

SIGNATURE PAGE

The signatures to this Agreement set forth the parties' full and complete understanding that this is an accurate statement of the negotiated language agreed to by the respective bargaining teams during their negotiation of this Agreement.

For the US Customs and Border Protection
(CBP)

For the National Border Patrol Council
(NBPC)

 9/17/19

Mark A. Morgan Date

 9/13/19

Brandon Judd Date

(A) Commissioner
US Customs and Border Protection

National President
National Border Patrol Council

Collective Bargaining Agreement
Between the
National Border Patrol Council
And
U.S. Customs and Border Protection

Effective November 1, 2019

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Article 1

Recognition

A. U.S. Customs and Border Protection recognizes the American Federation of Government Employees, National Border Patrol Council, AFL-CIO, as the exclusive representative of the bargaining unit described as follows:

1. Included: All nonprofessional employees of U.S. Customs and Border Protection in the United States Border Patrol who are assigned to Border Patrol sectors.
2. Excluded: All other professional employees of U.S. Customs and Border Protection; professional employees; management officials; supervisors; and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (5), (6), and (7).

Article 2

Effect of Law and Regulation

- A. The parties will be governed by existing or future laws; and Government-wide rules or regulations in effect upon the effective date of this Agreement. Should any conflict arise between the terms of this Agreement and any present or future laws, provisions of such laws shall supersede conflicting provisions of this Agreement.
- B. Should any conflict arise between the terms of this Agreement and any Government-wide rule or regulation (other than a rule or regulation implementing 5 U.S.C. 2302), issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.
- C. In any conflict between the terms of this Agreement and any provisions of DHS or Agency Directives, Policies, Handbooks, etc., regardless of the date of issuance, the terms of the Agreement will govern.
- D. The requirements of this Article shall apply to all understandings or agreements between the parties.

Article 3

Union Relations at the National and Sector Levels

- A. The Agency and Union recognize that the participation of employees in the formulation and implementation of personnel policies and practices affect their well-being and the efficient administration of the government. The parties further recognize that the entrance into a formal agreement for the exchange of information in the broad area of personnel policy or practice at the national and Sector levels may contribute to the effectiveness of the labor-management relationship. They, therefore, agree to the following forums for the purpose of informally discussing all matters of interest or concern in the areas of personnel policies, practices and matters affecting conditions of employment, whether or not spoken to in the agreement. These discussions will not assume the character of formal negotiations. Although further study of problems raised by the Agency or the Union during these discussions may result, neither the Agency nor the Union is obligated to reach agreement on the issues addressed during these discussions.
- B. Conditions of employment are defined as found in § 7103(a)(14), as “personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions.”
- C. Representatives of the Agency and the Union shall meet at the national level annually during the month of May. An agenda covering the items to be discussed must be forwarded in writing to the Assistant Commissioner, Human Resources Management, at least thirty (30) calendar days prior to the scheduled meetings. Up to ten (10) additional agenda items may be submitted on the first day of the meeting.

Eight (8) Union representatives will be on official time while attending such meetings. The cost of travel, including per diem or actual subsistence, will be borne by the Agency. The meetings at

the national level will be held for three (3) days with travel on official time. Any additional representatives the Union feels are required for the meeting may attend, on annual leave or leave without pay, with the Union bearing the cost of their travel and per diem.

D. Representatives of the Agency and the Union at the Sector level shall have the opportunity to meet quarterly or at the request of either party for the settlement of local problems and for the improvement of communications, understanding, and cooperation between the Agency and constituent units of the Union. Any understanding reached at these meetings shall be recorded, signed by the parties involved, and copies forwarded to the Local President or his or her designee and the Chief Patrol Agent or his or her designee. Such understanding will remain in effect until amended through negotiations.

E. The Union will notify the Agency of the names of designated representatives of the Council, each Sector and any changes as they occur.

Article 3A

Impact and Implementation Bargaining at National and Sector Level

- A. The Union, in accordance with law and the terms of this Agreement has the right to initiate bargaining on its own and engage in mid-term bargaining over proposed changes in conditions of employment with the exception of the following areas:
1. Matters specifically addressed in this Agreement or another negotiated agreement between the parties.
 2. Matters where there is a clear and unequivocal waiver of the right to bargain by the Union, including those issues clearly and unmistakably bargained away as part of the legal implementation of other conditions of employment including the negotiation of this Agreement.
- B. When any bargaining is required during the term of the agreement, the parties agree to utilize post-implementation bargaining exclusively. When conducting post-implementation bargaining, the parties will meet within 60 days of the Agency receiving notice of the Union's request to bargain and will continue negotiations until an agreement is reached or an impasse is declared. Upon mutual agreement, extensions may be granted. Bargaining will not be required over changes in conditions of employment where the effect of the change is de minimis.
- C. Local and national agreements and past practices will stay in place unless they conflict with this Agreement or are re-negotiated in accordance with law and this Agreement.
- D. Procedures
1. The Agency shall present the changes it wishes to make to existing rules, regulations and existing practices to the Union. The Union will present its views and concerns (which must be

responsive to either the proposed change or the impact of the proposed change) within a set time after receiving notice from Management of the proposed change. In the absence of timely Union proposals, Management will have no obligation to enter into negotiations. Nothing in this article shall require either party to negotiate on any matter it is not obligated to negotiate under applicable law. The time will be:

Thirty (30) calendar days at National Level

Ten (10) calendar days at Sector level

National level:

At the end of the time period at the National level, the Union will serve notice of its intent to start negotiations. The Union will present its written proposals within ten (10) calendar days, and negotiations will commence the following calendar week. Agreements reached at such negotiations will be recorded in a memorandum of understanding to be signed by the representatives of the Agency and the Union.

Sector level:

The Union and local management will meet to discuss the changes. If no agreement is reached the Union may request negotiations, and such negotiations will begin within five (5) calendar days. Agreements reached at such negotiations will be recorded in a memorandum of understanding to be signed by the Union representative and the Chief Patrol Agent or his or her designee.

2. Negotiation teams at the National or Sector level will be authorized an equal number of representatives present on official time. Travel and per diem for the Union representatives will be borne by the Agency.

Article 4

Rights and Obligations

- A. This agreement or its provisions may not in any manner diminish or impair any rights which would otherwise be available to any employee in the absence of such an agreement.
- B. Management officials of the Agency retain the right to determine the mission, budget, organization, numbers of employees, and internal security practices of the Agency; and in accordance with applicable laws and regulations—(1) hire, assign, direct, lay off, and retain employees in the Agency, or to suspend, remove, reduce in grade or pay or take other disciplinary action against such employees; (2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted; (3) with respect to filling positions, to make selections for appointment from among properly ranked and certified candidates for promotion, or any other appropriate source; and (4) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

Nothing in this Contract shall preclude the Agency and the Union from negotiating:

- (1) at the election of the Agency on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, or on the technology, methods and means of performing work;
- (2) procedures which management officials of the Agency will observe in exercising any authority under this Article; or
- (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

- C. Nothing in the agreement shall require an employee to become or to remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.
- D. The preceding requirements of this Article shall apply to all supplemental, implementing, subsidiary or informal agreements between the parties.
- E. Employees shall have and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist the affiliated locals of this Union or to refrain from any such activity. Except as expressly provided herein or the Federal Service Labor-Management Relations Statute the freedom shall be recognized as extending to participation in the management of the Union and acting for it in the capacity of a Union representative, including presentation of its views to the officials of the Executive Branch, the Congress, or other appropriate authority.
- F. The Agency may provide the opportunity, but may not require employees to participate in recognized savings programs, charitable campaigns for contributions, or other community-related programs or efforts.
- G. An employee has the right to freely communicate with the appropriate member of the following offices concerning individual personnel matters:
 - 1. the Servicing Human Resources Office;
 - 2. the EEO Office or the EEO Officer;
 - 3. a Supervisor or Management official of a higher rank than the employee's immediate supervisor;
 - 4. EEO Counselors;
 - 5. the appropriate official in the Health and Safety Office.
- H. Any inquiry into an employee's off-duty conduct must be based on activity which, if verified,

would have a nexus to the employee's official position. The Agency and Union agree that the conduct of employees while off duty shall result in action concerning the employee only when there is a nexus between that conduct and the employee's official position. Employees will not be subjected to harassment or frivolous inquiries.

