the request.
- C. **Basic Work Requirement:**
  - (1) Full-time Employees. In the case of a full-time employee, an eighty (80)-hour biweekly basic work requirement that is scheduled for eight (8) hours per workday over ten (10) workdays, and
  - (2) Part-time Employees. In the case of a part-time employee, a biweekly basic work requirement of less than sixty-four (64) hours that is scheduled for no more than eight (8) hours per workday over ten (10) workdays.
- D. **Variable Work Schedule.** With prior supervisory approval, employees may choose a work schedule with start and end times that differ from the basic work schedule.
- E. **“Split” Work Schedule.** With prior supervisory approval, employees may choose to split the workday on a consistent and repetitive schedule.
  - (1) “Split” work schedules are recorded on the Work Schedule and Telework Agreement Form or may be approved by supervisors on an ad-hoc basis in accordance with the telework request protocols within the telework agreement. All such protocols must be consistent with this LMA.
  - (2) Employees may be approved for a consistent and repetitive schedule that allows a split of the workday between official and approved alternative worksite.
  - (3) Employees may also be approved for a “Split” telework day between the office and the alternate worksite as a situational telework request that will be considered by the supervisor on a case-by-case basis.
  - (4) Any commuting time between the official and alternate worksite will be non-duty and non-paid.

- (5) A “Split” telework day approved by supervisors on the telework agreement will be recorded as regular telework in the time keeping system.
  - (a) A “Split” work schedule that is approved by supervisors on the telework agreement will be recorded in the timekeeping system based on the hours worked at each location (e.g., if an employee works four (4) hours at the official worksite and four (4) hours at the alternative worksite, the employee will record four (4) hours at the official duty station and four (4) hours as regular telework in the timekeeping system).
  - (b) Work schedules cannot be split for more than the one half-hour (30-minute) non-paid meal (lunch) break during core hours.
  - (c) Where there are non-recurring, extenuating circumstances affecting commute time an employee, with supervisory approval, may extend their tour of duty or take appropriate leave.
- (6) A “Split” telework day that is approved by supervisors situationally will be recorded as a situational telework day in timekeeping system (i.e., I – Periodic Emp Home).
- (7) It is permitted to work overtime in a telework or split duty status with prior supervisory approval and in accordance with the overtime provisions of this LMA.

F. For additional guidance refer to the following authorities:

- (1) 5 U.S.C. §6120 – 6121
- (2) 5 U.S.C. § 6129-6133
- (3) 5 C.F.R., part 610

## **Section 8 – Compressed Work Schedules**

### **A. Basic Work Requirement:**

- (1) **Full-time Employees.** In the case of a full-time employee, an eighty (80)-hour biweekly basic work requirement that is scheduled for less than ten (10) workdays; and
- (2) **Part-time Employees.** In the case of a part-time employee, a biweekly basic work requirement of less than sixty-four (64) hours that is scheduled within ten (10) workdays and that may require the employee to work more than eight (8) hours in a day.

B. **5/4/9 Compressed Work Schedule.** During each biweekly pay period, this schedule requires full time employees to work eight (8), nine (9)-hour days with one (1), eight (8)-hour day and one (1) regular day off (RDO) during each biweekly pay period, for a total of eighty (80) hours each pay period.

C. **4/10 Compressed Work Schedule.** During each bi-weekly pay period, this schedule requires full-time employees to work eight (8), ten (10)-hour days with two (2) regular days off (RDO) during each biweekly pay period, for a total of eighty (80) hours each pay period.

D. **Regular Days Off (RDO)**

- (1) Any day may be regularly scheduled as the eight (8)-hour day and the RDO, with supervisory approval.
- (2) An employee may switch the RDO to any other day in the pay period, with supervisory approval.
- (3) With written prior notice, normally at least one (1) week, supervisors may require an employee to work on the RDO. Employees for whom this would present a hardship may bring this matter to the next level of supervision.
- (4) If an employee is unable to take the RDO on another day within the same pay period, regular overtime and compensatory time regulations will apply. The employee will be paid overtime or compensatory time for any hours worked on the RDO. Employees at GS-13 and above will normally receive compensatory time instead of overtime pay.
- (5) If a federal holiday falls and is actually observed on a workday (Monday through Friday) and the RDO is the same day, then in every case the "in lieu of" holiday is the immediately preceding workday. If a federal holiday falls on a Sunday and is observed on a Monday and the RDO is Monday, the "in lieu of" holiday is Tuesday. If the holiday falls on a Saturday and is observed on a Friday and the RDO is Friday, the "in lieu of" holiday is Thursday. The RDO of an employee may be changed to another day in the pay period (with supervisory approval) when the holiday and the RDO fall on the first workday of the pay period.

**Section 9– Denial, Suspension, and Termination of Alternative Work Schedules (AWS)**

**Denials of AWS:**

A. When a supervisor denies a request for an AWS, the supervisor will:

- (1) notify the employee in writing of the basis for the denial; and

(2) as appropriate, provide an alternate schedule to the employee.

Suspension of an AWS:

- A. AWS may be suspended (i.e., changed to an eight (8)-hour, five (5)-day schedule) as a result of emergencies and incident responses, and unusual workload or operational demands. Management and/or the supervisor will normally provide advance notice of at least two (2) pay periods for non-emergencies. Management and/or the supervisor will notify the Union of suspensions for emergency or incident responses as soon as practical. Every effort will be made to give at least two (2) days' notice to employees under emergency situations. Efforts will be made to limit suspensions of AWS to as short a timeframe as necessary to meet the workload or operational requirements and restore AWS as soon as possible.
- B. Generally, employees may not receive overtime pay for time spent in training (5 U.S.C. §4109(a)(1)). For training, work conferences, and work travel, supervisors and employees should try to manage schedules to best accommodate these activities and may temporarily adjust employee schedules, as appropriate. After consulting with the employee, supervisors may suspend an employee's AWS for the entire pay period in which training, work conferences, or work travel occurs, in which case the employee should adjust to an eight (8)-hour, five (5)-day work schedule for that pay period.

**Section 10 – Credit Hours**

- A. Credit hours are hours under a flexible work schedule that a full time or part time employee elects to work in excess of their biweekly basic work requirement.
- B. Full-time employees may carry over up to twenty-four (24) credit hours from one (1) biweekly pay period to the next. Part-time employees who participate in the flexible work program may accumulate up to one quarter of the hours of the employee's basic work requirement for carryover from one (1) biweekly pay period to the next.
- C. Employees may earn credit hours above the limits in Section 10(B) during the pay period, but the excess hours must be used before the pay period ends or the hours will be forfeited.
- D. Supervisors may not require or request an employee to work credit hours. With the supervisor's prior approval, based on limiting factors such as workload and appropriate Management control, an employee on AWS may elect to earn credit hours. Credit hours can only be earned in the performance of official duties and work performed will be evaluated under the employee's performance standards.
- E. Credit time is earned or used in fifteen (15)-minute increments. When recording time earned or used, the employee's time will be rounded up to the next higher increment.

- F. Credit hours may not be used in advance of being earned. The use of earned credit hours is subject to the same regulations and contractual agreements governing the use of leave. Credit hours can be used in conjunction with other forms of approved leave. Credit hours may be earned and used within the same pay period.
- G. The Parties recognize that the law requires employees to forfeit credit hours above the twenty- four (24) hours they are allowed to carry over from one (1) pay period to the next; therefore, to avoid forfeiture of credit hours, the employee and the supervisor are strongly encouraged to work together when planning leave.
- H. If an employee separates from Federal employment, transfers to another agency, or is no longer eligible to work an AWS, the employee will be paid the balance of credit hours earned up to maximum allowable carry over limit.
- I. Credit hours may not be earned for travel.

#### **Section 11 - General Overtime Provisions**

- A. Overtime pay is a premium pay provided under Title 5, U.S.C., for hours of work officially ordered or approved. An employee may be scheduled or ordered to work overtime, or to work on holidays within the basic workweek. When an employee works overtime, such overtime will be paid in increments of one-quarter ( $\frac{1}{4}$ ) hour.
- B. Employees shall be paid differential and premium pay in addition to the overtime compensation in accordance with applicable regulations.
- C. Requests to work overtime will be made in writing.
- D. Management shall make a reasonable effort to give the employee as much notice as possible when planned overtime is required, and further, will give due consideration to the employee's personal circumstances.
- E. At the request of an exempt employee in writing, the supervisor or designee may grant overtime rather than compensatory pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature.
- F. In accordance with Fair Labor Standards Act (FLSA) regulations, supervisors will not require employees to earn compensatory time in lieu of overtime pay. FLSA-exempt employees at grade GS-13 and above will normally be given compensatory time off instead of premium pay.
- G. The Commission shall, to the extent practicable, permit employees to use their compensatory time at the earliest time convenient to them within twenty-six (26) pay periods.



- H. Normally, compensatory time off shall be granted before annual leave is approved. Compensatory time off must be used by the end of the 26th pay period after the pay period during which it was earned, or it will be forfeited except as indicated herein. Compensatory time off will not be forfeited, and the employee will be paid for the unused compensatory time off at the rate the employee would have otherwise received payment for overtime work at the time the overtime work was completed when:
- (1) the failure to take the compensatory time off is due to an exigency of the service beyond the employee's control,
  - (2) a non-exempt employee fails to use accrued compensatory time off within the twenty-six (26) pay period timeframe, an employee (either exempt and nonexempt) separates from Federal Service or transfers to another agency before the expiration of the twenty-six (26) pay period time limit, or
  - (3) when an employee (either exempt and non-exempt) is separated or placed in a leave without pay status:
    - (a) to perform service in the uniformed services (as defined in 38 U.S.C. §4303 and 5 CFR § 353.102); or
    - (b) due to an on-the-job injury and is found to be entitled to injury compensation under 5 U.S.C. Chapter 81.
- I. If annual leave would otherwise be forfeited, the annual leave shall be scheduled and approved before compensatory time. However, earned compensatory time off for travel will be forfeited if not used within twenty-six (26) pay periods in accordance with OPM regulations.
- J. Maximum Limitation (Pay Cap). The maximum earnings for GS employees for any pay period, including overtime compensation, may not exceed the maximum rate for grade GS-15, step 10. This limitation includes the value of compensatory leave taken in lieu of overtime pay. An exception to the maximum limitation may be granted by the Executive Director for work in connection with a natural disaster or other mission critical assignment.

## **Section 12 - Call-Back**

- A. Call-back is irregular or occasional overtime work performed by an employee on a day when work was not scheduled for them. Call-back requires an employee to return to their official duty location, which is neither a virtual platform nor the employee's residence.
- B. In accordance with 5 U.S.C. §5543 (b) (1), employees who are called back will be granted at least two (2) hours of overtime.

- C. The overtime pay will be paid out in accordance with 5 U.S.C. §5545(c)(2).
- D. It is understood that employees' safety is paramount, and call-backs will be held to a minimum, and that employee rest requirements will be considered.
- E. Management will make every attempt to minimize requests for irregular and unscheduled work via any virtual platform as well.

### **Section 13 - Resolving Disagreements Related to Work Schedules**

- A. In order to resolve disagreements at the lowest level possible, the employee shall make a good faith effort to meet with their immediate supervisor or their designee. If resolution is not reached, the employee may request a meeting with their second level supervisor or their designee.
- B. Meetings should be held at dates and times by mutual agreement. The employee may request Union representation at any time during attempts to reach resolution.
- C. Exercising this option does not negate the employee's right to file a grievance. The Parties agree to hold grievance timelines in abeyance while working through this informal process.

### **Section 14 - Regular Schedule or Tour of Duty**

- A. Supervisors can limit the number of employees off on a given day. The supervisor will ensure that the scheduling of biweekly schedules is fair and equitable for the employees that they supervise. Federal seniority (Service Computation Date) is the selection criterion.
- B. Supervisors retain the authority to restrict individual schedules for valid business reasons and to accomplish the mission in an effective manner.
- C. An employee may elect a tour of duty that will allow their normally scheduled shift to start and be completed within their office's local time between 5:00 a.m.-10:00 p.m.
- D. The biweekly schedule requires approval by the immediate supervisor or designee.

## **ARTICLE 16: TELEWORK**

### **Section 1 – Overview**

The Commission supports and encourages telework participation to the maximum extent possible for the efficient and effective accomplishment of the Commission's operations. Telework participation is evaluated case-by-case based upon sound operational needs and performance management principles.

### **Section 2 – Purpose**

Telework adds offsite work as a resource facilitating the accomplishment of work and continuity of operations. Telework can enable managers to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their activities. Telework ensures the continuity of essential operations and functions in the event of local or national emergencies. Telework enhances work-life balance and employees who telework are often more productive and generate better quality work. Telework also can be helpful in recruiting and retaining the best possible workforce, while simultaneously reducing traffic congestion, emissions, and infrastructure impact in urban areas, thereby improving the environment.

### **Section 3 – General**

- A. Telework is a work flexibility arrangement under which an employee performs the duties and responsibilities of such an employee's position, and other authorized activities, from an appropriate alternative worksite other than the location from which the employee would otherwise work.
- B. Supervisors may approve up to 8 days (64 hours) regular telework per pay period.
- C. Teleworkers and non-teleworkers will be treated the same for purposes of:
  - (1) Performance appraisals;
  - (2) Training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;
  - (3) Assignment of work; and
  - (4) Other actions involving managerial discretion.
- D. Except in cases of natural or man-made disaster, or continuity of operations (COOP) situations, participation in the telework program will be voluntary.

- E. Telework should be authorized for the maximum number of positions, to the extent that mission readiness is not jeopardized. To the broadest extent possible, telework should be made available to eligible employees on a regular and recurring basis.
- F. **Telework Evaluation:** The Parties agree to meet annually or upon request, in order to evaluate the effectiveness of the telework program, the marketing of the telework program, and the goals, objectives, and expansion of the telework program.
- G. Nothing in this Agreement shall be interpreted to limit the number of days an employee may be approved to telework on a situational basis.

#### **Section 4 – Definitions**

- A. **Regular Telework:** Telework that occurs on a regular and recurring basis.
- B. **Situational Telework:** Telework that occurs on an ad-hoc basis.
- C. **Unscheduled Telework:** An option for eligible employees to telework, to the extent possible, when severe weather conditions or other circumstances disrupt commuting as determined or announced by the Office of Personnel Management (OPM) and Commission policy.
- D. **Official Worksite:** Approved official duty location where employees perform their assigned official duties.
- E. **Alternative worksite:** A place away from the official worksite that has been approved for the performance of assigned official duties. It may be an employee's home, a telework center, or other approved worksite.

#### **Section 5 – Eligibility**

- A. Positions are telework-eligible except when the essential duties of the position prohibit telework.
- B. An employee in an eligible position can be approved for telework by their supervisor, provided that:
  - (1) The employee has not been officially disciplined for being absent without leave (AWOL) for more than five (5) days in any calendar year.
  - (2) The employee has not had a documented attendance or leave abuse problem within the six (6) months prior to the application to participate in telework.

- (3) The employee has not been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
  - (4) The employee has not received a formal leave restriction within the six (6) months prior to submission of the application to participate in telework.
  - (5) The employee completes assignments in a timely manner with minimal supervision.
  - (6) The employee has completed a web-based telework training.
  - (7) The employee is performing at a level of fully successful or higher in all critical elements.
- C. On an annual basis the Commission will provide the Union with a list of all currently ineligible BU positions noting any change from the previous year. The Union may request to meet to discuss the position ineligibility.