- I. The Union shall be given the opportunity to be represented at any formal discussion between one or more management representatives and one or more bargaining unit employees concerning any grievance or personnel policy or practice or condition of employment.

Article 5

Relationship of the Agreement to Agency Policies, Regulations, and Practices

- A. In prescribing regulations relating to personnel policies and practices and working conditions, the Agency shall have due regard for the obligation imposed by the FSLMR statute.
- B. For the stated duration of the Agreement, it will have the full force and effect of regulations within the Unit. During this period, the agreement will be modified only by the passage of legislation, and the issuance of O.P.M., Department of Homeland Security or Agency regulations required by law or other appropriate authorities, or by mutual agreement of the parties.
- C. This Agreement is not intended to abolish, solely by exclusion herefrom, any understandings or agreements which have been mutually acceptable to the parties. Such understandings or agreements may not conflict with the master agreement.

Article 6

Status of Employee Representatives

- A. The Agency shall not impose any restraint (except as may otherwise be provided in the FSLMR statute or this agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.
- B. A reasonable number of stewards may be designated by the Union or its affiliated Locals and shall be recognized as employee representatives. The Union will supply the Agency with their names and notify Management of any changes in the roster of stewards. Stewards will normally function within their Sector, except in unusual situations; as an exception to the payment of travel and per diem expenses otherwise provided for in this agreement, in such instances the Union will bear any cost of travel and per diem, and time traveling to and from the representational activity will be on official time.
- C. Upon request and approval in advance, Union officials are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms of the FSLMR statute by the Union in accordance with this agreement and any supplementary agreements hereunder. The Agency agrees that there shall be no restraint, interference, coercion, or discrimination against a Union official because of the performance of such duties during the period they are serving as Union officials. This does not preclude employees, including those on leave without pay, from being called back to their official duties when there is an immediate need

for their services.

- D. It is incumbent upon the Union to furnish Management the names of its stewards. In turn Management will advise new unit employees, or employees transferring between stations, upon entering on duty, of the name of the Local President.

Article 7

Union Representatives and Official Time

A. GENERAL PROVISIONS

1. Upon request and approval in advance, a reasonable period of official time will be granted to accredited representatives of the Union to perform the duties of their office which are consistent with the Statute and this contract. Local Presidents or their designees will normally be released to perform appropriate labor relations duties, subject to local workload requirements. In making this determination, local management will be sensitive to the obligation under Article 4 (Rights and Obligations) of this Agreement.
 - (a) A Local Union President or his or her designee may be granted up to two (2) hours travel time for the purpose of traveling to represent a grievant at any worksite within the Sector where there is no local Union steward.
2. When a representational activity is held at a particular time and/or official time is approved for a representative, the Agency will make the necessary shift adjustments for the participants to be on duty during the scheduled or requested date and time.
3. The Union representative and employee involved will obtain approval in advance from the employee's supervisor for any meeting during the employee's duty time which removes the employee from duty.
 - (a) Union representatives are permitted but not required to wear a uniform while on official time.
 - (b) Union representatives will not suffer any loss of pay, allowances, or other penalty for use of official time in accordance with BPAPRA and/or other relevant government rules and

regulations.

(c) Traveling to and from approved representational activities is official time and only compensable when it occurs during regular time hours, excluding periods of obligated overtime. Official time may be used during overtime hours only when, while the agent is engaged in the performance of agency work, an event arises incident to representational functions that must be immediately addressed during the overtime hours.

4. Upon request and approval in advance a reasonable period of leave without pay will be granted to Council and Local Officers for the purpose of carrying out Union-related duties.

B. OFFICIAL TIME: REPRESENTATIONAL ACTIVITIES

1. Union representatives will be authorized official time for all matters relating to the administration of this Agreement and labor-management relations matters, such as:

(a) Investigation, preparation, participation, and representation in regard to:

1. discrimination complaints and appeals;
2. informal employee or labor-management complaints;
3. unfair labor practice charges and hearings;
4. grievances;
5. disciplinary and adverse actions;
6. arbitration hearings;
7. statutory appeals;
8. health and safety related matters as authorized by law, regulation, policy and this Agreement;
9. attendance at committee meetings as the designated Union representative(s);

10. denial of within grade increases;
11. examinations of bargaining unit employees
12. labor-management meetings;
13. serving as technical advisor, co-representative, or otherwise assisting during hearings;
14. negotiations;
15. presenting the views of the Union to officials of the Executive Branch, the Congress, or other appropriate authority; and
16. maintaining records and reports required of the Union by 5 U.S.C. § 7120 (c).

(b) To meet, communicate, or confer with bargaining unit employees and representatives of the union concerning representational functions.

(c) To attend training mutually beneficial to both parties.

(d) Review of and respond to memoranda, letters, and requests from the Agency.

(e) Review and dissemination of instructions, manuals, and notices, which affect personnel policies, practices, or working conditions.

(f) Representation of bargaining unit employees (BUE) in matters related to critical incidents (shooting, accident, assault, death in custody, etc.).

2. Approval of official time for appropriate Union representational activities other than those specified above will be subject to review at the appropriate level. In this instance, activities that do not appear in the list above will be discussed with the submitting Union official. The parties may mutually agree to approve official time for the activity, but in the event the parties do not mutually agree, the denial may be grieved as a national grievance.

C. OFFICIAL TIME: BLOCK

1. The Union will be granted a total amount of official time for block, ad hoc, and training use in an amount not to exceed 74 full-time equivalent positions, which equals 153,920 hours.
2. In recognition of the nature and complexity of Agency operations consisting of rapidly evolving round-the-clock law enforcement operations, the parties agree that the Union will receive a block of hours that are pre-authorized for use as follows:
 - (a) The Union shall be granted a total of fifty (50) 100% block time positions which the Council will assign. However, at its discretion, the Union may assign an additional five 100% block time positions, for a total of fifty-five (55) 100% block time positions. The Union may appoint block time positions as 100% or 50%.
 - (b) The Union agrees to provide the Agency with a list of Union representatives who are allocated block time and the number of hours allocated to each. The Union will provide an updated list when changes occur. Local lists will be sent to the respective Chief Patrol Agent or designee and the national list will be sent to the Chief of the Border Patrol or designee, in advance of block time use.
 - (c) Union representatives who are allocated block time will notify the scheduling supervisor in advance of the administrative work week and coordinate scheduling if allocated less than 80 hours. Form G-955 is not required for block-time usage.
 - (d) Locals may allocate and schedule block time among representatives in no less than 40 hour increments.
 - (e) Union representatives working block time will be required to certify that they have worked time equivalent to an 8-hour workday but for the purposes of pay, will claim

an administrative work schedule (Monday-Friday, day shift). This will allow the representatives to complete work as it arises and prevent the Agency from having to contend with representatives electing to do work during night shift hours in order to enhance their pay.

- (f) Union representatives who are no longer designated as a full-time official will return to positions in the same series, grade, and location they occupied before assuming those duties without loss of seniority or shift-bid preference.

D. OFFICIAL TIME: AD HOC

1. The total amount of official time available for ad hoc use will be the remainder of official time after the number of full-time equivalent positions have been identified for block time use. On a quarterly basis, the Agency will provide the Union with a report indicating the total number of ad hoc official time hours used in that quarter.
2. Official time for representational activities, excluding block time, will be requested in accordance with the following provisions:
3. Union representatives will submit a CBP Request for Official Time for Union Business (Appendix VI, Form G-955) to their immediate supervisor or designated management official (DMO) to request official time.
4. Should the immediate supervisor or DMO be unavailable (e.g. off-duty, detailed out), the requestor may submit the G-955 to an on-duty shift supervisor.
5. Should the supervisor or DMO not be available, the representative may call the on-duty station supervisor to coordinate the submission of the G-955.
6. In cases where the G-955 cannot be submitted in person (e.g. representative is at home or there

is no on-duty supervisor), it may be emailed to the supervisor or DMO.