### **Section 6 – Conditions of telework**

- A. Normally, the supervisor will notify the employee at least twenty-four (24) hours in advance when recalling an employee to the office on a scheduled telework day.
- B. When business operations allow, employees who are recalled on a scheduled telework day will be allowed to reschedule the telework day during the same pay period. A rescheduled telework day will be recorded as a situational telework day.
- C. Employees are eligible to simultaneously have AWS and be on a Telework Agreement. Subject to the supervisor's approval, consistent with organizational needs, an employee may be approved to telework the day before or after an RDO.
- D. In order to maximize in-person collaboration, supervisors may work with their team to arrange one "Touch Down" day per pay period when all or most teleworking employees will be physically present in the office. Touch Down days will be noted in the employee's telework agreement.
- E. An employee's request for a change to a Telework Agreement must be approved in advance by the supervisor prior to the pay period of the requested change.
- F. Subject to supervisory discretion and approval, employees who are injured, recuperating, or temporarily disabled may be permitted to telework provided they are capable of completing their work assignments.

- G. Employees are responsible for maintaining a proper working environment at their alternative work site. Other than for official business permitted by law or government-wide rule or regulation, managers and supervisors will not visit an employee's residence uninvited. For any such visits, management shall provide twenty-four (24) hours advance notice during the teleworker's regular Core Hours. Management will not inspect non-workspace in the alternative worksite (residence).
- H. Employees are responsible for adjusting their transportation benefits to appropriately account for their telework schedule. Employees are not to receive transportation benefits for the days they telework.
- I. Employees are covered under Federal Employees' Compensation Act (FECA) if injured while performing official duties during telework. The employee must immediately notify his or her supervisor of any accident or injury that occurs while on duty at his or her approved alternative work site.
- J. Teleworkers are in a duty status when teleworking and are expected to have the resources necessary to perform their jobs and concentrate on official duties without interruption. Employees may not use duty time for any purpose other than performing assigned work. However, employees may, with supervisory approval, flex their schedule to accommodate necessary dependent care. Whether a flex schedule is approved or not, if an employee is unable to perform their duties within the duty day due to dependent care responsibilities, the employee must take appropriate leave.
- K. Employees and supervisors will discuss and document, as necessary, the job tasks/assignments that will be carried out or completed while teleworking.
- L. An employee teleworking will complete assigned work according to the work procedures agreed upon by the employee and supervisor and according to the job elements and performance standards established in the employee's performance plan.

## **Section 7– Denial, Suspension, and Termination of Telework**

### **Denials of telework:**

- A. When a supervisor denies a request for a telework agreement, the supervisor will:
  - (1) notify the employee in writing of the business-related basis for the denial;
  - (2) Suggest a different telework arrangement, as appropriate; and
  - (3) notify the Union of the denial.

- B. The supervisor may deny an employee's request for a telework agreement if that particular schedule would have an adverse impact on the Commission. Adverse impact is defined as:
- (1) A reduction of the productivity of the Commission work group;
  - (2) A diminished level of services furnished to internal or external customers of the Commission; or
  - (3) An increase in the cost of Commission operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

Termination of Telework:

- A. Telework arrangements may be terminated by either management or the employee by written notification of termination of the Telework Agreement, except under emergency situations. Reasons for termination of a telework agreement may include a decline in performance or productivity, or if the telework arrangement no longer benefits the organization or the employee's needs.
- B. Before removing an employee from the Telework Program, a supervisor should normally have a discussion regarding specific problems, including misconduct, or a diminishment in performance, in order to allow the employee to explain or correct the matter.
- C. A supervisor's decision to terminate an employee's Telework Agreement will be based on operational work requirements.
- D. When an employee's participation in the Telework Program is terminated due to operational requirements, the employee will be notified in writing of the reason for termination and the effective date of the termination. The effective date of the termination will normally be at least two (2) pay periods after the date of the notice. Management will consider individual circumstances when considering the effective date of removal from the program.
- E. Reconsideration. An employee who has been removed from the Telework Program may reapply for telework after one hundred and eighty (180) days.

### Suspensions of Telework:

The Commission may temporarily restrict telework for a short period of time for a group or an individual in order to meet operational requirements. Barring an urgent operational requirement, the employees will be provided notice at least seven (7) days in advance.

### **Section 8 – Right to Grieve**

Telework disputes or terminations of telework for BUEs will be processed in accordance with Article 7, *Grievance Procedure*, within this LMA.

### **Section 9 – Equipment and Supplies**

- A. Based on funds, equipment availability, and operational requirements, GFE, including computers, monitors, cell phone (subject to supervisor's discretion and approval), and other telecommunications equipment, will be provided by the Commission for use by employees participating in the teleworking program.
- B. The Commission is responsible for the maintenance, repair, and replacement of GFE. Employees are responsible for bringing the equipment into the office for maintenance or mailing equipment back to the Commission using pre-paid shipping boxes provided by the Commission.
- C. Employees are responsible for repair and maintenance of personally owned equipment and associated costs for telecommunications and internet services.
- D. Approved supplies will normally be procured through established office procedures.
- E. GFE will be signed out and returned in accordance with applicable Commission policies and procedures. The employee must return all GFE and material to the Commission at the conclusion of the telework arrangements or upon request.
- F. As appropriate, the Commission shall provide GFE in support of a requested and approved reasonable accommodation.



## ARTICLE 17: REMOTE WORK

### Section 1 – Purpose

Remote work can enable managers to meet their program goals while, at the same time, allowing employees to be more flexible in scheduling their activities. Remote work ensures the continuity of essential operations and functions in the event of local or national emergencies. Remote work enhances work-life balance and employees who work are often more productive and generate better quality work. Remote work also can be helpful in recruiting and retaining the best possible workforce, while simultaneously reducing traffic congestion, emissions, and infrastructure impact in urban areas, thereby improving the environment.

### Section 2 – General

- A. **Remote work** is a work arrangement under which an employee is scheduled to perform work within or outside the local commuting area of a FERC office and is not required to report to the office on a regular and recurring basis. The employee works at an approved non-FERC duty station, which can be in a different geographic area, on a permanent basis. The non-FERC duty station is indicated as the official worksite on the employee's SF-50, for pay and other purposes.
- B. **Official Worksite.** The official worksite is the location of an employee's position of record where an employee regularly performs their duties. All pay and travel entitlements are based on the official worksite.
- C. Office Directors or their designees may allocate remote positions from their Offices current Full-Time Equivalent (FTE) ceiling.
  - (1) Office Directors are responsible for developing the level with which remote work may be utilized by BUE in their organizations considering current or future recruitment needs, current retention needs, and the level with which remote work may be utilized without a decrease in efficiency, coverage, or workgroup performance.
- D. Remote Work Opportunities for Employees.
  - (1) Recruiting. Employees may be hired via vacancy announcement into positions designated as remote positions.
  - (2) Retention. Employees may be converted to a remote position as a retention incentive in the event an employee would be likely to leave FERC and FERC wishes to retain a highly qualified employee or an employee in a hard-to-fill position.

- (3) Workplace Flexibility. Office Directors or their designees will announce general solicitation remote work opportunities as a workplace flexibility. The announcement will include:
- (a) A definition of the population that includes the organization, title, series, and grade(s) of positions. A definition may also include specific functions/duties/roles of the positions (e.g., Subject Matter Expert (SME), nonsupervisory, BUE status, etc.)
  - (b) The target threshold for remote opportunities. The target threshold for remote work opportunities for non-supervisory employees will be expressed in terms of a ratio (e.g., 1:6). The ratio may vary between workgroups (e.g., one work group has a ratio of 1:6 and one workgroup has a ratio of 6:6). A workgroup is broadly defined as a team, branch, division, or office.
  - (c) Any workgroups, positions, functions, or duties/responsibilities which are excluded from consideration due to the nature of the work or other business requirements.
  - (d) In the event there are more employee responses to the solicitation for remote opportunities within a workgroup, employees who meet the considerations outlined above can be converted to remote work and the conversions will be made in the following order until the available opportunities are filled:
    - i. Highest Grade
    - ii. Most Recent Performance Rating (grade tie breaker)
    - iii. Seniority (FERC EOD date) (Grade and Rating tie breaker).
- E. Management will continuously evaluate the remote work target threshold on at least an annual basis following the process described above in (D)(3).
- F. Management-directed trips from the official (alternate) worksite to the regular worksite are "official business" and the employee is entitled to travel reimbursement in accordance with the Federal Travel Regulation (FTR) and agency policies.
- G. Participation in the remote work program is voluntary.
- H. All employees who work remotely will be required to complete a Remote Work Agreement (*See Appendix B*).

- I. OPM requires that agencies report remote work as a separate category to the extent possible. All such reports shall normally be made available to the Union.
- J. On an annual basis FERC will provide the Union with a list of all currently ineligible positions noting any change from the previous year.
- K. Article 7, *Grievance Procedure*, negotiated within this LMA will serve as the exclusive process for addressing a termination of a remote work agreement, an error in following the procedures outlined within Section (D)(3), or a failure to provide the entitlement outlined in section F of this article.

### **Section 3 –Termination of Remote work**

#### **Termination of Remote Work Agreement:**

- A. A Remote Work Agreement may be terminated by management due to business requirements and/or organizational needs. In the event management terminates the agreement:
  - (1) the employee will receive advance written notice of a directed reassignment to another FERC duty station, providing at least 180 days’ notice. Management may consider individual circumstances when determining an effective date for the directed reassignment.
  - (2) FERC will be responsible for any costs related to the employee’s relocation in accordance with FERC policy and the federal regulation.
  - (3) If an employee declines the directed reassignment, FERC must use the 5 CFR Part 752-Adverse Action regulations when separating an employee who declines the reassignment.

### **Section 4 – Equipment and Supplies**

*See Section 9 of the Article 16, Telework.*

## **ARTICLE 18: LEAVE**

### **Section 1 - General**

- A. Employees will accrue and use sick and annual leave in accordance with applicable regulations.
- B. Employees should make requests for leave as far in advance as practical to their immediate supervisor or their designee.

Leave may be requested any time and will only be denied for operational needs.

- D. Leave will be administered in accordance with regulation.

### **Section 2 - Leave Earnings**

- A. Full-time and part-time employees earn leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a non-pay status in accordance with 5 CFR, Part 630, Absence and Leave.
- B. A full-time employee in a Leave Without Pay (LWOP) status who reaches an increment of eighty (80) hours of unpaid leave will not accrue leave within that pay period. The running total of eighty (80) hours will reset each year on pay period one (1).

### **Section 3 - Annual Leave**

- A. Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
- B. The use of accrued annual leave is a right of the employee, subject to the right of the employer to approve when leave may be taken.
- C. Normally, the supervisor or designee will reply to the request for leave in a timely fashion. The employee will be responsible for ensuring that leave is recorded in their time and attendance record.
- D. In the event of a conflict in scheduling of annual leave among employees, FERC EOD will govern when this accommodation can be without a major impact on the workload of the Commission. The approved leave schedule will not be changed by the Commission except for operational needs or in emergency situations and after affected employees have been informed of the situation.
- E. If while on annual leave an employee becomes ill or injured, upon employee request, the annual leave will be changed to sick leave for the time of incapacitation, provided the employee has adequate sick leave to cover the absence.

- F. Depending on operational needs of the Commission, allowances will be made for employees who desire annual leave on or around religious and other holidays.
- G. Employees and their supervisors are encouraged to coordinate the scheduling of "use or lose" annual leave during the leave year to avoid forfeiture of this type of leave at the end of the leave year.
- H. Supervisors may grant advanced annual leave. The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year. Employees do not have an entitlement to advanced annual leave and approval of advanced annual leave requests is at the supervisor's discretion based on balancing the needs of the employee against the needs of the work unit. Employees on formal leave requirements, or with a documented attendance problem, will not be eligible for advanced annual leave. In the event that the Commission knows, or reasonably expects that an employee intends to leave the agency, advanced leave will not be granted. In most cases, when an employee who is indebted for advanced annual leave separates from the Federal service, he or she is required to repay the value of advanced annual leave for which he or she is indebted.

#### **Section 4 - Unanticipated Annual Leave**

- A. If the need for leave cannot be anticipated, the employee shall, as soon as practicable, contact the immediate supervisor or their designee to request approval of unscheduled leave. The employee will follow established work unit notification procedures in the event the immediate supervisor or their designee is not available.
- B. Employees who fail to follow leave request procedures as required above may be charged Absent without Leave (AWOL). Leave charged to AWOL may later be changed to approved leave should the employee provide a legitimate excuse for the absence.

#### **Section 5 - Sick Leave**

- A. Employees are entitled to use sick leave, in accordance with 5 C.F.R., §630.401.
- B. Employees will not normally be required to furnish a medical certificate to substantiate a request for sick leave unless the length of the absence exceeds three (3) consecutive workdays or unless the request includes leave without pay or advance sick leave. If because of the nature of the illness the services of a physician or other practitioner were not needed, the employee's written statement of the nature of the illness and the reason why a medical certification is not furnished may be accepted in lieu of the certificate.
- C. Employees may be required to furnish a medical certificate or other documentation when:
  - (1) An employee may be misusing sick leave

- (2) To support sick leave requests for use to care for a family member,
  - (3) as defined by regulation (5 C.F.R. § 630.201)
  - (4) Sick leave is used for bereavement purposes.
- D. In an individual case, if there is reasonable cause to believe that an employee may be abusing sick leave privileges, the supervisor will warn/counsel the employee that continued abuse of sick leave may result in a requirement to furnish a medical certificate for each subsequent absence attributed to sick leave regardless of duration. If abuse of sick leave continues, the employee may be notified in writing that for a stated period not to exceed six (6) months, all future requests for sick leave must be supported by a medical certificate. The medical certificate should be on a physician's letterhead and must include a general diagnosis, prognosis, specific dates of incapacitation and the date the employee is reasonably able to return to work.
- E. Visits to an appropriate Federal health unit shall be in accordance with appropriate laws and applicable regulations. Employees who are deemed incapacitated on advice of the appropriate health unit will not be required to furnish a medical certificate to support sick leave for the day released from duty unless the total absence exceeds three (3) consecutive workdays or a medical certificate is required, per Section 5(C).
- F. Sick leave may be advanced for periods not to exceed thirty (30) days (two hundred-forty (240) hours) in cases of serious health conditions or treatment of serious health conditions provided that the employee's application is supported by a medical certificate; repayment can be reasonably expected; and the employee is not currently under a leave restriction. Sick leave may be advanced for serious health conditions as defined under the Family and Medical Leave Act (FMLA) of 1993 and 5 C.F.R. §630.1202. The definition includes long-term conditions such as in-patient care, cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. Sick leave will not be advanced to an employee when it is likely the employee will retire or resign before the sick leave will be earned, be separated, or is on formal leave restriction.

### **Section 6 - Parental leave**

In accordance with 5 CFR Part 630, the Commission will grant twelve (12) weeks of Paid Parental Leave (PPL) under the FMLA to a covered Federal employee in connection with the birth or placement (adoption or foster care) of a child. A covered employee must have completed twelve (12) months of service (excludes individuals employed on a temporary or intermittent basis). The employee must agree in writing to work for the Commission for at least twelve (12) weeks upon return of the PPL. PPL only applies to employees with children born or adopted after October 1, 2020.

### **Section 7 – Court Leave**

Court leave is absence without loss of pay or leave for jury duty, or to attend judicial proceedings in a non-official capacity as a witness on behalf of a State or local government or a private party where the United States, District of Columbia, or a State or local government is a party to the proceeding as provided in 5 U.S.C. §6322. A request for court leave must include a copy of a court summons or other official court documentation. A certificate of attendance is required upon return to work.

### **Section 8 – Disabled Veteran Leave**

The Commission will grant an employee hired on or after November 5, 2016, who is a veteran with a service-connected disability rating of thirty (30) percent or more from the Veterans Benefits Administration (VBA) of the Department of Veterans Affairs up to one hundred-and-four (104) hours of Disabled Veteran Leave (DVL) for the purposes of undergoing medical treatment for such disability.

DVL is a one-time benefit provided to an eligible employee. The employee will have a single, continuous twelve (12)-month eligibility period, beginning on the first day of employment or as soon as practicable after the employee receives the certifying documentation from the VBA in which to use the leave or it will be forfeited with no opportunity to carry over the leave into subsequent years.

### **Section 9 – Parental Bereavement Leave**

Employees are entitled to two (2) work weeks of Parental Bereavement Leave for the death of a child in accordance with 5 U.S.C. §6329(d).

### **Section 10 - Administrative Leave**

- A. Administrative leave is absence from assigned duties without charge to leave or loss of pay. The Parties agree that excused absence may be granted for activities which are in the government's interest such as for activities formally encouraged by FERC or which benefit the Commission, or situations where it would be appropriate to grant Weather and Safety leave. The employee will be required to have supervisory approval prior to leaving or being absent from the workplace.
- B. Employees may be granted up to four (4) hours of administrative leave to donate blood. Time spent donating blood and in necessary travel for such purposes shall also be administrative leave.
- C. Employees may be granted administrative leave for serving as living donors for bone marrow, organ, and tissue donation and transplantation. The use of paid administrative leave can cover time off for activities such as donor screening, the actual medical procedure, and recovery time. Leave- approving officials are authorized to approve:

- (1) Employees use of up to seven (7) days of paid administrative leave each calendar year, in addition to annual and sick leave, to serve as a living bone marrow donor,
  - (2) Employees use of up to thirty (30) days of paid administrative leave each year, in addition to annual and sick leave, to serve as an organ donor.
- D. Employees may be granted up to four (4) hours of administrative leave for voting in Federal, State, local (i.e., county and municipal), Tribal, and territorial elections. The administrative leave may be used on the established election day or for early voting, whichever option is used by the employee with respect to an election event. Administrative leave may also be used for any travel time to and from the poll location. If an employee is on approved leave (i.e., annual or LWOP) on Election Day or the day of early voting, it is not permissible to grant administrative leave for time spent voting.
- E. Employees may be granted up to four (4) hours of administrative leave per year to serve as a non-partisan poll worker or non-partisan observer, including training periods. If poll duties exceed four (4) hours, employees may supplement the time using accrued or advanced annual leave, earned compensatory time, or leave without pay. Employees must request leave in advance.
- F. The Parties agree that the above reasons for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time. The Commission may require documentation as appropriate to support the reasons for and/or the duration of such administrative leave requests.

### **Section 11 – Other Leave**

Other leave administration matters, e.g., Federal Employees Family Friendly Leave Act, FMLA, Voluntary Leave Transfer Program (VLTP), Military Leave will be administered in accordance with governing laws, government-wide rules and agency regulations, including 5 C.F.R. Part 630.



## **ARTICLE 19: POSITION DESCRIPTIONS (PDs)**

### **Section 1 – General**

- A. Each position covered by this Agreement that is established or changed must be accurately described in writing and classified to the proper occupational title, series, bargaining unit status code, and grade.
- B. All PDs must clearly and concisely state the major and significant duties, responsibilities, and supervisory relationships of the position.
- C. Employees will have access to a current, accurate copy of their PD (e.g., eOPF).
- D. PDs will be kept current and accurate, and positions will be classified properly. Management-directed changes to a PD will be incorporated in the PD to assure that the position is correctly classified/graded to the proper title, series, and grade. Incidental changes may be made in the form of pen and ink notations on the PD; the BUE will be informed of the changes. The Union will be provided copies of, or access to, updated or current PDs upon request.
- E. In accordance with regulation, the Commission has the right to assign work that is not in the PD; however, assigned work should be within the scope of the position. If that work occurs on a regular and reoccurring basis, the PD must be revised to accurately reflect the job duties.
- F. Employees dissatisfied with the classification of their positions should first discuss the problem with their supervisors. If a supervisor is unable to resolve the issue to the employee's satisfaction, the employee can discuss the matter with the Human Resources (HR) staff member who will explain the basis for the classification/job grading. This informal classification review process in order to determine whether the classification is accurate should normally be completed within twenty (20) days.
- G. If the employee is unsatisfied with the outcome of the informal review, the employee may request for a desk audit to the designated HR Official or submit a formal classification appeal in Section 3.
- H. Upon request, the Union will have access to the evaluation report (including points and factors), if available, organizational and functional charts, and other pertinent information directly related to the classification of the position. This informal classification review process should be completed in a reasonable period of time. If the employee is unsatisfied with the outcome of the informal review, the employee may ask the supervisor to forward a request for a desk audit to the Commission.

- I. If/when a desk audit is conducted by the Commission, the desk audit will normally be completed in ninety (90) days from the employee's request. This time frame may be extended by mutual agreement.
- J. If the employee still believes there is an inequity, an appeal may be filed with the Commission and/or OPM as appropriate. An employee may file a classification/job grading appeal at any time through appropriate channels whether or not this informal classification review process was followed.
- K. Vacant positions will not be posted until the appointing authority assures that they are authorized, properly described, evaluated, and classified according to series, title, and grade.
- L. No position(s) will be downgraded without a thorough review. For a downgraded position, the employee's pay and grade will be maintained on an incumbent basis in accordance with law and regulations.

## **Section 2 - Classification Appeals**

- A. The Commission will make available information to employees and the Union regarding procedures for filing classification appeals through the Commission or OPM.
- B. After Commission classification review (i.e., HR classification review) employees or their Union representatives may submit their written classification/job grading appeals to the designated HR staff or OPM for a desk audit. Employees or their Union representatives may submit their written classification/job grading appeals (desk audit) through the designated HR staff. The HR staff will respond to the request within thirty (30) days from receipt and will provide the Union with a copy of the employee's appeal request. If/when a desk audit is conducted by the Commission, the desk audit will normally be completed within one hundred twenty (120) days from the employee's request. This time frame may be extended by mutual agreement.
- C. However, this does not preclude an employee from filing a classification/job grading appeal directly to the Commission or OPM, as appropriate. Timelines may be extended by mutual agreement.
- D. Employees who file written appeals with the Commission or OPM concerning the title, series and grade, and/or coverage of their position will have their appeal decided within a reasonable period of time from the date the designated HR Official receives a completed application. Classification appeal decisions will be forwarded by the Workforce Relations Director to the Union.

### **Section 3 – Changes to OPM Issued Classification Standards**

The Commission will make available to the Union copies of any OPM guidance provided to the Commission changing BUE classification standards.

### **Section 4 - Effective Date**

The effective date of a personnel action taken as a result of an appeal should be in accordance with the directions provided by the Commission or OPM decision, normally no later than the beginning of the fourth (4<sup>th</sup>) pay period following the date of the decision.

## **ARTICLE 20: MERIT PROMOTION**

### **Section 1 - Purpose**

The Parties agree that merit promotion principles will be applied in a consistent manner, with fairness and equality to all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, genetic information (including family medical history), marital status, race, color, sex (including pregnancy and gender identity), national origin, disabling condition, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), or sexual orientation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and shall be based solely on job-related criteria. This Article neither implies nor guarantees promotion or selection.

### **Section 2 - Actions Covered by Competitive Procedures**

In accordance with 5 C.F.R. §335.103, competitive procedures will apply to the following types of personnel actions subject to the exceptions explained in Section 3:

- A. Promotions to positions within the BU,
- B. Temporary promotions for more than one hundred twenty (120) days,
- C. Details over one hundred twenty (120) days to higher graded positions or to positions with higher promotion potential,
- D. Selection for training, which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in 5 C.F.R. §410.302,
- E. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in competitive service. Exceptions are actions permitted by reduction-in-force (RIF) regulations,
- F. Transfer to a higher-grade position or with more promotion potential than a position previously held on a permanent basis in the competitive service,
- G. Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a previously held on a permanent basis in competitive service.

### **Section 3 - Actions Not Covered by Competitive Procedures**

In accordance with 5 C.F.R. §335.104, competitive procedures will not apply to the following personnel actions which are exceptions to Section 2 above:

A. Career Ladder Promotions: Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:

- (1) Competitive procedures;
- (2) Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority);
- (3) Non-competitive appointment under special authority; such as conversion of Pathways Program or similar program(s), appointment of former ACTION Volunteers or Peace Corps volunteers, conversion of a Veterans Recruitment Authority (VRA) appointee, Presidential Management Fellows, and Schedule A (5 C.F.R. §213.3102(u)).

B. Promotion Based on Reclassification when:

- (1) No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, or the correction of a classification error; or
- (2) The position is upgraded due to accretion of additional duties and responsibilities, where the current position is abolished and the following provisions are met:
  - (a) The duties of the former position are absorbed into the new position;
  - (b) The new position has no promotion potential;
  - (c) The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the organizational unit;
  - (d) The new position is not a reclassification from non-supervisory to supervisory status; and
  - (e) The accretion is supported by an analysis of the position which may involve a position review including written, face-to-face, and/or telephonic

reviews with the employee and/or the employee's supervisor, or other fact gathering method.

C. Permanent Promotion: to a position held under a temporary promotion when:

- (1) The assignment was originally made under competitive procedures; and
- (2) It was known to all competitors at the time of original appointment that the assignment may lead to a permanent position.
- (3) Temporary Promotion: Temporary Promotion to a higher graded position or one with higher promotion potential for one hundred twenty (120) days or less.
- (4) Placement as a Result of Priority Consideration: when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
- (5) RIF Placements: which result in an employee receiving a position with higher promotion potential will not occur unless an employee currently holds or previously held the higher grade on a permanent basis in the competitive service.
- (6) Promotion to a Grade Previously Held: on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons and not at the employee's request.
- (7) Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having Promotion Potential: no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved under 5 C.F.R. §6.7 and did not lose because of performance or conduct reasons).
- (8) Promotion as a legal remedy as ordered and agreed upon in a legal or administrative proceeding.
- (9) Details: Details to a higher graded position or one with higher promotion potential for one hundred twenty (120) days or less.

#### **Section 4 - Temporary Promotions**

- A. Employees will not be detailed and/or temporarily promoted to higher graded positions or positions with known promotion potential for more than a cumulative total of one hundred twenty (120) days during any twelve (12) month period without the use of competitive procedures.

- B. Temporary promotions for qualified and eligible employees will take effect the date requested on the SF52, or as soon as possible thereafter. Employees must be doing the full scope and performance of the position and be eligible to meet OPM qualifications for temporary promotions. Short term "acting" positions are not considered temporary promotions.
- C. Temporary promotions for more than one hundred twenty (120) days will be advertised and competed in accordance with OPM regulations.

### **Section 5 - Involuntarily Demoted Employees**

- A. Employees who are involuntarily demoted in the Commission due to no fault of the employee and as a result of the following events are entitled to consideration for re-promotion before using competitive procedures:
  - (1) An error in the prior classification of a position;
  - (2) A change in classification standards without a change in duties and responsibilities;
  - (3) A change in duties and responsibilities caused by a gradual erosion or by management action; or
  - (4) The application of RIF procedures.
- B. Grade retention entitlement lasts for a period of two (2) years and applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

### **Section 6 – Vacancy Announcements**

Vacancy announcements will include, among other things, indication of BU eligibility. When the position is included in the BU, the vacancy announcement shall indicate that AFGE Local 421 is the exclusive representative. The posting period for the vacancy announcement will be a minimum of seven (7) days and must open and close on a workday.

### **Section 7 - Career-Ladder Promotions**

- A. Employees are not guaranteed promotion once selected for positions within an established career ladder.
- B. Except as provided below, employees within a career ladder will be promoted to the next grade level as soon as they have:

- (1) met legal and regulatory requirements (i.e., time-in-grade restrictions);
  - (2) grade building experience in order to meet all basic eligibility requirements;
  - (3) demonstrated the ability to perform at the next higher level; and
  - (4) a current rating of record of “Fully Successful” (level 3) or higher.
- C. Upon request, the supervisor will meet with the employee and will explain where the employee's performance can be improved and advise what the employee must do to qualify for the promotion. Supervisors will be encouraged to speak with employees throughout the performance rating cycle regarding career ladder promotion opportunities.



## ARTICLE 21: INVESTIGATIONS

### Section 1 – General

- A. An investigation may be conducted in the following manner, but is not limited to: face-to-face meeting, virtual methods or telephone, and preparation of statements or other written witness statements. The Parties agree that investigations should normally be initiated within twenty (20) days once the Commission is on notice of allegations of misconduct.
- B. The Parties recognize that the length of time needed to complete investigations may vary given extenuating circumstances, such as case complexity, availability of witnesses, etc.
- C. An employee is required to cooperate in the course of an administrative investigation. The right of employees not to incriminate themselves will apply in criminal investigations.
- D. The employee will be informed of the process as applicable.
  - (1) At minimum:
    - (a) If known, the subject of the investigation will be informed that they are the subject of the investigation;
    - (b) Employees who are the subject of investigation will be informed of the allegation(s) and will be informed that facts will be gathered and evaluated;
    - (c) Employees who are not the subject of the investigation but who are called as witnesses shall be informed of the general nature of the investigation and the reasons for the inquiry;
    - (d) Any information exchanged during the course of the investigation will remain confidential only to be shared during the course of official business.
  - (2) The Union shall be given the opportunity to be present at any examination/fact finding of BUE(s) by a representative of the Commission in connection with an investigation if:
    - (a) The employee reasonably believes that the meeting may result in disciplinary action against the employee; and
    - (b) The employee requests representation.

- E. If the supervisor or an Agency official expresses to the employee that they may be subject to a disciplinary action, the employee has a right to representation in accordance with this article.
- F. If an employee requests Union representation and a representative is not available, the meeting will be delayed or rescheduled within two (2) days to provide an opportunity to obtain Union representation. Once the employee requests representation, no further questioning will take place until the scheduled meeting.

## **Section 2 - Investigations**

- A. When the Commission investigates allegations of misconduct of a BUE compelling the employee to respond fully and truthfully and provides the subject of the investigation with a Warning and Assurance form notifying them of their rights concerning the interview, the Union President will be provided a copy as well.
- B. Supervisors, employees, and Union representatives will not, except as specifically authorized, disclose any information about an investigation. An employee may discuss the investigation with their authorized Union representative. A copy of the employee's statement will be given to the employee and/or the employee's representative.
- C. In accordance with the procedures and restrictions of the FOIA or 5 U.S.C. 7114, the subject of the investigation and the Union will be furnished with a copy of the completed investigation and evidence file and all other relevant and pertinent information.
- D. The statement of employee rights and obligations will be consistently applied. That statement will be consistent with this Agreement and will include the following:
  - (1) The right of an employee to a copy of their personal statement; and,
  - (2) The right of an employee not to incriminate themselves during a criminal investigation.