7. Supervisors should consider contractual timelines and Agency scheduled activities related to the requested time.
8. The following information must be completed on the Form G-955:
 - (a) Name of supervisor;
 - (b) Name, title, and duty location of representative;
 - (c) Date and time of request;
 - (d) Date(s) of official time requested;
 - (e) Total number of official time hours expected to perform activities described;
 - (f) Upon completion, supervisor will complete total number of hours used to perform activities described;
 - (g) Explanation of the activity to be performed which must include: the issue (i.e. overtime grievance, investigation of discrimination complaint, Sector LMR meeting, completing report for the Department of Labor, etc), and the location where the official time will be performed; if it will be performed at a CBP location other than the representative's regular duty station;
 - (h) The representative's contact phone number;
 - (i) The duty location of the employee(s) being represented if formal action has been initiated, the name and title of the employee;
 - (j) Signature of the representative making the request;
 - (k) Date and time the representative signed the request; and
 - (l) The reviewing supervisor will circle approved or denied and if denied, will explain.

9. The supervisor will endorse the form in a timely manner indicating approval or denial, retain one copy and return one copy to the requester.
10. If the union official is not provided an answer to the request prior to the time requested, he or she may assume it is approved.
11. When appropriate, the Agency will work with the representative to schedule an alternate time and/or date for use of the requested official time.
12. When official time is denied, the supervisor will provide an explanation for the denial in a timely manner. If denied due to operational impacts the supervisor will work with the requestor to identify an alternate time to mitigate impacts to operations.
13. If the request is approved, the union official will advise his or her supervisor, either orally or in writing, as to the date and time of his or her return to duty and total number of hours used. The supervisor or designated management official will calculate the amount of official time used. If different than what was initially approved, the supervisor will provide a copy to the union official and forward it to the timekeeper for the time and attendance record.
14. The requirement that the written notice be made in advance will not apply in cases where such advance written notice would be impractical. Examples of instances where the advance submission of a G-955 would have been impractical are: shootings, traumatic accidents, significant incidents, and events directed by the Agency (e.g. meetings, phone calls, interviews). Even in these circumstances, the G-955 will be submitted subsequently.

E. TRAINING OFFICIAL TIME

1. Union representatives may be excused from duty and granted official time, workload permitting, to attend training that is designed to advise representatives on federal labor

relations matters and which is of mutual benefit to the Agency and the Union.

2. A Union representative requesting to attend such training will present a description of the course to the Agency.
3. Absent mutual agreement, the Agency will not pay travel, per diem, course fees, or any other costs incidental to the approved training.
4. Requests for Union-sponsored training will be submitted with the agenda that includes the actual hours that training will be conducted. Normally, requests will be received in writing from the Union at least 30 days in advance of the date training is scheduled to commence. At the local level, when training involves 1-2 stewards the request will be made prior to the posting of the G259. Management will notify the Union of its decision on the request as early as practical, no later than 15 days after receipt of the request.
5. Official time for this purpose will be charged to ad hoc or block time.

Article 8

Use of Official Facilities

- A. At the request of the Union, subject to availability, space will be made available for meetings of the Union during non-duty hours of the employees involved. The Union agrees to exercise reasonable care in using such space and will leave it in a clean and orderly condition.
- B. Each Agency installation will provide bulletin board space in a place of prominence for posting material published by the local AFGE Local, by the National Headquarters of the AFGE, and the National Border Patrol Council. In each Sector Headquarters the Agency will provide one locked bulletin board of a size approximately 3' by 3' for posting of material. The bulletin boards will be permanently attached to the walls where building management regulations permit such permanent installations. Arrangements for space and installation of bulletin boards shall be made with the appropriate Chief Patrol Agent.
- C. In addition, miscellaneous items such as notices of items for sale, etc., may be posted upon approval of the Union. The Union shall be responsible for all matters on the bulletin board and each item placed thereon shall be initialed and dated by a Union official. The Union agrees to keep its bulletin board space in a neat and acceptable manner. Literature or notices posted will neither violate any law nor contain libelous material. Official publications of the Union that are transmitted to an Agency installation shall be placed in a place of prominence where they shall be readily accessible to all employees at that installation. For this purpose, mail drawers shall be considered such a place of prominence where mail drawers are provided to employees. Such publications shall not be delayed in distribution to the Union official addressed or general distribution to appropriate employees.

Article 9

Identification of Employees in the Unit

- A. The Agency agrees to provide to the Council President, within sixty (60) days after this agreement goes into effect and quarterly thereafter, a list reflecting the name, grade, duty station and position title of all bargaining unit employees. Employees that entered on duty in the Sector within the last quarter will be appropriately marked. Said list shall group employees by duty station and position title. The parties recognize that the listing will not be construed as action by the employer to unilaterally deny bargaining unit status to any employee or to confer it.

Article 10

Outside Employment

- A. Outside employment, including self-employment, must not result in or create the appearance of a conflict of interest with official duties or with official business of the Agency nor impair the employee's mental or physical capacity to perform official duties. The employer shall not take actions regarding an employee's outside employment which are arbitrary or capricious.
- B. Employees desiring to accept or undertake outside employment, including self-employment, shall request permission in writing and obtain written authorization from the employer prior to commencement thereof, consistent with this Article. The request must be made on form CBP 3031 (Appendix IV).
- C. An employee's request must be submitted to the employer at least fourteen (14) calendar days prior to proposed commencement of outside employment or business activity.
- D. The employer will respond to the employee, approving or denying the request, as soon as possible but not later than 15 calendar days after receipt of the request. When the employer denies a request, the employee will be advised of the reason therefor.

Article 11

Union Representatives Permitted on Government Property

- A. National representatives of the Union, Council Officers and Council employees shall be permitted upon all Agency installations. It is understood that such Union representatives shall, whenever possible, give advance notice to the supervisor in charge of the installation of their impending visit. Upon arrival, he or she shall attempt to advise the supervisor, if available, of his or her presence.
- B. Such representatives shall not interfere with the work of the employees of the installation during duty hours. Council Officers, Council employees and National representatives of the Union shall be permitted to participate in meetings between Local representatives and the Agency.

Article 12

Personnel Manuals

- A. The Agency agrees to provide employees with an up-to-date policy repository in electronic format of Agency personnel policies that employees must adhere to.

Article 13

Dues Withholding

A. The Agency will maintain a system for voluntary allotments by employees in the unit for the purpose of paying dues to the Union.

B. Definitions

1. Dues: The regular, periodic amount determined by the Union to be required of the member to maintain good standing in the Union. This amount is certified by the Union on the SF-1187 form and excludes special assessments, back dues, fines, and similar items not considered to be dues. A multi-level dues structure may be utilized
2. SF-1187: Request for Payroll Deductions for Labor Organization Dues.
3. SF-1188: Cancellation of Payroll Deductions for Labor Organization Dues.
4. Payroll Office: National Finance Center, CBP Office of Administration.

C. Eligible Employees

1. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:
 - (a) Be in the Unit covered by this Agreement;
 - (b) Be a member in good standing with the Union;
 - (c) Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
 - (d) Request the allotment on SF-1187, which has been certified by the authorized Union official.

D. The Union will:

1. Inform and educate members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
2. Provide SF-1187 to employees;
3. On the SF-1187, certify the amount of dues to be withheld each biweekly pay period and identify the Local to receive the dues deductions;
4. Forward the completed SF-1187 to the email address designated by the Agency; and
5. Provide the designated official of the Agency with written notification concerning:
 - (a) Changes in the amount of Union dues.
 - (b) The names of those Union officials authorized to certify the SF-1187s.
 - (c) The name of any employee who has been expelled or ceases to be a member in good standing in the Union within 30 days of such determination; and
 - (d) the name of any employee on dues check off who transfers from one Local to another and any change in the amount to be deducted, when the Union becomes aware of an employee transferring to a different Local.
6. In Sectors where there is more than one Local, each Local will have the right to process SF-1187s.

E. The Agency will:

1. Screen each SF-1187 to ensure that only eligible employees are on the dues withholding listing.
2. Certify on the SF-1187 that the employee is a member of the bargaining unit and promptly process the allotment.
3. Return the annotated SF-1187 to the employee, if the employee is not a member of the bargaining unit, with an explanation as to why the SF-1187 is being returned.

4. Screen each personnel action and promptly terminate allotments for employees who are promoted or transferred out of the unit permanently.
5. Ensure that employees who are transferred, reassigned, or relocated to a different Local within the bargaining unit remain on dues withholding.
6. Provide an electronic report to the National Border Patrol Council Treasurer with the name and location for all employees who have had any dues deduction action processed. This report will be provided every pay period and the National Border Patrol Council will be responsible for providing the contact information for their treasurer.
7. Terminate dues allotments automatically after two pay periods for employees who promote or transfer out of the bargaining unit. It is the employee's responsibility to check their Leave and Earning Statement (LES) to verify the cancellation. If the employee discovers the allotment has not automatically terminated, the employee must notify the designated Agency official.

F. The following procedures govern the voluntary allotment of dues:

1. Withholding of Dues.

- (a) Upon receipt of a properly completed SF-1187, the Payroll Office shall arrange to withhold the Union dues in accordance with existing pay periods and procedures under which employees are regularly compensated.
- (b) The dues deduction will be effective as soon as possible, but in no case later than two full pay periods following receipt of the SF-1187 by the Payroll Office.
- (c) Employees who meet the eligibility requirements for dues withholding and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF- 1187.

2. Changes in Dues.

- (a) The amount of dues certified on the SF-1187 will remain unchanged until an authorized Union official provides written certification that the amount of dues has changed. A new SF-1187 will not be required.
- (b) Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than twice in a twelve month period.
- (c) Changes in the amount deducted for Union dues will be effective as soon as possible, but no later than two full pay periods following receipt of the notice from the Union.

3. Termination of dues

- (a) An allotment for the deduction of dues with respect to any employee shall terminate and be processed by the Agency when:
 - i.) the agreement between the agency and the exclusive representative ceases to be applicable to the employee; or
 - ii.) the employee is suspended or expelled from membership by the exclusive representative.
 - iii.) An employee submits a properly completed SF-1188 to the Agency.
 - (a) After being a member continuously for one year, an employee may submit an SF-1188 to the Agency for the revocation of an allotment.
 - (b) Employees may voluntarily terminate allocation of union dues.
 - (i) No revocation can be effective before the employee's first anniversary date following the commencement of union dues.
 - (ii) Thereafter, revocations will be effective the first full pay period following September 1, if the request is received by September 1.

G. Bargaining Unit Status Determinations

1. The Federal Labor Relations Authority (FLRA) is the exclusive authority for determining bargaining unit status of Agency positions.
2. When the Agency determines a position subject to dues withholding is no longer eligible for such deduction, it will cease dues withholding.
3. If the Agency's action in (2) is contested through a Clarification of Unit Petition and the FLRA determines that an employee who had authorized dues withholding should not have been removed from the bargaining unit, the Agency will reimburse the Union for all dues that should have been withheld during the period the Agency erroneously withheld dues.

Article 14

Leave

- A. Annual leave is a right of the employee and not a privilege. Consistent with the needs of the Agency, annual leave which is requested in advance will be approved. It will be the responsibility of the supervisor, in consultation with the employee, to schedule annual leave in order that annual leave will not be forfeited.
- B. The employer will make every effort to schedule workloads and annual leave in a manner which permits each employee, if he or she wishes, to schedule at least three (3) consecutive weeks of accrued annual leave each year.

The number of employees granted leave during any given period shall be governed by Agency requirements and the number of employees required for necessary coverage.

- C. Each employee will be given the opportunity to submit their leave preferences, in accordance with his or her personal desires, so that the master leave schedule can be established and posted in conspicuous places at each duty location no later than the beginning of each six-month period, as defined herein, which will commence on October 1st and April 1st, respectively, of each calendar year:
 - 1. By July 15th and January 15th of each year, the Agency will provide at least a two-week period for employees to provide their preferred, and alternate annual leave periods for each requested timeframe for master leave scheduling purposes.
 - 2. Employees will be arranged in order of seniority, as defined in Appendix I, and their requested periods of annual leave will be arranged in order of preference. Each employee will be granted their first available leave choice and then move to the next employee on the

- list. After moving from the most senior employee down to the most junior employee, the list will start over again with the most senior employee and continue to move through the list until all leave requests have been considered or there are no more available periods of time.
3. If the Agency is unable to grant an employee's first preference in a particular timeframe, the Agency will utilize the alternate preference requested. If the employee's first preference cannot be approved, the agency will record the employee's next available alternate. Should none of the requested timeframes be available, the Agency will make a reasonable attempt to notify the employee in an effort to identify an additional alternate period of leave.
 4. Upon request the Union will be allowed to be present during the master leave scheduling process.
 5. Employees who do not request leave by the beginning of the applicable master leave period (October 1st and April 1st) will be allowed to take leave at a later date, provided it does not interfere with annual leave scheduled or the needs of the Agency. Requests for annual leave of five (5) days or less need not have been included in the annual leave schedule provided all five (5) days are within one administrative workweek.
 6. Normally annual leave once approved will not be canceled. Annual leave will be canceled only for exigencies of the Agency's business when such leave was approved in advance. Before canceling leave the Agency will make a reasonable effort to take other action.
 7. The Agency will furnish employees with a copy (electronic or paper) of the posted master leave schedule at each duty location by the start of the respective pay period immediately prior to March 1st and September 1st of each year.

8. The Agency will furnish a copy of each duty location's posted master annual leave schedule to the appropriate Local President or Council President, upon request. The Agency will make available all submitted master leave request forms and the Union may make copies as needed, upon request.
 9. Normally annual leave once approved will not be canceled. Annual leave will be canceled only for exigencies of the Agency's business when such leave was approved in advance. Before canceling leave the Agency will make a reasonable effort to take other action.
- D. Any employee-initiated change in approved vacation schedule cannot be made without the concurrence of all employees whose vacation schedule would be affected by the change.
 - E. For other scheduled non-master leave requests, seniority will be utilized as a tie-breaker.
 - F. An employee may be excused to vote, insofar as practicable, without interfering seriously with operations as follows:

If the polls are not open at least three hours, either before or after an employee's hours of duty, he or she may be allowed to report for work three hours after the polls open or to leave work three hours before the polls close, whichever requires the lesser amount of time off. Depending upon exceptional circumstances in an individual case, an employee may be excused for such additional time necessary to vote, but not to exceed a full day.
 - G. Permanent employees will be granted necessary time off without charge to leave or loss to pay to serve as a juror, or as a witness on behalf of the United States, a state or municipality when officially required to appear. This excludes administrative proceedings.
 - H. For sick leave periods of not more than three consecutive workdays, the employee shall not be required to submit Form OPM-71, unless there is reasonable evidence of abuse. Sick leave in excess of three days shall be reported on form OPM-71, including a medical certificate or a

statement of the nature of the illness and why a medical certificate is not furnished.

- I. When weather and safety leave is granted in the case of inclement weather or other conditions which warrant such leave, Management will notify employees on duty.

The employer will make a reasonable effort to notify employees who have not yet reported to duty that weather and safety leave has been granted.

If hazardous weather or emergency conditions existing within the employee's normal commuting area prevent an employee from reporting to work, and the post of duty is not closed, an employee can be granted weather and safety leave for the day, or that part of a day, during which such conditions prevented the employee from reporting to work. To be eligible for leave under this subsection, the employee must provide the employer with evidence that he or she made every reasonable effort to report to work, but that such conditions prevented him or her from doing so.

- J. An employee may be granted annual leave or, if annual leave is exhausted, leave without pay (up to 14 calendar days) for the purpose of aiding, assisting or caring for his wife or minor children while his wife is incapacitated for maternity reasons.
- K. Annual leave or sick leave balances will not be factors for promotion. However, evidence of leave abuse may be used as an aid in determining reliability of an employee.
- L. Employees effecting a change in duty station may be granted administrative leave not to exceed four (4) workdays to make all necessary arrangements for preparing and actually effecting the transfer.
- M. Absent exigent circumstances, employees who request unscheduled leave will notify their supervisors at the particular duty location as soon as possible.