## **Section 3 - Kalkines and Garrity Warnings**

When the Commission conducts an administrative investigation of a matter that concerns potential criminal misconduct, the following warnings will be provided to interviewed employees as appropriate;

- A. Kalkines Warnings:
  - (1) Kalkines is an advisement of rights usually administered by United States federal government agents to federal employees in internal investigations. The Kalkines warning compels federal employees to make statements or face

disciplinary action up to, and including, dismissal, but also provides suspects with criminal immunity for their statements.

- (2) Kalkines grants the employee “use immunity,” which means that any truthful statements made in response to the investigation are immune from subsequent use in criminal prosecution against them.
  - (3) An employee under investigation has the right to not incriminate themselves in criminal investigations. When an employee knowingly and willfully provides false statements or information in response to questions regarding job performance duties, the Commission has the right to pursue disciplinary actions up to and including removal.
- B. Garrity Warnings: Informs a federal employee who may face criminal prosecution that the employee will not be subject to discipline for refusing to answer questions if answering may tend to incriminate the employee.

## ARTICLE 22: DISCIPLINE AND ADVERSE ACTIONS

### Section 1 - General

- A. The Commission and the Union recognize that the public interest requires the maintenance of high standards of conduct. The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. It is not to be punitive in nature.
- B. The Commission may use the concept of progressive discipline, which is the least amount of discipline necessary to correct the performance or conduct issue. Progressive discipline promotes the efficiency of service which is the objective of discipline.
- C. Supervisors are encouraged to use coaching and/or counseling sessions where appropriate prior to taking disciplinary action.
- D. BUEs have the right to be represented by the Union, or any other representative acting on behalf of the Union including attorneys or other representatives. If the employee elects Union representation, then the Union Representative will be provided material relied upon.

### Section 2 - Definitions

For purposes of this Article, the following general definitions are used:

- A. **Disciplinary actions** are defined as official written reprimands or suspensions of fourteen (14) days or less.
- B. **Adverse actions** are defined as removals, suspensions of more than fourteen (14) days, reductions in pay or grade or furloughs of thirty (30) days or less.
- C. **Representative** means "Union-designated representative" such as a steward or officer or, when applicable, any other formally designated representative as selected by the employee per 5 U.S.C. § 7114(a) (5).

### Section 3 - Fairness and Timeliness

Disciplinary actions must be consistent with applicable laws, government-wide regulations, and this Agreement. If the Commission believes that misconduct has occurred, an investigation will normally be completed prior to any disciplinary action being taken and normally within forty-five (45) days after the Commission became aware of the alleged misconduct. After completion of an investigation if one is conducted and, if it is determined that disciplinary action is warranted, such action will be initiated in a timely manner after completion of the investigation. Discipline will be applied fairly and equitably. The Proposing Official will not act as the

Deciding Official. The Deciding Official may be at a higher level of management than the Proposing Official.

#### **Section 4 - Coaching and/or Counseling (Non-Disciplinary Tools)**

- A. Prior to taking disciplinary action, supervisors are encouraged to use any of the following as non-disciplinary means to correct the alleged misconduct or unacceptable performance:
  - (1) Coaching and/or counseling sessions,
  - (2) Written Warning, and
  - (3) Informational and instructional letters.
- B. These are not punitive nor are they disciplinary in nature. Rather, these are constructive instruments designed to correct behavior at the lowest possible level.
- C. At the discretion of the supervisor, such letters, notations, or records may be maintained by the supervisor and documented within a reasonable time period of the event. Supervisory notes may be used to support an action taken against an employee for misconduct.
- D. Coaching and/or counseling will be conducted privately and in such a manner as to avoid embarrassment to the employee.

#### **Section 5 - Reprimands**

- A. Reprimands are effective upon date of issuance to the employee. The reprimand will state the specific reasons and material used to support the action. Management agrees that the employee shall be given a reasonable amount of time to review the information provided.
- B. Once an employee receives a letter of reprimand, they may grieve the action under the procedures set out in Article 7, *Grievance Procedure*. Reprimands will remain in the employee's Workforce Relations Folder for a period of two (2) years with a supervisory review after one (1) year and can be removed sooner after a minimum of six (6) months at the discretion of the employee's supervisor. At the end of the retention period, the reprimand will be permanently removed from the employee's Workforce Relations Folder. Once the reprimand is removed from the employee's file, it can no longer be used to support future discipline.

## **Section 6 - Suspensions and Adverse Actions**

- A. An employee for whom a suspension of fourteen (14) days or less or an adverse action is proposed is entitled to thirty (30) days written notice prior to the effective date of the action, except when the crime provision has been invoked.
- B. An employee for whom a suspension or an adverse action is proposed is entitled to a response period of fifteen (15) days. The employee may ask for an extension, if needed.
- C. Notices will state specific reasons for the proposed action.
- D. Management agrees that the employee shall be given the opportunity to use a reasonable amount of time to review the evidence on which the notice is based and that is being relied on to support the proposed action.
- E. The employee and/or representative may respond orally or in writing (or both) as soon as practicable but no later than fifteen (15) days from receipt of the proposed action notice. The response may include written statements of the persons having relevant information and/or other appropriate evidence. Extensions for replying to proposed adverse actions and suspensions will be granted when good cause is shown. Requests for extensions shall be submitted to the designated Deciding Official in writing.
- F. In responding to a proposed disciplinary action, the employee will be entitled to Union representation and will be responsible to secure such representation and to notify the Deciding Official and Workforce Relations of their election to be represented.
- G. The written decision shall include the reason for the disciplinary action, a statement of findings, evidence relied upon in making the decision and conclusions as to each charge. The letter will also provide the employee's appeal rights and/or grievance rights. The Decision Letter will include the time period for filing a grievance and with whom it must be filed.

## **Section 7 - Douglas Factors**

In proposing disciplinary or adverse action, the Commission shall comply with the applicable law and regulation and shall also consider the Douglas Factors as outlined below:

- A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- C. The employee's past disciplinary record;

- D. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- G. Consistency of the penalty with any applicable agency table of penalties;
- H. The notoriety of the offense or its impact upon the reputation of the agency;
- I. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- J. The potential for the employee's rehabilitation;
- K. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- L. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

## **ARTICLE 23: ELECTRONIC RECORDING**

### **Section 1 – General**

- A. If a disciplinary or adverse action is proposed against an employee represented by the Union and the Commission used recorded evidence to support the proposed action, the Union will be allowed to represent employees in any subsequent discussions or proceedings and:
- (1) The Union, if representing the employee, will be allowed to view recorded evidence to the extent the Commission determines there is no security risk in divulging the recorded information;
  - (2) The employee will be given the opportunity to review the recording of the administrative inquiry for accuracy and will be provided with a copy of the recording and a transcript, if one is made.
- B. The Union is not precluded from any further negotiations on the impact and implementation of changes to BUE working conditions resulting from the establishment or installation of new electronic recording devices or systems.
- C. The Commission agrees that electronic recording devices will not be located in restrooms or other areas and rooms used by employees for dressing and taking care of personal needs (e.g., bathrooms, nursing mother's rooms, wellness rooms, shower areas, etc.). The Commission agrees that security cameras or electronic recording devices will not be located within the Union's office.
- D. The Union will be given written notice of any newly established electronic recording device or system that is not of a medical or criminal nature and that impacts the working conditions of BUEs. To the extent that the Commission determines there is no security risk in divulging such information, the notice shall include:
- (1) What information is to be collected (e.g., nature and source);
  - (2) Why the information is being collected (e.g., to determine eligibility);
  - (3) Intended use of the information (e.g., to verify existing data);
  - (4) With whom the information will be shared (e.g., another agency for a specific programmatic purpose);
  - (5) What opportunities individuals have to decline to provide information (i.e., where providing information is voluntary) or to consent to particular uses of the information (other than required or authorized uses);



- (6) How the information will be secured (e.g., administrative and technological controls); and
  - (7) Whether a system of record is being created under the Privacy Act, 5 U.S.C. §552(a).
- E. This Article in no way restricts management's rights to: (a) use electronic monitoring to conduct administrative or criminal investigations; (b) use such footage or data in connection with or in support of disciplinary action; and/or (c) use such footage or data in matters referred to the Office of the Inspector General and/or for criminal prosecution.

## **ARTICLE 24: USE OF PERSONAL DEVICES**

### **Section 1 – General**

Parties recognize that employees do not have an expectation of privacy with respect to Commission assets whether those assets are accessed via Commission-provided device or personally owned device.

Parties, however, do recognize that employees have an expectation of privacy with respect to all other aspects of their personally owned devices that are not related to Commission assets, except as provided herein.

### **Section 2 – Mobile Application Management**

- A. The Commission will post the privacy policies, user installation instructions, and Frequently Asked Questions (FAQs) of all applications available for employee use on personal devices through the Bring Your Own Device (BYOD) program.
- B. Except as specified in Section 3 of this Article, the Commission will not use any application, including but not limited to Microsoft Intune, to obtain or access employees' calling and web browsing history, email and text messages, contacts, calendar, passwords, pictures, files, and other personal data. Any such data obtained by the Commission will not be used against any employee, nor will it be stored or retained by the Commission. In the event that the Commission confiscates an employee's personal device, the Commission will return the device to the employee within a reasonable period after the conclusion of any investigation, unless the personal device is in law enforcement custody.
- C. The Commission will work with the Union to produce a reference document for employees clarifying terms and product capabilities regarding the use of personal data by the application. Upon Union request, the Commission will consider holding a townhall regarding the deployment of new applications under the BYOD program.
- D. Employees will not be expected or required to use their personal devices to perform work. Rather, employees may use personal devices to perform work at the employee's election.
- E. Within budgetary constraints and based on the nature and type of work performed, management will determine the necessary GFE for official use (e.g., mobile phones, tablets, etc.). Employees are responsible for protecting and safeguarding all FERC information, GFE, and government property.

### **Section 3 – Guest Wireless Network**

- A. Parties recognize that employees have no expectation of privacy on any devices that are connected to the Commission’s Guest Wireless Network. Activities on the Guest Wireless Network are subject to monitoring, recording, and periodic or random audits. Designated Commission personnel may access any communications traversing the Guest Wireless network and disclose information or activity that poses a security risk or is indicative of potentially criminal activity obtained to management and law enforcement personnel, as appropriate.
  
- B. Employees who object to the possibility of Commission monitoring should opt not to use the Guest Wireless Network.

### **Section 4 – Intellectual Property Rights**

Employees who use their personal devices on the Guest Wireless or utilize their personal device through the BYOD program retain intellectual property rights in accordance with the law.

## **ARTICLE 25: PERFORMANCE MANAGMENT**

### **Section 1 – General**

- A. The Performance Management System will be administered in accordance with the terms of this Agreement, Merit Systems Principles, FERC policy, as well as all Federal statutes and regulations. The Commission will administer the Performance Management System in a way so that it does not engage in Prohibited Personnel Practices.
- B. The application of performance standards and the determination of acceptable level of competence will both be made in a fair, objective, job-related and measurable manner. Measurable criteria are defined as observable and/or demonstrable; examples are those that may gauge quality, quantity, timeliness, cost effectiveness, and/or manner of performance.
- C. Serving as a Union Representative shall not place those representatives at an advantage or disadvantage in appraising performance or in consideration for promotion.
- D. The official appraisal period, for which a performance plan must be prepared and monitored, and for which a summary performance rating (rating of record) will be issued, is normally June 1 through May 31 or July 1 through June 30 of each year.

### **Section 2 – Definitions**

For the purpose of this Article, the following definitions apply:

- A. Performance Appraisal is the process of comparing actual job performance against performance standards, rating each critical element, and assigning a summary rating.
- B. Performance Plan is the collection of performance elements and standards that describe expected performance. The performance plan must include all critical and additional elements and their performance standards. This is not to be confused with a Performance Improvement Plan (PIP).
- C. Critical Element is a component of a position consisting of one (1) or more duties and responsibilities that contribute 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.
- D. Rating of Record is the official written summary of an employee's performance given at the end of the rating period and is determined by evaluating the employee's performance against the employee's written performance standards.

- E. Progress Review is an official periodic review of the employee's performance where the supervisor provides feedback on how the employee is performing and, upon request, how the employee may improve performance.

### **Section 3 - Establishing Performance Standards**

- A. Uniform Performance Appraisal Rating Periods. The annual appraisal period for all FERC employees shall be either June 1 through May 31 or July 1 through June 30 of each year.
- B. Rating Levels. The level of ratings for each individual element and the summary rating are: Outstanding, Highly Successful, Fully Successful, and Unacceptable.
- C. An entry rating of "Fully Successful" is presumed for new appointees and persons reduced in grade or promoted to a new position. When an employee is promoted or reduced in grade due to a change in position classification standards or error in classification, the current rating of record shall remain in effect until a subsequent rating is issued.

### **Section 4 – Procedures for Issuing Performance Plans**

- A. The employee will receive, within thirty (30) calendar days of the start of the new rating period, in writing, the critical elements and performance standards for the position. Performance standards will be issued on an annual basis, or when the employee changes positions, or when a critical element or performance standard is changed.
- B. In the event that an employee needs additional clarification or context over the performance elements or standards, or in regard to a performance appraisal, the employee may request a meeting with the supervisor and the next level supervisor. This meeting will be held on a timely basis. The employee will be granted a reasonable amount of time up to one (1) hour to meet with a Union Representative for informal consultations prior to the meeting with the next level supervisor.
- C. The supervisor and employees are encouraged to discuss the performance plan for a position. If a critical element or performance standard is unclear to the employee, or the employee has input regarding the elements and standards, the supervisor will seek to clarify the elements and standards. The supervisor will consider the employee's input before completing the plan. Management has the right to set performance standards. The finalization of the completed plan requires action by the reviewing official (normally the 2nd level supervisor).
- D. After the discussion has been completed, and all input considered, the supervisor, reviewing official, and employee will complete and sign the employee's performance plan. A copy will be furnished to the employee.

## **Section 5 – Performance Feedback**

- A. Managers and supervisors will provide constructive feedback regarding performance on a regular basis during the rating period. If at any time during the rating period, a supervisor finds that an employee's performance is below Fully Successful, the supervisor will notify the employee and provide assistance to the employee on how to improve performance. Subject to the availability of funds, training will be made available when it would assist in improving employee performance.
- B. At a minimum, the supervisor will provide written and verbal performance feedback at the end of the appraisal period and written or verbal performance feedback at mid-year. Performance appraisals will be documented in accordance with FERC policy.
- C. During the performance appraisals, an employee will be provided specific written feedback regarding their performance compared to the standards in the performance plan. At the mid-year progress review, and upon request, the supervisor will explain to the employee whether their current performance would be rated at an acceptable level or higher (or below Fully Successful). At the annual performance appraisal, the supervisor will provide the employee with a rating for each applicable critical element and a summary rating for the appraisal period.
- D. During performance reviews, supervisors will provide individualized feedback based upon the employee's input and the supervisor's own observations. Employees are encouraged to provide their supervisor with a summary of their accomplishments prior to the mid-year and annual performance reviews.
- E. The supervisor will consider making appropriate allowances for work-related factors that were beyond the control of the employee which may have made it more difficult, or impossible, to meet the written performance standards.
- F. During mid-year and annual performance reviews, the supervisor will answer any questions the employee may have concerning what is necessary to improve performance. The employee may submit written comments regarding the review that will be retained by the supervisor. Employee comments are not approved for retention in eOPF.
- G. An employee's signature on the performance appraisal acknowledges receipt and does not document agreement. The employee will not be required to sign the performance appraisal.
- H. Performance reviews should be an open, honest, and two-way conversation between an employee and the supervisor. Normally the Union and Workforce Relations are not entitled to be present at performance review discussions.
- I. Employees may grieve their annual performance appraisals, including the factual basis for information included in the narrative.