Article 15

Development and Training

- A. The Agency and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. Through the procedures established for employee-management cooperation, and consistent with the needs of the Agency, the parties shall seek the maximum training and development of all employees. The Agency agrees to develop and maintain forward-looking effective policies and programs designed to achieve this purpose, consistent with its needs.
- B. The Agency and the Union recognize that each employee is responsible for applying reasonable effort, time, and initiative in increasing his or her potential value to the Agency through self-development and training. Employees are encouraged to take advantage of training and educational opportunities needed to increase their efficiency in the performance of their duties and for possible advancement in the Agency.
- C. The nomination of employees to participate in training and career development programs and courses shall be based on Agency needs but will be free of personal favoritism.
- D. The Agency agrees to make available to employees training opportunities and seminars consistent with Agency goals. In accordance with law, rule, or regulation, employees may be granted variations within the normal workweek, including leave without pay, for educational purposes consistent with Agency needs.
- E. The Agency encourages the individual employee to develop a personal plan for career self-development. In developing this plan the employees may seek counseling and advice from his or her supervisor. (See Article 4, Section G, for permission to contact personnel office or higher level

supervisor for advice.) The Agency agrees to provide lists and catalogs on available Agency training.

- F. The Agency agrees to provide appropriate training in trainee level positions according to its needs and provide employees with information about that training.
- G. The Agency will maintain records for all employees who receive Agency training.
- H. The Agency encourages the Union to submit recommendations to the Chief of the Border Patrol or Chief Patrol Agents or their designees concerning employee training needs and programs.
- I. The Agency agrees to provide refresher or advanced training in accordance with established Agency policies.
- J. Refer to Appendix III for Temporary Assignments and Collateral Duties.

Article 16

Classification

- A. The Agency encourages the Union to make known to the Agency its views on the adequacy or inadequacy of occupational classification standards. The Agency agrees to consider the Union's oral or written views concerning the occupational classification standards and will notify the Union, in like manner, of any action taken.
- B. Classification decisions rendered by the Agency or OPM having the effect of establishing a grade level within an occupation, hitherto nonexistent in that occupation, will be forwarded by the Sector in which the action is taken to Headquarters for circulation of that decision and the basis for that decision to all other Sectors. This information will be considered where appropriate in the subsequent classification of similar positions within the occupation throughout the Agency.
- C. When the employee designates the Union as the employee's representative in a classification appeal the representative may discuss the classification appeal with the classifier prior to the beginning of a desk audit. Sufficient time shall be allowed prior to the beginning of the desk audit for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will summarize his or her findings for the appellant and the Union representative.
- D. Classifiers will continue to make visits to field position locations to conduct desk audits of the different Agency positions. Notice of the visit of the classifier will be posted as far in advance as possible on the bulletin board of the station he or she intends to visit.
- E. The Agency will provide every employee with an accurate description of the duties which may govern his or her grade. The employee will be encouraged to discuss any changes or inaccuracies

with the supervisor who will also maintain a continuing review of duties.

- F. If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. Upon request of the employee, a Union representative may be present during this discussion. If the employee wishes to further pursue the question, he or she may forward a written request to the Servicing Human Resources Office. The Servicing Human Resources Office will either answer, or acknowledge receipt of, the request in writing within 30 calendar days, providing an estimate of the additional time needed to reply.
- G. The parties agree that, except where the Agency would be impeded in carrying out its overall law enforcement mission, duties not specified in an employee's position description, or reasonably related thereto, will be avoided unless temporarily required by the needs of the Agency.
- H. The parties recognize that details to other positions and activities are necessary and an integral part of mission accomplishment. The Agency will not use details to avoid filling positions at a higher grade level, nor will they be made on the basis of personal favoritism. Should the requirements of the Agency necessitate an employee's being detailed to a lower position, this will in no way adversely affect the employee's salary, classification, or job standing.

If a detail of more than 120 calendar days is made to a higher grade position, or to a position with known promotion potential, it must be made under competitive promotion procedures.

If an employee alleges that a detail violates OPM regulations or this agreement, he or she may file a grievance under the negotiated grievance procedure.

Article 17

Safety and Health

- A. The Agency agrees to provide safe and healthful working conditions, taking into account the mission of the Agency and the inherent hazards of the job performed.
- B. The Agency agrees to maintain a joint Union-Management Safety and Health Committee in each Sector. The Committee shall be composed of at least one representative of Management and one representative of the Union. The Union representative shall be selected by the Union.

The Committee shall:

- 1. Meet as often as necessary upon request of either party;
- 2. Make inspections of the facilities annually;
- 3. Make recommendations to the appropriate management official for the correction of unsafe or harmful conditions and the elimination of unsafe or harmful work practices;
- 4. Promote health and safety education; and
- 5. Make recommendations for awards relating to safety which will be forwarded through official channels to the appropriate offices for action.

The names, duty stations and telephone numbers of the joint Safety and Health Committee will be posted on all official bulletin boards.

- C. The Union agrees to participate on the Committee and will endeavor to have its members observe all safety rules and use all equipment and safeguards provided. Members of the Committee, upon request and with the approval of the designated management official, shall be allowed official time to leave their work, for the purpose of performing their duties as outlined in this Article, without loss of pay or charge to leave. Such meetings can only occur during the regular eight-hour shift.

- D. In the course of performing their normally assigned work, employees will be alert to observe unsafe practices and conditions. If an unsafe condition is observed, the employee shall report it in writing to a member of the Union-Management Safety and Health Committee.
1. The Committee shall meet within seven (7) calendar days of notification that a question has arisen and shall issue its recommendations in writing to the designated local management official no later than fourteen (14) calendar days after their meeting. In the event that the members of the Committee do not agree on the recommendations, any of the members shall have the right to express a written minority view. It shall be the responsibility of both parties to insure the availability of the committee representative within the stated time limits.
 2. The written decision or an interim response of the Agency shall be rendered within fourteen (14) calendar days after receipt of the Committee's recommendations.
- E. In the case of identical grievances on Safety issues arising under this section, involving two or more Sectors, subject to the consent of the employees involved, one safety grievance shall be selected by the Union for processing. All decisions for that grievance will be binding on the other safety grievances.
- F. Agency policy prohibits the use of vehicles not in safe operating condition. Negligence in reporting vehicle damages may be grounds for disciplinary action being taken against the responsible operator.
- G. When an employee believes he or she is being required to work under conditions which are unsafe or unhealthy beyond normal hazards inherent in the operation in question, he or she shall refer the matter to his or her supervisor. The supervisor will make an evaluation of the working conditions, and direct that the work either be continued or stopped.
- H. Copies of reports furnished to the Department of Labor in compliance with E.O. 12196,

“Occupational Safety and Health Program for Federal Employees” will be available to the Union.

- I. To the maximum extent possible, employees assigned to duties in an office should be accorded an uninterrupted lunch period between the third and fifth hours of duty where lunch periods are customarily taken. The Agency shall provide clean and healthful lunch rooms, at offices where lunch facilities are available, for the consumption of food.

Article 18

Injury Compensation

- A. When employees or their representatives report an illness or injury has occurred in the performance of official duties, the employees at their request will be promptly counseled by trained personnel as to their right to file for compensation benefits and the benefits payable. The employee also shall be advised as soon as possible that, when traumatic injury leave has been exhausted, compensation benefits can be used in lieu of sick or annual leave. The Agency will give appropriate assistance to the employee in filing a compensation claim.
- B. The Agency and Union understand that injury compensation cannot be paid for any period when an employee is on paid leave. If, when traumatic injury leave has been exhausted, the injured employee has sick or annual leave to his or her credit, he or she may decide whether to use all or part of it before applying for injury compensation. If the employee should be charged for sick or annual leave (or if he or she is so charged because he or she was not informed of the possibility of injury compensation benefits), he or she may repay in a lump- sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave. This repayment would permit him or her to qualify for injury compensation provided all other conditions are met.
- C. Employees will be permitted to review documents relating to their claim which the Office of Workers' Compensation and Servicing Human Resources Office have authorized to make available. Employees may be accompanied by their designated representative if they so desire.

Article 19

Fitness for Duty Examination

- A. In directing employees to undergo a fitness for duty examination, the Agency will observe applicable rules and regulations.
- B. Employees will be advised of their right to have a Union representative if conditions exist pursuant to 5 U.S.C. 7114(a)(2)(B), or not prohibited, by OPM procedures.

Article 20

Injured or Incapacitated Employees

- A. Any employee who has been injured or incapacitated on the job and able to perform light duty will be assigned to such duties that he or she is able to perform, when such duty is available, until he or she has recovered from the injury or incapacitation. Employees will be eligible for recommendation for promotion although they are serving in light duty status.
- B. An employee who suffers a compensable illness or injury and later, within one year after commencement of benefits, fully recovers from such illness or injury and meets the physical requirements of the position to which he or she is being assigned will be restored to duty in the former or an equivalent position in accordance with 5 USC 8151 and 5 CFR 353.301(a) et seq.
- C. The Agency shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his or her former or equivalent position, in accordance with 5 USC 8151 and 5 CFR 353.301 et. Seq.
- D. Temporary light duty, when available, is for eligible employees who are unable to perform the essential duties of their position because of an injury, illness sustained off duty, or pregnancy, and who are capable of performing alternative duty assignments. Therefore, the Agency will give eligible employees an opportunity to work in temporary light duty assignments where available and consistent with the Temporary Light Duty Directive.

Article 21

Personnel Files

- A. No derogatory material of any nature which might reflect adversely upon the employee's character or Agency career will be placed in his or her electronic Official Personnel File (eOPF) or Employee Performance File (EPF) without his or her knowledge.
- B. In the interest of strengthening supervisor-employee relationships, supervisors will discuss employee work performance or work deficiencies with the involved employee(s) on a timely basis.
- C. Upon written request of the employee concerned, his or her eOPF, EPF, position description and classification standards will be made available to the employee or his or her representative for his or her information in the processing of any complaint, grievance, adverse action or allegation of discrimination. Such material will be made available as soon as possible for review in the office of a supervisory official of the Agency during the normal business hours of that office. The employee or his or her representative will be assisted by the Agency in obtaining machine copies of the position description, classification standards, or such material from the official personnel file as may be needed by the employee in connection with the matter which forms the basis for the review.
- D. When the Union is designated as the representative of an employee, it will furnish the name and address of the representative to the Agency in writing and copies of all correspondence addressed to the employee will be furnished to the representative.

Article 22

Equal Employment Opportunity

- A. The Agency and the Union agree to cooperate in providing equal employment opportunity for all qualified persons; to prohibit discrimination based on a protected status and to promote full realization of equal employment opportunity through a positive and continuing effort.
- B. The Agency and the Union will support and strive for the realization of the following listed EEO programs:
 - (1) A more balanced representation of minority groups and women in law enforcement positions, consistent with Merit System Principles, and applicable law.
 - (2) Upward Mobility of clerical and other support personnel into occupations with greater career advancement potential as identified by the Agency.
- C. The Agency and the Union agree that the upward mobility and career programs are of paramount importance. The Council President may submit to the appropriate Sector Office or to the Headquarters, his or her specific written recommendations including the suggested methods of implementation relating to the upward mobility and career development programs within the Agency.
- D. The Agency agrees to furnish annually to the Union the MD-715 reports sent to the OPM. The Agency will brief Sector representatives on the status of local EEO programs at the Sector meetings held in accordance with Article 3 of this agreement. The Agency will accept and consider any written proposal furnished by the Council President for use in updating EEO plans of action.
- E. The Agency agrees to furnish to the Union an annual summary of the number and types of discrimination complaints received.

F. In accordance with appropriate regulations, where corrective or remedial action to be taken as a result of adjudicatory procedures would appear to conflict with a provision of a negotiated agreement, management shall provide the Union with reasonable notice and the opportunity to bargain to the fullest extent required by law. If the Agency is ordered to take action by an EEOC Order and bargaining is not completed before the date required to take such action, the Agency will continue to meet its bargaining obligations by continuing negotiations on a post-implementation basis.

Article 23

Reduction in Force, Transfer of Function, Reorganization

- A. The Agency and the Union jointly recognize that occasions may arise where adjustments of the workforce may be necessary either by reduction-in-force, transfer of function, or reorganization. When such adjustments involve release of employee(s) from competitive level or area, they will be conducted in accordance with this Article.
- (1) A reduction-in-force means the release of competing employees from their competitive level by separation, demotion, furlough for more than 30 days or more than 22 discontinuous workdays, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; an individual's exercise of certain reemployment rights or restoration rights; or a reclassification due to erosion of duties when it occurs within 180 days of a formally announced RIF in the competitive area.
- (2) Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.
- (3) Reorganization means the planned elimination, addition, or redistribution of functions or duties in an organization.
- B. Prior to official notification of employees, the Council will receive at least thirty (30) days advance notice of any pending reduction-in-force, transfer of function or reorganization. This notice, in writing, will include the reasons for the reduction-in-force or transfer of function or reorganization,

the approximate number and types of positions affected, the approximate date of the action, and an invitation to the Union to a meeting conducted by the Agency to explain the reduction-in-force or transfer of function or reorganization procedure, and answer relevant questions.

- C. The Agency will attempt to minimize actions that adversely affect employees which often follow a reduction-in-force by using, to the extent feasible, attrition to accomplish reductions. All reductions-in-force will comply with applicable laws and regulations.
- D. The Agency agrees to provide affected employees as much advance notice of reduction-in-force or transfer of function or reorganization as is administratively possible, but in no case will such notice be less than 30 calendar days. All such notices shall contain the information required by OPM regulations. When a general notice is issued to employees, a specific notice will be given the employee not less than five (5) calendar days preceding the effective date of the action.
- E. All reductions-in-force (RIFs), transfers of function and reorganizations will be carried out in compliance with laws, and any alleged violation of applicable laws and regulations will be subject to review under the negotiated grievance procedure beginning at Step 3 of Section E.
- F. With regard to RIF actions which would otherwise be appealable to the Merit Systems Protection Board, an employee who alleges a violation of a prohibited personnel practice under Section 2302(b)(1) of Title 5, U.S. Code may elect either to appeal to the Merit Systems Protection Board or under the negotiated grievance procedure, but not both.
- G. Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade at the position offered by the Agency. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected

employees shall have the right to the assistance of the Union when reviewing such lists or records.

H. Affected employees shall have a minimum of five (5) calendar days in which to accept or reject, in writing, an offer of another position. Failure of employees to respond, in writing, to the offer within the time limits will be considered a rejection of the offer.

I. The Agency will:

(1) inform employees of plans for the transfer of function and the governing regulations after a decision has been made;

(2) notify the employee of the proposed plan, in writing, so that the employee will be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have not less than 30 calendar days to accept or reject the position offered;

(3) assist and counsel affected employees in seeking placement opportunities with other Federal Agencies or elsewhere in the community;

(4) counsel employees on individual rights relating to such matters as retirement and severance pay.

J. In the event career or career-conditional employees are separated by reduction-in-force, the Agency will refer these names to the Department of Homeland Security for inclusion on the appropriate reemployment priority list in accordance with governing regulations. Employees will be given preference for reemployment consistent with governing regulations. The Agency will provide affected employees information regarding employment possibilities with other Government agencies, retirement, severance pay, and other benefits available to them.

K. If, as a result of a reduction-in-force or a transfer of function, an employee is reassigned to a new position, the Agency agrees to comply with all applicable laws and regulations requiring that it

provide employees a fair opportunity to attain satisfactory performance.

- L. The parties agree that technological changes such as automation and reengineering are desirable for the efficient operation of the Agency. However, decisions and actions concerning the impact of these changes should be made with a full awareness of employee morale. In light of this, when such changes affect the classifications, or status, of positions covered by this agreement, the Agency will meet with the Union to discuss these changes. The Agency will attempt to minimize the adverse impact of these changes by using attrition and reassignment.
- M. In the event of a transfer of function or reorganization of Agency activity to another government entity, the Agency will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.
- N. Nothing in this Article shall be interpreted as a waiver of the Union's right to initiate bargaining over impact and implementation, as provided for by 5 U.S.C. 7106(b)(2) & (3), on any proposed reduction-in-force, transfer of function or reorganization. Absent mutual agreement to do so, no such bargaining will include reopening the provisions of this Article.