- J. At the employee's request the supervisor will provide copies of materials, if any, not otherwise available to the employee that the supervisor used to assess the employee's performance. Any request for such materials will not extend the period for filing a grievance on a performance appraisal.

### **Section 6 – Appraisal Due Date**

All appraisals will be conducted and completed, to the maximum extent feasible, within forty-five (45) days of the end of the rating period. Any delays in issuing the ratings during the 45-day time period should be communicated to the employee, in writing, with a reestablished deadline for issuing the ratings.

### **Section 7 – Unacceptable Performance**

- A. Performance which is below the Fully Successful level (or is at any future defined level of unacceptable performance) on one or more critical elements is Unacceptable.
- B. When performance is Unacceptable the supervisor must notify the employee in writing and allow the employee a reasonable opportunity period to demonstrate acceptable performance before taking any performance-based action taken under Chapter 43 (5 U.S.C. 4300).
- C. The PIP Notice to the employee will:
  - (1) Identify the critical element(s) for which performance is Unacceptable;
  - (2) Inform the employee of the performance standards that must be reached in order to be retained in the position;
  - (3) Give the employee a reasonable opportunity of at least ninety (90) days to demonstrate acceptable performance; and
  - (4) Detail any active and appropriate assistance to help the employee improve the employee's performance. This assistance may consist of closer supervision, counseling, guidance, formal training, or other assistance as determined by the supervisor.
- D. If at the conclusion of the PIP period the employee's performance is still Unacceptable, and Management determines to propose to reduce the employee in grade, or remove the employee from service, the employee is entitled to:
  - (1) Thirty (30) calendar days' advance written notice of the proposed action specifying instances of unacceptable performance on which the proposed action is based, the critical element(s) involved in each instance of unacceptable

performance, and, if a performance appraisal has been prepared, a copy of the performance appraisal.

- (2) Notification that the employee has the right to reply to the proposal verbally and/or in writing and to be represented by the Union (or by another representative, including an attorney);
  - (3) A reasonable period of time for the employee to answer verbally and/or in writing. Normally the time allowed should not be less than fifteen (15) calendar days following the date the employee receives the notice; and
  - (4) A written decision issued at least thirty (30) calendar days after the notice of proposed action that specifies the instances of unacceptable performance on which the action is based.
- E. The deciding official may extend the notice period at their discretion. At the discretion of the deciding official, if the employee's performance improves to a Fully Successful level between the proposed action and decision, then the employee will not be reduced in grade or removed.
- F. If the employee's performance continues to be Fully Successful or higher for one year from the PIP determination, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any Agency record relied upon to rate to the employee.
- G. If the employee's performance does not continue to be at least Fully Successful for one year from the PIP determination, the supervisor may propose reduction in grade or removal without another PIP opportunity.

### **Section 9 – Within-Grade Increases (WGI)**

- A. If a WGI is denied for an employee, the employee will be informed in writing of:
- (1) The reason(s) for the negative determination;
  - (2) The aspects in the appraisal write-up or PIP which performance must be improved in order to achieve at least a Fully Successful level of performance; and
  - (3) The right to request reconsideration of the negative determination.
- B. The explanation of the right to request reconsideration will include notification that:
- (1) The request must be made in writing within fifteen (15) calendar days of receipt of the WGI denial memo;



- (2) The employee, if otherwise in a duty status, will be granted a reasonable amount of official time to review the material that is the basis of the negative determination and to prepare a response;
  - (3) The employee will have the right to be represented by the Union (or other representative); and
  - (4) The name and address of the Management official to whom the request for reconsideration should be delivered. This person will be an official at a higher level than the reviewing official.
- C. The Management official, who receives a request for reconsideration, will issue a decision on the request for reconsideration within the following time limits:
- (1) After receipt of the request for reconsideration, the decision will be issued within fifteen (15) calendar days; however, if Management needs additional time, the employee and/or representative must be notified of the reason(s) for delay and the estimated date of the decision.
  - (2) If the decision is to grant the WGI, the decision will be made retroactive to the first day of the first pay period following completion of the waiting period and in compliance with the conditions of eligibility.
  - (3) If the decision is to deny the WGI, the notice of decision will inform the employee of the right to grieve under Article 7, *Grievance Procedure*.
  - (4) When a WGI has been withheld, the rating official may, at any time at least ninety (90) calendar days after the denial, determine that the employee has demonstrated at least a Fully Successful level of performance, prepare a new rating of record, and grant the WGI. However, the rating official is only required to determine whether an employee's performance is at least a Fully Successful level of performance after each fifty-two (52) weeks following the original eligibility date for the WGI.

### **Section 10 – Keeping Records of Performance**

The employee and the employee's Union representative have the right to a copy of any records of performance. The Union representative will conform with FERC policy with respect to sensitive or Critical Energy Infrastructure Information (CEII).

## **ARTICLE 26: EMPLOYEE AWARDS AND RECOGNITION**

### **Section 1 – General**

- A. Recognition of employees through monetary and non-monetary awards reflects the Parties' efforts to promote continuous improvement and achievement in mission accomplishments. The employee recognition program provides a positive indication of the Parties' commitment to providing quality public service. The intent is to motivate, encourage, and recognize commendable achievements by individuals or teams in furtherance of the Commission's mission, goals and objectives. While there is no entitlement to an award or recognition, awards and recognition decisions must be made in a fair manner based solely on the merit without regard to race, national origin, sex, or other non-merit factors.
- B. Absent budget constraints and mission requirements, the Commission will utilize the award budget to the fullest extent authorized.
- C. Awards will be processed in a timely and expeditious manner. Generally, awards will be granted within the same fiscal year as the performance or achievement being recognized.

### **Section 2 - Types of Awards**

- A. The type of awards by which employees may be recognized, and the awards which employees may be eligible to receive include but are not limited to:
  - (1) Monetary and Time Off Awards (TOAs)
    - (a) Monetary awards granted by the Commission may never exceed 20% of the employee's rate of basic pay.
    - (b) Employees may at any point during the performance cycle indicate their preference to receive a TOA instead of a monetary award.
    - (c) All employees whose current rating is Fully Successful or higher are eligible for monetary and TOAs, except that employees who were on leave restriction within the fifty-two (52) weeks prior to the award effective date are not eligible for a TOA.
    - (d) TOAs are granted in increments of no less than one (1) hour.
    - (e) Full-time employees may be awarded up to eighty (80) hours of time off during a leave year; however, no employee may receive more than forty (40) hours per award without approval from the Chairman.

- (f) Part-time employees may be granted TOAs up to the average number of work hours in the employee's biweekly scheduled tour of duty during a leave year. The limit for a single TOA for part-time employees or employees with an uncommon tour of duty is one-half the maximum that may be granted during the leave year.

(2) Rating-based awards:

- (a) These awards are based solely on an employee's performance rating of record assigned at the end of the appraisal period and are intended to recognize sustained levels of successful performance over the course of the rating period.
- (b) A rating-based award may not be granted to an employee without a rating of record.
- (c) Actual awards and recognition will be commensurate with the purpose and intent of the award granted, provide for special acknowledgement of the accomplishments, and given as close to the time of achievement(s) as possible. Award amounts should be proportionate to the benefits resulting to the Government from the contribution.
- (d) Award nominations will follow the justification, submission, and approval process as outlined in Commission policy.

(3) Quality Step Increase (QSI).

- (a) Constraints: QSIs are reserved for the most exceptional levels of performance.
- (b) Management reserves the discretion to grant a QSI. It is not required or automatically granted to employees who meet the basic eligibility criteria.

B. Supervisors and managers should ensure employees are not inadvertently receiving duplicative awards for the same contribution.

### **Section 3 – Employee Appreciation**

The Commission advocates a culture of appreciation where recognition for good work is promoted by the entire workforce, and encompasses a very broad spectrum of acknowledgement, not limited to the monetary, time off, and non-monetary awards delineated in this Article, regulations, and Performance and Awards policy. Intangible recognition provides meaningful appreciation for successes and achievements and facilitates engagement and positive business outcomes.

Examples include, but are not limited to:

- A. Public credit for work done well;
- B. Opportunities to participate in visible projects;
- C. Being selected to lead initiatives;
- D. Thank you notes; and
- E. White boards for employees to leave short notes of appreciation for their peers.

#### **Section 4 – Information Request**

The Union maintains the right to all reasonable information regarding awards granted to employees covered by this Article. Such information shall include, at a minimum:

- A. The award recipient's series and grade;
- B. The type of award granted.

## **ARTICLE 27: TRAINING**

### **Section 1 – General**

The Parties acknowledge the importance of training and employee development to the mission of the Commission and to the morale and well-being of the employees. Therefore, the Commission will make available to employees the training necessary for the basic performance of the employees' assigned duties.

- A. Subject to budgetary and workload constraints, the Commission will provide employees with appropriate job-related training to perform their duties in a safe and efficient manner.
- B. The Commission will attempt to provide opportunities for employee development (both internal and external) and advancement. Workload and funds permitting, BUEs will be encouraged to participate in work-related employee development initiatives. Internal initiatives would include in-person and virtual (FERC Learning Management System) training, mentoring, coaching, and shadowing. External initiatives would include technical conferences, workshops, and seminars.
- C. Employees seeking approval for training opportunities should first consult with their supervisors. If additional assistance is required, the employee may seek it from the second line supervisor.
- D. Continued Service Agreement. All employees will be required to enter into a continued service agreement prior to attending academic training funded by the Commission. Employees failing to complete the service agreement will be required to repay to the Commission the total cost of the academic training course.

### **Section 2 – Individual Development Plans**

- A. An individual development plan (IDP) is a tool to assist employees in career and personal development. Its primary purpose is to help employees reach short- and long-term career goals, as well as improve current job performance.
- B. BUEs may develop an IDP, but no BUE will be required to do so. The supervisor will meet with the employee and make a good faith effort to provide constructive feedback towards a working IDP. However, an employee selected to participate in a program requiring an IDP, as referenced in the Commission's training policy, must complete and submit one to meet the program's requirements.
- C. Any training, travel, or other expenses identified in the IDP are subject to supervisory approval and the availability of funds.

### **Section 3 – Additional Training**

The following provisions shall apply to programs or training sessions which maybe tangentially related to the duties and responsibilities of the position (e.g., employee well-being, financial literacy) and which are conducted in the respective local commuting areas of the unit locations:

- A. Employees must obtain advance approval from their immediate supervisor to attend such training if the training occurs during scheduled hours of duty.
- B. Supervisors are strongly encouraged to give favorable consideration to such requests, subject to workload and budget.
- C. Programs or training sessions which are covered by this section concern career-related matters, e.g., retirement, etc.
- D. Training may be provided by the Commission or other governmental or not-for-profit entities.
- E. The Commission may provide training related to Employee Assistance Program (EAP), benefits, retirement, Thrift Savings Plan (TSP), etc.

### **Section 4 - Travel costs associated with Training**

In accordance with current travel regulations, the Commission will pay all approved expenses, including travel in connection with training required by the Commission to perform the duties of an employee's current position or a position to which an employee has been assigned, consistent with applicable law, rules, and regulations.

### **Section 5 – Reassignments and New Assignments**

When employees are reassigned to new positions (i.e., title or series) or assigned new duties or functions in connection with their current positions, the Commission will provide the training necessary to enable employees to perform required duties.

### **Section 6 - Scheduling Training**

When training requests are approved by management, employees will be granted absences from work to attend approved training. Schedule adjustments will be made to accommodate an employee's training or educational program. Training will be completed on duty time.

### **Section 7 - Training Information**

The Commission shall inform employees about required training. This notification shall include training that is required to maintain certifications that are required to maintain employment.

### **Section 8 – Notification**

Employees will be notified of approval or disapproval of training requests prior to the starting date of the training.

### **Section 9 - Union Recommendations**

At any time, the Union may bring to the attention of the appropriate management officials such training needs as it deems necessary for the performance of the duties of employees. These officials agree to give serious consideration to recommendations.

## **ARTICLE 28: STUDENT LOAN REPAYMENT PROGRAM (SLRP)**

### **Section 1 – General**

- A. **Purpose:** The Commission will administer the Student Loan Repayment Program (SLRP) pursuant to 5 U.S.C. § 5379 and 5 C.F.R. Part 537 and FERC policy, where the Commission has fulfilled its bargaining obligations.
- B. **Discussion of Resources:** The Parties recognize that benefits under the SLRP are subject to budgetary constraints but agree to brief the Union, at the Union's request, on annual benchmarks and goals for the allocation of resources and to review the effectiveness of the program.

### **Section 2 – Qualifying Loans**

Qualifying student loans are ones that are made, insured, or guaranteed under Parts B, D, or E of Title IV of the Higher Education Act of 1965, or that are health education assistance loans made or insured under Part A of Title VII of the Public Health Service Act or under Part E of Title VIII of that Act. The loan may be for the employee's own educational expenses or for the educational expenses of the employee's child as long as the loan is under the employee's name. Generally, an employee's consolidated loan is qualifying. However, loans that have been consolidated with loans of another individual, such as a spouse or child, are not qualifying.

### **Section 3 – Consideration**

- A. **Open Season:** Employees may approach their supervisors to express interest in the SLRP upon official announcement by the Commission to the managers that the application period has commenced.
- B. **Written Determination:** In recommending an employee for SLRP, a supervisor will make a determination in writing, based on specific case justification, that the employee meets all criteria required by law and regulation. The employee must provide all necessary information to justify consideration. The Commission will make its determination on a recommendation for repayment of a student loan in a timely manner. Approval may be for repayment for more than one loan for the same individual.
- C. **Approving Official:** The Commission will notify the Union of the approving official for SLRP. Employees must reapply each year during the application period to remain in the program.
- D. **Selection Process:** In accordance with 5 C.F.R. § 537.103(d), the Commission's selection process for employees to receive student loan repayment benefits will ensure fair and equitable treatment.



- E. **Repayments:** In accordance with 5 C.F.R. § 537.106(c), repayments of student loans are subject to the maximum limits of \$10,000 per calendar year and a total of \$60,000 per employee.
- F. **Service Agreement:** Employees receiving this benefit must sign an initial service agreement to complete three (3) years of service with the Commission. For every year in which payment is made beyond three (3) years, one (1) additional year of service is required. Employees will be indebted to the Federal Government and must reimburse the Commission for the total amount, before taxes, of any student loan repayments received if the employee fails to complete the required service agreement because they voluntarily separate from the Commission (e.g., resignation or transfer to another Federal agency) or are involuntarily separated for misconduct, unacceptable performance, or a negative suitability determination.
- G. **Union Representation:** Employees may be represented by the Union regarding the administration or misapplication of service agreements or payments.

## **ARTICLE 29: CHILDCARE, NURSING MOTHERS, AND WELLNESS**

### **Section 1 - Child Care**

- A. The Parties recognize that working parents may have special childcare needs during working hours. The Commission recognizes the need to be flexible when emergencies occur. Employees acknowledge their responsibility to make adequate arrangements for childcare so that emergencies are infrequent and short-lived.
- B. The Commission will provide information regarding EAP, which provides information and assistance with dependent care, the Flexible Spending Account (FSA), which also assists employees with dependent and medical care costs, and Tuition Assistance Program, which provides monetary assistance based off income for eligible employees. The Commission will also provide information regarding the Family Friendly Leave (FFL) program.

### **Section 2 - Nursing Mothers**

- A. For one (1) year after the birth of a child, an employee must be granted reasonable break time to express breast milk for her nursing child each time she has a need to do so. This may include regularly or ad hoc compensated rest/break periods, meal period, changes in work schedules, the use of annual leave, leave without pay (LWOP), credit hours, compensatory time, or other arrangements as appropriate.
- B. The Commission will comply with the Office of Personal Management policy on Nursing Mother Rooms. The Commission will, to the maximum extent practicable, provide one (1) Nursing Mother Room per floor at headquarters, and one (1) Nursing Mother Room at each regional office or other appropriate arrangements (telework, work schedule flexibilities) for nursing mothers.
- C. The Commission agrees the Nursing Mother Room will include, to the greatest extent possible: a locking door for privacy, a sink with hot and cold running water, paper towels, hand soap and/or sanitizer, adequate lighting, electrical outlets, and seating for the nursing mother. Nursing mothers should have access in the room to a microwave for sterilization of breast pumps and associated items and access to a refrigerator for storing breast milk during work hours.

### **Section 3 - Wellness Rooms**

- A. The Commission will provide a room within the Health Unit at the headquarters building where employees may attend to medical or physical conditions in privacy. This room will be separate and apart from the Nursing Mother Room.

- B. For the regional offices, where possible, the Commission will provide one (1) room per location for employees to attend to medical or physical conditions in privacy, which will be separate from Nursing Mother's Rooms.

## **ARTICLE 30: BREAK ROOMS/BREAK AREAS**

### **Section 1 - General**

Both Parties recognize that the health and well-being of employees are necessary to the successful accomplishment of the Commission's mission. Management will provide break rooms, and/or break areas for employee use at all FERC-controlled buildings (Headquarters and Regional Offices).

### **Section 2 – Location**

Break rooms/areas shall be reasonably accessible to the employees' work areas, subject to compliance with Occupational Health and Safety Administration (OSHA), biological containment, and safety regulations.

### **Section 3 – Break Room Specifications**

The Commission will provide adequate break rooms per building, furnished with the following list of items:

- Sink with hot and cold running water
- Microwave
- Refrigerator
- Seating
- Cleaning Supplies
- Access to internet or wi-fi
- Tack board or bulletin board

If any of the above become inoperable, management will provide a replacement normally within thirty (30) days and provide employees with an alternative option(s) in the interim.

### **Section 4 - Changes to Break Room(s)**

Should the Commission need to change access and/or configuration of designated or existing break rooms/break areas or establish new break rooms, the Commission agrees to notify the Union and negotiate as required.

## **ARTICLE 31: HEALTH, SAFETY, AND SECURITY**

### **Section 1 – Safe and Healthy Work Environment**

The Commission agrees to take action to provide employees with a safe and healthy workstation space in accordance with the established guidelines of the GSA, as applied to their duties and functions within the organization. This includes an acceptable, according to Federal Regulations: heat and humidity; noise level; available conference rooms; adequate fire and disaster plan; adequate furniture, equipment, and supplies; and sanitary restroom and toilet facilities within reasonable proximity to the work area.

### **Section 2 – Compensation for Claims**

The appropriate management official will act upon all requests for compensation by employees in the BU, under the Federal Employees Compensation Act (5 U.S.C. Chapter 81), as implemented by appropriate FERC Regulations.

### **Section 3 – Routine and Emergency Health Services**

- A. The Commission will participate in the Federal Employee Occupational Health (FOH) Program and will provide access to a health unit.
- B. The following services will be provided at no expenses to the employees at Headquarters:
  - (1) When available, immunizations that are made available by the FOH.
  - (2) Emergency response, minor illness and injury care, and preventative health services.
  - (3) Health screening, including visual screening, blood pressure, diabetes, cholesterol, and other risk factors for heart disease.
  - (4) Comprehensive health information programs such as screening programs and programs of national health agencies.

### **Section 4 – Meetings with FERC Security and Safety Officer**

The FERC Chief Security Officer will meet and discuss with the duly appointed Union representative(s) on matters of employee health and safety biannually, or upon request. The Union President may indicate to the FERC Chief Security Officer a desire for such meetings.

### **Section 5 – Reporting of Unsafe Conditions**

Employees are responsible for reporting hazardous or unsafe working conditions to their immediate supervisor and/or security officers, who will take immediate action to have such hazardous or unsafe working conditions corrected. The FERC Security and Safety staff should also be immediately contacted by the employee.

### **Section 6 – Smoke-Free Workplace**

The Parties agree that a smoke-free work environment is essential to the health of all employees.

## **ARTICLE 32: EMPLOYEE ASSISTANCE PROGRAM (EAP)**

### **Section 1 - Program Purpose**

- A. This Article will be administered in accordance with applicable Federal laws and regulations, including 5 C.F.R. Part 792. 105. The Commission agrees to promote an Employee Assistance Program (EAP) that provides no-cost, short term, confidential counseling to assist employees with issues of a personal nature related to work and family.
- B. The EAP is a comprehensive program that helps employees resolve personal problems that may adversely impact their work performance, conduct, health, and overall well-being. EAP addresses problems in the quickest, least restrictive, and most convenient manner while minimizing cost and protecting client confidentiality. Supervisors are also encouraged to note when employees appear to be experiencing difficulties for which EAP may provide assistance, and to refer the employee to EAP for assistance. Early intervention may be helpful in returning the employee to full productivity.
- C. The Commission will maintain an EAP (or any successor programs) and make this service available to BUEs at no cost unless the cost is specifically required. The EAP should be staffed with professional counselors who will assist employees in addressing problems that have had an adverse effect on their job performance, reliability, and health.
- D. As appropriate, supervisors will offer the availability of the EAP to employees who are experiencing performance and conduct issues.
- E. In extreme cases, such as threats of workplace violence or suicidal thoughts, management may consider a mandatory referral to EAP. Management should focus on the employee's conduct in the workplace rather than the perceived medical condition when making a mandatory EAP referral.
- F. Management may consider delaying a disciplinary action during which time an employee is mandated to attend EAP counseling.

### **Section 2 - Record of Participation**

The Commission will not retaliate against a BUE for a request for EAP counseling or assistance. The Commission will ensure that the confidentiality of medical records of employees concerning treatment for problems related to alcohol, drugs, emotional concerns, or other personal issues will be preserved in accordance with current laws and OPM regulations or successors.

### **Section 3 - Voluntary Participation and Employee Responsibility**

The existence and functions of counseling and referral programs will be publicized to employees. No employee will be required to participate or be penalized for merely declining referral, unless mandated to attend, counseling services or for participating in the services provided.

### **Section 4 – Confidentiality**

- A. The Parties recognize that all confidential information and records concerning employee counseling and treatment will be maintained in accordance with applicable laws, rules, and regulations and in accordance with the Privacy Act of 1974 (5 U.S.C. 552a).
- B. Without an employee's specific written consent, the supervisor may not obtain information about the substance of the employee's involvement with a counseling program.
- C. Employees who fail to attend voluntary EAP appointments when the employee has been excused from work may be subject to disciplinary action.

### **Section 5 - Excused Absence(s)**

- A. A supervisor and/or manager shall grant up to one (1) hour of excused absence for each EAP counseling session, up to a maximum of six (6) sessions per calendar year, during the assessment/referral phase of rehabilitation. Additionally, employees may use sick leave, annual leave, or request LWOP.
- B. Reasonable time to and from the scheduled appointment off-site to account for travel time may be granted as an excused absence in accordance with individual circumstances. The employee will be required to notify their immediate supervisor as soon as practicable if the agreed-upon circumstances were to change. If additional time is required for a session, if an employee continues EAP sessions after the maximum six (6) sessions per calendar year, or if an employee is referred to an outside resource, the employee will request leave as soon as practicable, and the request will be approved in accordance with existing leave policies and this Agreement. Additionally, employees may use sick leave, annual leave, or request LWOP.
- C. Supervisors will release employees for EAP visits as soon as practicable and as soon as work requirements allow. The Parties will encourage employees to make appointments with the EAP professional.
- D. The number of excused absences for EAP counseling services will be consistent with the current Commission regulation and/or successors.



**Section 6 - Leave Associated with EAP**

It is the policy of the Commission to grant leave (sick, annual, or LWOP) for the purpose of treatment or rehabilitation for employees under EAP as would be granted for employees with any other health problem(s).

## ARTICLE 33: AMENITIES

### Section 1 - Parking and Bicycle Rack

- A. The Parties recognize that reducing pollution, conserving energy, and easing automobile traffic congestion are the responsibility of all citizens. The Commission and the Union will encourage and promote efforts aimed at reducing problems caused by commuting. The Commission and Union agree that it is in the interest of the Commission to consider convenient access to public transportation facilities as an important criterion in locating or relocating Commission facilities. Unless otherwise directed, FERC will maintain status quo on parking until September 2025.
- B. Parking fees will be based on a two-tiered fee program: employees with an approved regular and recurring schedule that has them in the building six (6) or more days a period will be charged \$28 per pay period. Employees with an approved regular and recurring schedule that has them in the building five (5) or less days per pay period will be charged \$20 per pay period. The Commission will negotiate with the Union regarding the impact of changes to parking arrangements at the Commission's premises (including the Regional Offices) which are different from the arrangements in effect on the effective date of this Agreement.
- C. The building owner currently provides a bike rack in a secure area at 888 First Street. The Commission will continue this arrangement to the extent possible. Cyclists, regardless of bike subsidy participation status, shall present their badges to the guards on duty for review. Security will lift ramp arms at the top of the ramp during normal post hours and give priority to cyclists over motorized vehicles. Cyclists will swipe the P2 reader (arm bottom of ramp). A safe bike path into the garage will be provided, including either a route around any speed bump, a lower and wider speed bump, or a wider notch through the speed bump.
- D. The Commission will continue to pay subsidies of up to \$20 per month for any expenses incurred for the purchase of a bicycle, bicycle improvements, repair and storage if the bicycle is regularly used for travel between an employee's residence and their FERC office or workplace. Where regulations reference, "qualified bicycle commuting month" at FERC shall include March through November. Eligible employees may apply at any time for bicycle commuting reimbursement; however, employees cannot receive the bicycle commuter subsidy and the regular transit commuter subsidy for the same period of time. Administration of bicycle commuting reimbursement shall not be more restrictive than the criteria set forth in 26 U.S.C. § 132(f)(5) except as agreed upon here.
- E. The Commission will continue to provide transit subsidies to employees in accordance with regulation for the purchase and use of transit passes, as defined by law and Government-wide rules and regulations, to the maximum expense authorized by Congress, for employees to travel to or from work at Commission, provided that the

Agency determines that Commission-approved budget priorities permit expenditures for such subsidies.

**Section 2 - Fitness Center**

- A. The Parties agree that wellness regimes are vital to physical, mental, and emotional health and well-being. To that end, the Parties agree that having facilities at the 888 First Street Headquarters office in Washington, D.C., for employees to avail themselves during non-duty time (e.g., meal break), and established Fitness Center hours, will enable employees to maintain a healthy and productive lifestyle.
  
- B. The Commission will provide Headquarters staff with a well-maintained Fitness Center. If fees are required to be increased, for example due to improvements in staffing or equipment, the Commission will be required to provide notice of the change to the Union for bargaining. The Commission will negotiate with the Union regarding the impact of changes to Fitness Center arrangements at the Commission's premises which are different from the arrangements in effect on the effective date of this Agreement.

## **ARTICLE 34: EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

### **Section 1 - General**

It is agreed between the Parties to cooperate in providing equal opportunity and in preventing discrimination against any employee based on race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, reprisal or retaliation for prior civil rights activity, or genetic information in accordance with the Genetic Information Nondiscrimination Act. Furthermore, management agrees to be compliant with associated rules, regulations, laws, policy, and procedures.

Unless it conflicts with mission-related activities or requirements, employee requests to attend EEO activities and programs shall be approved.

Employees are encouraged to join and participate in Employee Resource Groups (ERGs). Membership in such groups is recognized to be voluntary.

## **ARTICLE 35: CHARITIES**

### **Section 1 - General**

The Parties agree to cooperate in the furtherance of charities sanctioned by the Commission, such as the Combined Federal Campaign (CFC). The Parties recognize the voluntary nature of such causes and agree to the furtherance of this principle. Participation or non-participation will not advantage or disadvantage employees.

## **ARTICLE 36: OFFICIAL AND PERSONNEL RECORDS**

### **Section 1 - Official Records and Files**

- A. No personnel records may be collected, maintained, or retained except in accordance with law, Government-wide regulations, Commission regulations, and this agreement. All personnel records are confidential and shall be known or viewed by officials only with a legitimate need to know for the performance of their duties; they must be maintained in a secure location.
- B. The Commission agrees that the official record of the employee is the Official Personnel File (including eOPF). Employees may access their OPF while on duty time.

### **Section 2 – Employee Files Maintained by Supervisors**

Employee(s) files maintained by supervisors:

- A. will be viewed only in accordance with official Commission business and/or a need-to-know basis; and
- B. must be maintained in secure fashion in order to prevent disclosure.

### **Section 3 - Access to Records**

- A. During normal duty hours, employees and/or their representative, who will be designated in writing, shall have the right to examine records personally identified to the employee (e.g., eOPF, EEO, evidence files, appeal and grievance records), PDs, and performance standards.
- B. In accordance with Commission and federal regulations, employees have a right to access copies of any information specific to them personally maintained under their name and/or social security number.
- C. Any record in the personnel files maintained by the supervisor, used as the basis for a disciplinary action, must be disclosed to the employee.
- D. The employee shall have the right to prepare and enter a concise statement of disagreement with any supervisory note provided to the employee.
- E. No derogatory material of any nature which might reflect adversely upon the employee's character or government career will be placed in the employee's OPF, without the employee's knowledge.

### **Section 3 - Outdated Records**

- A. All disciplinary records shall be purged, and information disposed of in accordance with appropriate records control schedules.
- B. The Commission will maintain a system of follow-up to assure that any disciplinary or similar action(s) with a time limit is removed from the employee's personnel record on the proper date.
- C. If any outdated or unauthorized material is accidentally left in a file, it may not be used to support any personnel action detrimental to the employee.

## **ARTICLE 37: DUES WITHHOLDING**

### **Section 1 - Eligibility - BUEs**

Any BUE may have dues deducted through payroll deductions, or any other approved system. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGÉ, or submits a timely revocation form under the procedures of this article.

### **Section 2 - Union Responsibilities for BUEs**

- A. The Union agrees to inform the Commission, in writing, of the following:
- (1) The dues amount(s) or changes in the dues amount(s),
  - (2) The names of the Union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments, and
  - (3) The name and address of the payee to whom the remittance should be made.
  - (4) The Union agrees to notify dues-paying members of any increases in dues and to advise them of the reasons for the change.
- B. The Union agrees to promptly forward completed and certified forms(s) to the appropriate administrative office.