Article 24

Acceptable Level of Competence - Within Grade Increases

- A. All determinations that an employee's work is not at an acceptable level of competence and any subsequent actions shall be governed by applicable laws and regulations (5 U.S.C. § 5335 and 5 C.F.R. Part 531). Current laws and regulations include a requirement that the Agency provide such employees with a written notice setting forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase, and informing the employee of his or her right to request that the appropriately designated Agency official reconsider the determination.
- B. All notices informing employees of their right to request reconsideration shall set forth all of the statutory and regulatory requirements governing such matters in effect at the time of the negative determination.

Article 25

Uniforms

- A. The employer has determined that the maintenance of a uniformed force of employees will promote the law enforcement mission of the Agency. Accordingly, determinations regarding which employees will wear a uniform and when, where, and under what circumstances the uniform or uniforms determined to be appropriate will be worn are rights reserved to management. As such the Agency will follow the USBP Uniforms and Grooming Policy Standards.
- B. Only uniform items officially approved by Agency headquarters will be worn by employees. The employer shall maintain listings of the officially approved items within each Sector, and shall maintain a uniform program under which agents may obtain uniform items either through payment of a uniform allowance or, at the discretion of the employer, through a voucher system.
- C. The Agency will notify and discuss with the Union, all proposed uniform changes, additions and deletions, prior to circulation to the field.
- D. Unless it is definitely known that three types of dress shall be required for performance of duty on detail (TDY), requirement for transporting uniforms shall be limited to either the rough duty or dress uniforms in addition to appropriate clothing for plain clothes duty.
- E. Uniformed personnel will be required to wear name plates with the wearer's initial and last name, unless otherwise determined by the agency.
- F. The Sam Browne Shoulder Strap shall not be part of the uniform for all non- Supervisory Border Patrol Agents.
- G. (1) Each Border Patrol Agent is responsible for the proper wear and maintenance of his or her uniform. Agents who are provided a basic uniform allowance will be required to maintain the

minimum number of uniform items specified in the USBP Uniform and Grooming Standards Policy to perform his or her duties as assigned. Agents who have received an initial issuance of uniforms must have ordered or acquired all items listed in USBP Uniform and Grooming Standards Policy within 90 days after receiving their second annual uniform allowance.

(2) The replacement uniform allowance received in the second and subsequent years of employment shall be the maximum amount allowable under OPM regulation.

H. In the event the Employer is not legally able to pay the uniform allowance in Section G, the Employer will furnish the employees any and all uniform items the employees may be required to wear.

I. Local management will determine the periods of time, the tours of duty, and assignments during which the summer or winter uniform will be worn.

Article 26

Travel and Per Diem

- A. Travel or any extension thereof will, to the maximum extent possible, be authorized or ordered in advance in sufficient time for the employee to have in his or her possession a travel advance prior to starting such travel.
- B. The Agency agrees to make every effort to avoid requiring employees to perform continuous automobile travel for more than their daily regular tour of duty or to travel on assigned days off.
- C. The sole purpose of a travel advance is to provide the employee with funds to sustain himself or herself when performing official travel. Travel will be authorized to the maximum extent possible in sufficient time for the employee to have in his or her possession a travel advance. The travel advance shall be returned promptly upon cancellation or indefinite postponement of the travel for which the advance was made.
- D. It will be the responsibility of a traveler to submit a travel voucher in accord with Section E of this article, and to return any excess of the travel advance over reimbursable travel expenses concurrently with the voucher.
- E. Travelers are required to submit travel vouchers within five (5) work days after completion of travel or each thirty (30) days, whichever occurs first, exclusive of full days on emergency work assignments, leave, or union related duties. In no event will more than seven (7) calendar days be excluded for union related duties.
- F. When an employee has not submitted a travel voucher within the above time limits, the employee's immediate supervisor shall discuss the matter with the employee in order to ascertain why the voucher has not been completed. Absent the exceptions noted above or other good and sufficient

cause, the supervisor will direct the employee to submit a voucher in not less than four (4) calendar days after the required discussion with the employee takes place.

Preparation and submission of vouchers shall not be delayed for lack of sufficient receipts. A reclaim or supplemental voucher shall be submitted when the traveler has obtained the necessary receipts not available when the initial voucher was filed.

- G. If a dispute exists as to the propriety of an expense claimed on a voucher, any excess of a travel advance over the undisputed portion of the claim will be collected from the employee or withheld from the employee's salary pending resolution.
- H. If an employee is not reimbursed for properly claimed expenses within twenty work days after filing his or her travel voucher, he or she may request, through supervisory channels, that the processing of the voucher be expedited. If an employee's Government credit card account becomes delinquent because the Agency failed to process a voucher in a timely manner, the Agency will expedite the processing of the voucher and will contact the credit card contractor and explain that the employee is not at fault.
- I. Absent emergency circumstances, supervisors will allow sufficient time during regularly scheduled tours of duty for preparation of travel vouchers.
- J. The recovery of outstanding cash travel advances shall be accomplished in accordance with the provisions of Appendix V.
- K. Disputes over the interpretation and application of this Article may be presented under the grievance procedure in Article 33 of the Agreement.
- L. No disciplinary action may be taken for failure to submit a travel voucher or repay a travel advance until all procedures of this Article have been exhausted and the employee has been notified in writing that failure to comply may result in disciplinary action. However, disciplinary

action may be taken for insubordination if an employee fails to respond to direction by his or her supervisor, in accordance with Section F of this agreement, to prepare and submit a travel voucher.

- M. Disputes over what expenses are reimbursable may only be grieved or appealed by presenting such claim in the following steps: (1) An appeal will be sent to Civilian Board of Contract Appeals pursuant to 31 U.S.C. 3702(a)(3), 48 CFR 6104.402. Claims should be filed with the Office of the Clerk of the Board. The Board's mailing address is: 1800 F Street, NW, Washington, DC 20405. The Board is located at: 1800 M Street, NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is: (202) 606-8800. The Clerk's facsimile machine number is: (202) 606-0019. The Clerk's e-mail address for receipt of filings is: cbca.efile@cbca.gov. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.
- N. The Agency agrees that for operational details requiring advance planning, as much advance notice as possible will be given to employees selected for the detail.
- O. Except for training courses, details away from the normal duty station will not exceed 35 calendar days, unless the employee volunteers for a longer period.

Article 27

Overtime—Other Than Border Patrol Agent Pay Reform Act

- A. Overtime assignments will be distributed and rotated equitably among eligible employees. In the event overtime is mandated, supervisors shall assign overtime work to employees by inverse seniority. Supervisors shall not assign overtime work as a reward or a penalty, but solely in accordance with the Agency's need. Complaints or disagreements on distribution of overtime shall be processed in accordance with the negotiated procedure.
- B. Necessary records (the bi-weekly duty schedule and the time and attendance report) will be maintained by the Agency in accordance with the established retention schedule and made available to all employees or their designated representatives upon request.
- C. All employees in an overtime status will perform the duties of the position to which assigned. They will wear the necessary uniform and identification that the duties of the position require.
- D. To the extent that local conditions warrant and space and resources are available, the Agency agrees to provide suitable space for changing uniforms and lockers for storage of employee uniforms.

Article 28

Tours of Duty

- A. The parties to this agreement recognize that for employees engaged in law enforcement activities, and their required support personnel (normally those employees working under the jurisdiction of a Border Patrol Sector), the employer shall establish, maintain, and change those shifts, tours of duty and hours of work to best promote the efficient and effective accomplishment of the mission and operations of the Agency.
- B. Assignment to tours of duty shall be posted five days in advance in the appropriate work area covering at least a two week period.
- C. Except in an emergency, the Agency agrees to schedule eight (8) hours between changes in shifts, and when practical will schedule more time between shifts.
- D. The Agency agrees that it will attempt to assign consecutive days off duty consistent with the Agency's mission. Assigned days off will be assigned by seniority as requested by the employee. Nothing in this article will preclude Agents from swapping assigned days off duty with other employees from the same tour of duty.
- E. The Administrative workweek shall be seven consecutive days, Sunday through Saturday.
- F. Breaks in working hours of more than one hour shall not normally be scheduled in any basic workday.
- G. When practical, an employee shall be given at least 24 hours advance notice of individual shift changes. Individuals involved in a change of shift should be notified of the reason for the change.
- H. Where mutually agreeable to all employees affected, and approved by the supervisor, employees may trade shifts out of the normal rotation. The supervisor will not unreasonably withhold approval

of a request to trade shifts.