### **Section 3 - Agency Responsibilities for BUEs**

- A. It is the responsibility of the Commission to:
- (1) Process voluntary allotments of dues in accordance with this article and in amounts certified by the Union,
  - (2) Withhold employee dues on a bi-weekly basis, and
  - (3) Transmit remittance to the local allottee designated by the Union in accordance with this article, as expeditiously as possible at the end of each pay period.
- B. The Commission will process requested changes to dues amounts and make them effective normally within two (2) pay periods but no later than three (3) pay periods from notification of the change.
- C. Electronic transfer of funds is authorized for the transmittal of Union dues.



- D. The Commission agrees to withhold Union dues from a back-pay award granted to an employee who was terminated and was on dues withholding at the time of a termination. The amount withheld from the back-pay award will be calculated from the date of termination until the employee's date of reinstatement. Upon their return to duty, the employee will be made whole and will continue status quo in the BU and dues-paying status they were in at the date of termination.
- E. The Commission agrees to withhold Union dues from a back-pay award to an employee who was on dues withholding at the time of a suspension.

#### **Section 4 - Procedures for Withholding for BUEs**

BUEs wishing to have their dues withheld by payroll deduction, or any other approved system, will submit their completed SF- 1187 (Request for Payroll Deductions for Labor Organization Dues) to the designated Union official(s). This official will certify the form and include the amount of dues to be withheld. The certified SF-1187 will be forwarded to the appropriate administrative office for processing. The individual deduction will become effective within one (1) pay period after the SF-1187 is submitted to the appropriate administrative office.

#### **Section 5 - Position Determination**

- A. When there is a dispute regarding whether a BU position is "covered by" a BU or not, the employee's dues paying status will continue status quo until the issue is resolved.
- B. The Parties will discuss the issue until a decision is reached, either through mutual agreement or through the formal process.

#### **Section 6 - Cancelling Dues Withholding**

- A. The Union will provide the appropriate designated form to employees upon request.
- B. In accordance with 5 U.S.C. § 7115, employees may discontinue dues withholding after one (1) year as a dues paying BUE by following the procedures as outlined in this Section.
- C. In order for dues deduction to be stopped on the first full pay period after the anniversary date, the SF-1188 must be submitted to the Union and the appropriate payroll officer no earlier than thirty (30) days prior to the anniversary date. SF-1188 forms submitted after the anniversary date will not be accepted.
- D. Employees may rejoin the Union by resubmitting a new SF-1187. A reestablished one (1) year anniversary period for dues withholding will then be established based on the new SF-1187.

**Section 7 – Costs**

All payroll deductions and transmittals will be made at no cost to the Union.

## **ARTICLE 38: OFFICIAL TIME AND DUTY TIME**

### **Section 1 - Official Time**

In accordance with 5 U.S.C. §7131, Union representatives shall be allowed a reasonable amount of official time, if otherwise in a duty status, to carry out their representational activities. This time will be without charge to leave. Employees acting as Union representatives may be released from duty without charge to leave for appropriate representational purposes under the Statute. Official time for employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority (FLRA) and the Equal Employment Opportunity Commission (EEOC). Such official time is not limited by this Article.

### **Section 2 - Appropriate Activities**

- A. The use of official time will be permitted for, but not limited to, the performance of the following representational functions:
- (1) Discussing grievances and appeals, discrimination complaints or matters affecting general working conditions with employees.
  - (2) Participating in training for labor-management relations, where appropriate (e.g., joint training) and Labor relations training for Union representatives (e.g., Union sponsored training).
  - (3) Participation on joint Union-Management committees regarding workplace conditions or employee engagement.
  - (4) Preparing (including making inquiries) and presenting grievances, appeals, or discrimination complaints.
  - (5) Attending meetings necessary to the collective bargaining or the representational process.
  - (6) Considering and preparing Union proposals to Management.

### **Section 3 - Meetings with Union Representatives**

While Union stewards and officials may be granted a reasonable amount of official time to conduct the representational functions of the Union, prior to conducting said functions, Union stewards and officials must request official time through their immediate supervisor and inform them of: (1) the nature of the business, and (2) the approximate amount of time they will be away from their job duties, before being approved.

Supervisors have the discretion to arrange for Union stewards or officials to conduct their representational functions at a more suitable time, if deemed necessary. In the event a request for official time is denied and rescheduled, supervisors must be able to articulate the business reason(s) an official time request was denied and rescheduled. When a request for official time is approved, Union stewards or officials must report back to their supervisor once they have returned from conducting their representational functions.

Union stewards and officials are also responsible for informing their supervisor and/or timekeeper of the number of official time hours used each pay period for representational functions.

Below is the current list of Union time and labor codes and their descriptions:

- N19010000: Union Dispute Resolutions: Official time used to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the U.S. Merit Protection Board (MSPB), FLRA and EEOC and, as necessary, to the courts
- N19014000: Union General Labor-Management Relations: Official time used for meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, and Union participation in formal meetings and investigative interviews
- N19029000: Union Mid-Term Negotiations: Official time used to bargain over issues raised during the life of a term agreement
- N19040052: Union Labor Relations Training: Official time used for Union representatives attending Labor Relations Training
- N19041000: Union Term Negotiations: Official time used by Union representatives to prepare for and negotiate a basic collective bargaining agreement (labor-management agreement) or its successor

#### **Section 4 - Travel and Meetings**

- A. Official time will be granted for Union representatives to appear before the FLRA, MSPB, the Federal Services-Impasses Panel, or the EEOC.
- B. Union representatives will be allowed a reasonable amount of travel in conjunction with official time to perform representational activities.

#### **Section 5 - Internal Union Business**

As provided by 5 U.S.C. §7131 (b), "Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of

labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status or on official time.” Preparation of forms for public disclosure are not internal union business.

### **Section 6 - Official Time to Observe**

For training purposes, a Union representative acting as an observer under the provision of 5 U.S.C. § 7114(a) (2) will be on official time if otherwise in a duty status.

### **Section 7 - Performance Evaluation**

The use of official time, in accordance with this agreement and the regulations, will not adversely affect an employee's performance evaluation.

### **Section 8 – Training**

- A. Consistent with the Commission’s mission requirements, and where mutually agreeable, the Commission will grant up to four hundred (400) hours total of Official Time per calendar year to the Union Local, for its current Union officials to attend labor relations training or other training related to employees’ conditions of employment.
- B. When requesting official time for training purposes the Union steward or representative will provide the agenda for the training, normally within seven (7) days prior to the training. Under this Section, Official Time approved for training will generally cover such areas as contract administration, handling of statutory actions such as grievances, and information related to Federal labor relations laws, regulations, and procedures. The Union may request additional hours of Official Time for training. A Union representative may not normally attend the same type of training within two (2) years.
- C. The total number of training hours may be extended by mutual agreement (such as when New-Stewards are appointed and additional training in excess of 400 hours is needed). The request from the Union needs to be addressed to the Director of Workforce Relations or his/her designee. The Director of Workforce Relations will normally respond within five (5) days. If no response is received, the training requested will be deemed approved.

### **Section 9 – Legislative Activities**

Subject to mission priorities, the Commission will grant two Union Representatives up to twenty (20) hours official time per calendar year within the scope of 5 U.S.C. §71 to directly present the views of AFGE Local 421 to Congress and officials of the executive branch of the Government. The Union will forward a memorandum of the agenda with at least fifteen (15) days advance notice. This memorandum will identify legislative topics/subject matter, dates, and times. Approval and release for attendance on official time will be made by the Commission for all

matters not involving pending legislation unless a workload exigency exists. All expenses will be borne by the Union.

## **ARTICLE 39: CONTRACTING OUT**

### **Section 1 - General**

The provisions of this article concern contracting out of work currently performed by BUEs.

### **Section 2 - Procedures**

- A. If a decision is made to contract and eliminate BU position(s), periodic briefings will be held with the Union to provide information concerning any decisions that may impact employees in implementing Office of Management and Budget (OMB) Circular A-76.
- B. Timely briefings will be held with affected employees for the purpose of providing information concerning contracting out under A-76 procedures. One (1) Union representative will be given an opportunity to attend such employee briefings. The Union representatives will be on official time.

### **Section 3 - Site Visits**

The Commission will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by BUEs. One (1) Union representative may attend this site visit. The Union will be free to participate in the site visit but will not disrupt the site visit.

### **Section 4 - Union Notification**

When the Commission determines that BU positions will be eliminated and contracted out, the Commission will notify the Union within twenty (20) days and provide to the Union information concerning the decision which is disclosable. The Union will then have the opportunity to request to negotiate as appropriate.

Upon request from the Union, the Parties shall meet and confer within twenty (20) days, concerning the impact upon BUEs.

### **Section 5 - Employee Placement**

When permanent employees are notified that they will be adversely affected by a decision to contract out, the Commission will make maximum effort to provide career transition assistance for employees. This effort will include:

- A. Career Transition Assistance Program (CTAP)
- B. Utilize Interagency Career Transition Assistance Program (ICTAP)

- C. Establishing a re-employment priority list and a placement program
- D. Paying reasonable costs for training that contribute to placement, in accordance with Commission regulations.

**Section 6 - Relationship to Laws and Government-wide Regulations**

Nothing in this Article will be interpreted as precluding the Union from exercising any rights it might have under law or regulation.



## **ARTICLE 40: FURLOUGH**

### **Section 1 – Definitions**

- A. **Administrative Furlough** is a planned event by the Commission that is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.
- B. **Shutdown Furlough** (also called an emergency furlough) occurs when there is a lapse in appropriations or authorization, and can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

### **Section 2 – Coverage**

During a furlough, exempt BUEs serving as Union officials shall continue to be granted Official Time in accordance with this LMA. Exempt employees are those not affected by a lapse in appropriations.

### **Section 3 – Planning**

- A. For Administrative Furloughs, the Commission will consider all reasonable alternatives to address budgetary constraints prior to placing BUEs on furlough.
- B. The Commission will consider the Union's pre-decisional input regarding the agency's Administrative Furlough plan through the Labor Management Forum (LMF). No waivers are implied, and agreements may be reduced to writing.
- C. Subject to mission requirements, BUEs may request continuous or non-continuous furlough days during an Administrative Furlough.
- D. For Administrative Furloughs, the Union may request, and the Commission will normally provide, the criteria for selecting the BUE positions that are excepted from furlough.
- E. For Administrative Furloughs, the Union may request, and the Commission will normally provide, the reason for furlough.
- F. For Shutdown Furloughs, in accordance with Congressional authorization and appropriation(s) for backpay, the Commission will process the pay and benefits for BUEs impacted by a loss of pay in a timely manner.

#### **Section 4 – Notification**

- A. The Commission agrees to notify the Union of an impending furlough as soon as practical after the Commission is informed. Subsequently, the Commission will identify to the Union the impacted organization(s) and provide a list of any BUEs that are excepted from furlough. The Commission will provide notice to the Union and impacted BUEs of an orderly shutdown of Commission activities (e.g., turning in equipment, and if required, setting out of office replies).
- B. In advance of a shutdown, the Commission will notify BUEs, whether they are excepted or non-excepted BUEs, as defined by OPM.
- C. BUEs on furlough will be advised that they are not permitted to conduct Commission work or volunteer to work.
- D. The Commission will issue furlough notices (proposed and/or decision letters) to affected BUEs. Notices will normally be delivered as soon as practical after the Commission is informed of the furlough/shutdown. Notices may be issued electronically to BUEs where possible; or any other delivery method deemed appropriate to ensure receipt. Notices will indicate the actions and employee rights through this process.
- E. BUEs will be notified that Federal Employee Health Benefits (FEHB) coverage will continue during a shutdown furlough. The employee's share of the FEHB premium will accumulate and be withheld from pay upon return to pay status. The employee can choose between paying the Commission directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty. BUEs will be provided information about helpful resources during this period, their benefits, and any impact this could have on their leave.
- F. BUEs will be notified that Federal BUEs' Group Life Insurance (FEGLI) coverage will continue for twelve (12) consecutive months in a non-pay status without cost to the employee.

#### **Section 5 – Return to Work**

Furloughed BUEs will be notified when to return to work as soon as it has been officially determined by the appropriate authorities and will be informed when they are to report. BUEs must provide contact information (cell number, personal email, or any other method that will provide the Commission with the ability to contact them). Additionally, BUEs are encouraged to monitor the media resources and contact their supervisor for guidance.

## **Section 6 – Access to Union Office**

Access to the Union office during a period of furlough should not be prevented solely on the basis of the Union official's non-duty status. Access to the Union's office by a Union official in a non-duty status does not change the employee's furlough status.

## **ARTICLE 41: REDUCTION IN FORCE (RIF)**

### **Section 1 – Purpose**

- A. The Commission and the Union recognize that employees may be seriously and adversely affected by a RIF, reorganization, or transfer of function action. The Commission and OPM recognize that attrition, reassignment, furlough, hiring freeze, and early retirements are among the alternatives to RIFs that may be available. This Article describes the exclusive procedures the Commission will take in the event of a RIF, reorganization, or transfer of function as defined in this Article. It is also intended to protect the interests of employees while allowing the Commission to exercise its rights and duties in carrying out the mission of the Commission.
- B. Recognizing the potential disruptive impact that a RIF may generate, the Parties agree to use RIFs after careful consideration and utilization, when possible, of less invasive tools such as those described above.

### **Section 2 – Definition**

For the purpose of this Article, the following terms are defined in law and regulations and are included for informational purposes:

- A. **RIF:** RIF procedures are used when one or more employees will be separated or downgraded due to reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights. In addition, RIF procedures must be used for a furlough of more than thirty (30) consecutive days, or of more than twenty-two (22) discontinuous workdays.
- B. **Transfer of Function:** A transfer of function occurs when a function ceases in one competitive area and moves to one or more competitive areas which do not perform the function at the time of the transfer. Also included, the movement of an entire work operation to another commuting area.
- C. **Reorganization:** Reorganization is the planned elimination, addition, or redistribution of functions or duties of an organization.
- D. **Competitive Area:** An area in which employees compete for retention is known as a Competitive Area. A competitive area must be defined solely in terms of the Commission's organizational units and geographical location; and it must include all employees within the competitive area as defined.
- E. **Competitive Level:** The Parties agree that OPM regulations fully define competitive level. Employees are assigned to competitive levels based on their position of record. Positions in a competitive area that 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. The incumbent of one (1) position can successfully perform the critical elements of any other position upon entry, without any loss of productivity beyond what is normally expected in the orientation of any new but fully qualified employee. (The terms competitive level and retention register are closely related terms.)

- F. **Retention Register:** The retention register is the ranking of employees in the competitive level after the Commission applies the four (4) retention factors. The four (4) retention factors are: tenure of employment, military preference (subject to section 5 C.F.R. § 3501(a)(3)), length of service, and performance rating. (The terms competitive level and retention register are closely related terms.)
- G. **Bump and Retreating:** Bumping means the displacing of an employee on a different competitive level who is in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. Retreating means the displacing of an employee on a different competitive level with less service within the released employee's own tenure group and subgroup.

H. **Identification Method One and Identification Method Two**

- (1) Under Identification Method One procedure, the losing competitive area identifies an employee with a transferring function if: the employee performs the function during at least half of the employee's work time, or regardless of the amount of time that the employee performs the function, the function includes the duties controlling the employee's grade or rate of pay.
- (2) Under Identification Method Two procedure, the losing competitive area identifies for transfer the number of employees it needs to perform the functions. The losing competitive area uses Identification Method Two only to identify positions and employees not covered by Identification Method One.

**Section 3 - Workforce Reshaping Through Attrition**

To minimize effects upon employees in a RIF situation, it is the policy of the Commission, where proper, to accomplish any RIF through attrition.

**Section 4 - Applicable Laws and Regulations**

For purposes of Title 5 employees, the policy, procedures, and terminology described in this article are to be interpreted in conformance with 5 U.S.C. §§ 3501-3504, 5 C.F.R. Part 351, and other applicable government-wide laws and regulations. Any changes or revisions to the published procedures will be subject to normal notification and negotiation protocols.

### **Section 5 – Application**

The Commission agrees to fairly and equitably apply this Article and any laws or regulations relating to any matter in this Article.

### **Section 6 - Union Notification**

- A. Management officials shall be responsible for properly notifying the Union President or designee in conjunction with any of the actions described in this Article.
- B. For actions covered by this Article, the Commission agrees to notify the Union as described below:
  - (1) Management will notify the Union at the earliest possible date, normally no less than ninety (90) days prior to the effective date.
  - (2) All notices to the Union will be given in writing prior to any notice to affected employees.
- C. The notice to the Union under this section shall consist, at a minimum, of the following information:
  - (1) The reason for the action;
  - (2) The approximate number, types, and geographic location of position(s) initially affected; and
  - (3) The approximate date of the action.

### **Section 7 - Freezing of Vacancies**

The Commission will freeze all relevant vacant positions sixty (60) days prior to the effective date of a RIF. The Commission may elect to fill vacancies after the conclusion of the RIF actions. When the Commission decides to fill a vacant position(s) after the effective date of the RIF, whether previously frozen by virtue of RIF or in the creation of new vacancies, employees who have been demoted through the application of RIF procedures will be offered the vacancy provided the employee is qualified or has been given a waiver of qualifications for the intended position. Employee entitlement to this special consideration shall be determined in accordance with the Article 20, *Merit Promotion*, of this Agreement.

### **Section 8 - Employee Notification**

An individual employee who is adversely affected by actions stated in this Article shall be given a specific written notice not less than sixty (60) days prior to the effective date of the action. All

such notices shall contain the information required by OPM regulations in addition to the information required by this Article.

### **Section 9 - Content of Employee Notices**

The content of the specific notice shall include the following information:

- A. The specific action to be taken;
- B. The reason for the action;
- C. The effective date of action;
- D. The employee's competitive area, competitive level, subgroup and service date, and the three (3) most recent ratings of record received during the last four (4) years;
- E. Information on reemployment rights (except as permitted by 5 C.F.R. § 351.803(a)); and
- F. The employee's grievance or appeal rights.

### **Section 10 - Employee Information**

The Commission shall provide information and assistance to impacted employees by:

- A. Informing all employees of the extent of the affected competitive area, the regulations governing such action, and the kinds of assistance provided to affected employees;
- B. Notifying employees of all regular competitive vacancies the Commission wishes to fill by advertising on USAJobs.gov or its successor;
- C. Conducting a placement program within the Commission, in accordance with applicable government wide rules/regulations. The placement program will include counseling for employees by qualified personnel on opportunities and alternatives available to affected employee(s).

### **Section 11 - Personnel Files**

At the written request of an employee, the Union may review any BUE's OPF if the employee believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with laws, rules, regulations, and provisions of this Article.

### **Section 12 – Records**

- A. The Commission will maintain all lists, records, and information pertaining to actions taken under this article for at least one (1) year in accordance with applicable rules and

- regulations after the date it issues a specific RIF notice.
- B. A copy of the retention-register will be made available to the Union at the earliest possible time. In addition, the Union is entitled to see employee-requested Commission records that detail their bump and retreat records.
  - C. An employee who has not received a specific RIF notice has no right to review the Commission's retention registers and related records.

### **Section 13 - Employee Use of Authorized Time and Commission Facilities**

- A. Employees who are identified for transfer of function or separation as a result of a RIF under this Article shall be entitled to a reasonable amount of duty time (at least forty (40) hours) for:
  - (1) Preparing, revising, and reproducing job resumes and/or job application forms;
  - (2) Participating in employment interviews;
  - (3) Using the telephone to locate suitable employment; and
  - (4) Reviewing job bulletins, announcements, etc.
- B. Such employees will also be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment: telephone, reproduction equipment, email, and counseling (EAP).

### **Section 14 - Performance Appraisals**

Annual performance appraisals for purpose of retention standing will be frozen thirty (30) days prior to the issuance of the notice of action. The three (3) latest annual appraisals of record during the four (4) year period prior to the cut-off date for accepting performance ratings will be used to determine eligibility for additional credit toward an employee's service computation date. To be credited under this section, an appraisal must have been issued to the employee with all appropriate reviews and signatures and must be on record.

### **Section 15 - Employee Response to Specific Notice**

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee shall have seven (7) days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available on or before the effective date of the RIF, the Commission will make the better offer to the employee. However, making the better offer will not extend the sixty (60) day notice period.



## **Section 16 - Displaced Employees**

The Commission shall provide any employee to be separated by RIF or transfer of function with the appropriate contact information regarding unemployment benefits available to them.

## **Section 17 – Details**

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record. Employees on detail will be evaluated based on their permanent position of record (e.g., not the detail).

## **Section 18 - Transfer of Function**

This section only applies when a transfer of function is used.

- A. When a transfer of function occurs, the Commission will first solicit qualified volunteers for transfer from among those employees in positions that have been identified for transfer only if no competing employee who is identified under Identification Method One or Identification Method Two will be separated or demoted solely because a volunteer transferred to the gaining competitive area. If there are not enough qualified volunteers from among these affected employees, the Commission will solicit qualified volunteers from the competitive area.
- B. If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing.
- C. In the event there are not enough volunteers for the transfer, the Commission will identify employees for transfer according to Identification Method One and/or Identification Method Two. Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions within the competitive area for which the employee is qualified and which the Commission has determined to fill.

## **Section 19 - Re-employment Priority Rights of Affected Employees**

- A. In accordance with 5 C.F.R. Part 330, the Commission will inform employees of their right and responsibility to complete a re-employment application. The Commission will provide the employee with a point of contact for personal assistance with the re-employment application.
- B. Career and Career-Conditional employees who have received a specific RIF separation notice or a Certificate of Expected Separation and who submit a complete Re-employment Priority List (RPL) application to Human Resources will be entered on the FERC RPL for the commuting area in which they are qualified and available.

Commission components must use the RPL in filling vacancies before offering employment to an individual from inside or outside the Commission, unless it meets one of the exceptions in 5 C.F.R. § 330.211. Employees may remain on the list for two (2) years from the date of RIF separation unless removed earlier based on the occurrence of one of the events in 5 C.F.R. § 330.208.

**Section 20 – Relationship to Laws and Government-wide Regulations**

- A. Employees covered by this LMA may file a grievance in accordance with Article 7, *Grievance Procedures*, of this LMA if the employee believes that the Commission failed to properly apply the RIF regulations.
- B. Nothing in this Article will be interpreted as precluding the Union from exercising any rights it might have under law or regulation.

## **ARTICLE 42: MID TERM BARGAINING**

### **Section 1 – Introduction**

- A. The Commission will follow the procedures of this section prior to implementing any proposed changes to established personnel policies and practices and other matters affecting the working conditions of employees in the unit, including past practices that are not enumerated in the Agreement.
- B. Nothing in this Article will be deemed to have waived the rights of either Party under the Statute.

### **Section 2 – Nonnegotiable Items**

If the Commission declares that a Union proposal is nonnegotiable, it will provide the Union with a brief written description of why such a determination was made. If the Union disagrees with the Commission's written determination of non-negotiability, it may seek further consideration in accordance with 5 U.S.C., Chapter 71, §7117. Nothing in the Article precludes the Parties from discussing alternative language that the Commission determines to be negotiable.

### **Section 3 - Procedures for Negotiating During the Term of the Agreement**

- A. Either Party may propose changes in conditions of employment during the life of the Agreement which are not already covered specifically by the Agreement. The initiating Party will provide the other Party with reasonable advance written notice, not less than thirty (30) days prior to the proposed implementation date.
- B. The notice will, at a minimum, contain the following information:
  - (1) The nature and scope of the proposed change
  - (2) A description of the change
  - (3) An explanation of the initiating Party's plans for implementing this change, including whether there is a need for expedited implementation of new policies or practices affecting conditions of employment due to emergency or unforeseen circumstance(s) that calls for immediate action.
  - (4) An explanation of why the proposed change is necessary (if known)
  - (5) The proposed implementation date.

- C. If the Union elects not to respond, does not provide written notice of their intent to bargain within the time limit, or if written proposals are not submitted within the time limit, the Commission will have no obligation to bargain on the matter and may implement the change(s).
- D. Either Party may request to be briefed on the proposed change(s) prior to the submission of the demand to bargain notice by requesting a briefing. If the receiving Party wishes additional information or an explanation of the notice, that Party may, within five (5) days of receipt of the notice, make a written request for a briefing (informal discussion) by the initiating Party. The briefing will normally take place within five (5) days of the written request, and/or for additional information, in order to clarify or determine the impact of the proposed change.
- E. If the receiving Party wishes to negotiate over the proposed change, it shall notify the other Party by submitting a written proposal(s) within twenty (20) days after receipt of the notice. Union proposals will be submitted to the Director of Workforce Relations, or designee. Management proposals will be submitted to the Union President or designee.
- F. The Parties will meet to bargain proposals within the next ten (10) days. Upon request by the receiving Party, the Parties will normally meet face-to-face or may also meet through virtual platform(s) with mutual agreement.
- G. The Parties agree to negotiate in good faith through appropriate representatives for the purpose of collective bargaining as required by law and this agreement. Implementation of changes in working conditions shall be postponed to allow for the completion of bargaining, up to and including negotiability disputes and/or impasse proceedings, except as required by law or by mutual agreement. The Commission shall implement all changes not subject to impasse. Either Party at any time may secure assistance from the FMCS. If the services of the FMCS do not resolve the impasse and the FMCS releases the Parties, either Party may submit the issue(s) at impasse to the Federal Services Impasse Panel to settle the impasse in accordance with 5 U.S.C. § 7119.
- H. If the initiating Party is unable to meet within the prescribed time frames the timelines may be extended.
- I. Barring emergency, changes will not normally be implemented until all bargaining obligations are met. If emergency circumstances occur, the Commission will notify the Union of the situation as soon as is practicable, and the Parties may agree to post-implementation bargaining on changes in working conditions. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. In the case of an emergency, management will notify the exclusive representative prior to meeting with employees and will meet their bargaining obligation.
- J. If the receiving Party does not wish to bargain, it can either respond back indicating so, or if the proposing Party does not receive any response, the proposing Party can go forward

with implementing the change after the expiration of the response period (thirty (30) days after notice is provided).

- K. Extensions may be requested in writing and shall be granted provided there is no adverse impact on the Commission for granting the delay.
- L. Nothing in this Article precludes the Commission and the Union from engaging in post-implementation bargaining, if mutually agreeable.

## **ARTICLE 43: COMPUTATION OF TIME**

### **Section 1 – General**

- A. Except as otherwise required by law, any period of time prescribed or allowed by this agreement is computed in accordance with 18 C.F.R. § 385.2007.
  
- B. The last day of any time period is included in the time period, unless it is a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday as designated in 5 U.S.C. §6103. In each case the period does not end until midnight of the next day which is not a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday.

## **ARTICLE 44: DURATION**

### **Section 1 - Duration of Agreement**

- A. This Agreement will be implemented and become effective when it has been ratified and signed by the Parties and approved by the Agency Head or on the 31<sup>st</sup> day after execution of the new agreement by both Parties, whichever is sooner. ratified, and signed by the Parties, including review pursuant to 5 U.S.C., §7114(c). If the Agency Head has neither approved nor disapproved the agreement, then this Agreement goes into effect on the 31<sup>st</sup> day. The effective date of this Agreement will be clearly stated on the title page/cover of this LMA.
- B. The duration of this agreement will be for a period of six (6) years from its effective date. It will remain in effect for yearly periods thereafter, automatically renewing on the anniversary date of the original effective date unless either Party serves written notice of its desire to renegotiate this Agreement. Either Party may give written notice to the other not more than one hundred and five (105) or less than sixty (60) days prior to the expiration date and each subsequent expiration date for the purpose of renegotiating this Agreement.
- C. Once a Party initiates negotiations pursuant to this article, the Parties shall meet within ninety (90) days of the receipt of notice to negotiate ground rules. The Parties will negotiate written ground rules prior to commencing negotiations of a new agreement.
- D. The current Agreement shall remain in effect until the new Agreement is executed.
- E. Joint labor management training will be conducted once for all BUEs and supervisors, within one (1) year of the effective date of this Agreement. Training logistic and schedule for a virtual meeting will be by mutual agreement. A representative from the AFGE District or National Office may attend the joint labor management session(s).

### **Section 2 – Reopener**

This Agreement is subject to reopening by mutual consent of the Parties concerned. Such negotiations shall be conducted in accordance with Article 42, *Mid-term Bargaining*. Changes in Government-wide regulations requiring amendments to the LMA shall be made through mid-term negotiations in accordance with Article 42, *Mid-term Bargaining*.

### **Section 3 - Amendments and Modifications**

This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Agreement. Any amendments to this Agreement agreed to by the Parties will be in writing and will become effective upon approval of the Agency Head or thirty-one (31) days after execution of the amendments, whichever comes first.

**Section 4 – Exceptions**

If any provision of this contract shall be held invalid by legislative act or court decision, the remainder of this contract shall not be affected thereby.

**Section 5 – Effect**

This Agreement replaces and supersedes all prior agreements and memorandums.

**END NOTE**

Contract bargained between March 2022 and September 2024.

Bargaining Team for the Agency:

Sidney Chapman (Chief Negotiator), Letitia Fournillier, Nicholas Behr, Sakishia Robinson, Beverly Smith, and Alesha Lewis Brooks

Bargaining Team for the Union:

Peter Winch (Chief Negotiator), Robin Cleland (Co-chief Negotiator), Kelly Wolcott, Danielle Elefritz, Peter Black (deceased, see dedication of this agreement).



**NEGOTIATING TEAMS**

Signed this XXth day of December 2024, at the U.S. Federal Energy Regulatory Commission, Washington, D.C.

**FOR THE FEDERAL ENERGY  
REGULATORY COMMISSION**

**FOR THE AMERICAN  
FEDERATION OF  
GOVERNMENT EMPLOYEES  
LOCAL NO. 421**

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Sidney Chapman  
Chief Negotiator  
Director, Workforce Relations Division

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Peter Winch  
Chief Negotiator  
Special Assistant, AFGE District 14

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Letitia Fournillier  
Negotiator

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Robin Cleland  
Co-Chief Negotiator  
President, AFGE Local No. 421

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Nicholas Behr  
Negotiator

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Danielle Elefritz  
Negotiator

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Sakishia Robinson  
Negotiator

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Kelly Wolcott  
Negotiator

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Beverly Smith  
Negotiator

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Alesha Lewis  
Negotiator

**Approved:**

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**Willie L. Phillips**  
**Chairman**  
**FERC**  
**Chairman**

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**Robin Cleland**  
**President**  
**AFGE, Local 421**

**This agreement is effective on August 19, 2024**