- I. The basic non-overtime workday shall not exceed eight (8) hours.
- J. All bargaining unit employees who are subject to more than one shift will be covered by the shift bid process contained within Appendix II.

Article 29

Grooming and Appearance

- A. Subject to Section D of this Article and any applicable bargaining obligations under the FSLMR statute, the Agency retains the right to establish reasonable grooming standards for all employees. Any grooming standards so established for uniformed officers will be designed to promote their image as professional law enforcement officers.
- B. Every effort will be made to consistently and fairly apply established grooming standards.
- C. In accordance with the procedures set forth in Article 33 (Grievance Procedure) and Article 34 (Arbitration), the Union reserves the right to grieve and arbitrate the validity of any grooming standards established unilaterally by the Agency. In ruling upon any such grievance, the Arbitrator shall be guided by the principles contained in this Article. Questions as to the application of the grooming standards are also subject to grievance and arbitration in accordance with the procedures set forth in the Grievance Procedure and Arbitration Articles.
- D. (1) Head and facial hair, including sideburns, moustaches, and beards shall be neatly trimmed and clean, and shall neither interfere with the wearing of the required uniform nor constitute a safety hazard or an impediment to the employee's ability to properly perform his or her assigned duties. Employees who are not actively attempting to grow a beard or other type of facial hair must report to work with an otherwise cleanly shaven face.

(2) Beards are authorized, but patchy, or spotty clumps of facial hair, excluding those resulting from scars, are not considered beards and as such are not permitted. If a beard or mustache is worn, it shall be well-groomed and neatly trimmed at all times in order not to present a ragged

appearance. The bulk of the beard (distance that the mass of facial hair protrudes from the skin of the face) shall not exceed one-half of an inch, unless required for medical or religious reasons.

(3) Ungroomed beard stubble will not be considered neat, clean and professional. Facial hair will not be worn in any extreme or unconventional styles.

(4) Beards are not authorized for agents until the successful completion of the Border Patrol Academy and any applicable probationary period and may not be worn in Class A or Class B uniforms, Honor Guard, Recruitment, Public Affairs, Sector and Headquarters temporary assignments (unless otherwise authorized at that location), Border Patrol Academy Instructors, and Oral Hiring Boards.

(5) These exclusions will not apply to employees who have requested and received a waiver for medical or religious purposes.

E. The Agency bears the burden of demonstrating that a particular employee's grooming violates the established standards as a result of the provisions of this Section D.

Article 30

Equal Pay for Equal Work

- A. The Agency and the Union agree to the principle of equal pay for equal work as set forth in 5 U.S.C. § 2301(a)(3). The Agency shall cooperate fully in processing alleged violations of this law under any applicable procedures which may be provided by law or regulation.

Article 31

Formal Meetings and Investigative Interviews

- A. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment.
1. The Agency will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency if:
 - a. the employee reasonably believes that the examination may result in disciplinary action against the employee;
 - b. and the employee requests representation.
 2. The employer will advise employees in the unit of this right annually and will post the annual notice throughout the year on bulletin boards where notices for employees are normally posted.
 3. The Agency agrees prior to taking a written or sworn statement from an employee, or when an employee is going to be interrogated before witnesses which may lead to disciplinary action against the employee, he or she will be advised in writing of his or her right to be represented by the Union.
- B. The failure to obtain representation will not delay the interrogation by more than 48 hours from the time the employee receives notice of the interrogation. The employee and the Union will promptly designate the representative and make reasonable efforts to minimize the delay. Upon request, a reasonable extension of time will be granted when the representative must travel more than 100 miles to represent the employee.

- C. Normally, an employee who is a witness in an investigation is not entitled to Union representation; however, an employee who is requested to give information concerning another person and who refuses to do so voluntarily will be entitled to representation upon request if he or she reasonably believes that the examination may result in discipline against him or her.
- D. This provision is intended to provide information to bargaining unit employees and does not affect the right of the Department of Justice to determine the functions to be performed by its officials: Under 18 U.S.C. § 6003, no official of the Agency is authorized to grant criminal immunity, which is a matter totally within the control of the U.S. Attorney and the appropriate Division within the Department of Justice. Agency investigators may, however, inform employees that the U.S. Attorney has declined criminal prosecution in a matter under investigation and that, consequently, those employees are obliged to answer questions about that matter. In all such instances, no information gathered during the interrogation may be used against the employee in a criminal proceeding, except for possible perjury charges for any answers given during the interrogation.
- E. Investigative interviews undertaken on behalf of the Agency may be conducted at any reasonable hour. However, investigators will make reasonable efforts to consider such factors as employee fatigue and schedules of designated representatives when scheduling interviews. Nonetheless, where an employee is directed to appear fo[r an interview, all hours spent in the interview shall be compensated at an appropriate rate.
- F. Where an employee is asked to certify to the correctness of a transcript of a prior investigative interview, he or she shall be afforded upon request the opportunity to review any recording of the interview by arrangements with appropriate management.

Article 32

Disciplinary and Adverse Actions

- A. When the Union is designated as the representative in a disciplinary or adverse action, the employee will furnish to the Agency written designation and authorization on Appendix VII. The designation and authorization form will serve to release to the representative the information and documents which, as provided in this Article and relating to the disciplinary or adverse action, the employee is entitled to receive. Information and documents which are not releasable will not be used in taking a disciplinary or adverse action. The designation and authorization will include the name and address of the representative where the Agency will promptly provide the material and copies of all correspondence addressed to the employee. If time and distance are factors in the designation and authorization, it may be furnished to the local supervisor in writing and that supervisor may attest to its authenticity by telephone to the releasing official.
- B. When the Union is not designated as the representative in a disciplinary or adverse action, the Union will be furnished with sanitized copies of the notice of proposed action, final actions taken, and decisions on any subsequent appeals (except that published decisions of adjudicating bodies need not be sanitized). Sanitized copies are copies from which all identifying information (for example, name and social security number) has been removed. Copies furnished shall identify the issuing Sector, but information identifying lower organizational levels will be deleted. The Union agrees to provide the Agency with a list of representatives designated to receive such notices.
- C. The disciplinary actions covered by the provisions of this Article are written reprimands, suspensions of fourteen (14) calendar days or less, and disciplinary transfers. Any dispute concerning the disciplinary nature of an action involving relocation of an employee may be

referred as a threshold issue in an arbitration under Article 34 (Arbitration).

D. An employee against whom a disciplinary action is proposed is entitled to:

1. an advance written notice stating the specific reasons for the proposed action;
2. a ten-day response period, extended for good cause, to answer the notice orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the answer; if an oral reply is made, the employee and representative will normally be present; however an employee may be represented by the representative alone for valid medical reasons;
3. upon request, a copy of the material relating to the proposed action, regardless of whether relied upon in the proposed action;
4. be represented by an attorney or other representative;
5. a formal written decision, and the specific reasons therefor, by an official other than the official who proposed the action. The deciding official will consider only the reasons specified in the notice and the material in the investigatory and disciplinary files, and shall consider any answer of the employee and his or her representative.

E. Adverse actions are removals, suspensions for more than fourteen (14) calendar days, reductions in grade or pay, and furloughs of thirty days or less.

F. An employee against whom an adverse action is proposed is entitled to:

1. at least thirty (30) calendar days advance written notice, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, in which case he or she is entitled to at least seven (7) days advance written notice. The specific reasons for the action must be stated. If fewer than thirty (30) calendar days advance written notice is provided, the specific reasons for the belief that a sentence of imprisonment may be imposed must also be stated.

2. a ten-day response period, extended for good cause, to answer the notice orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the answer(s). If an oral reply is made, the Agency will prepare a summary of the reply. The employee may review the summary, make corrections, and submit his or her version of the summary. If an oral reply is made, the employee and representative will normally be present; however, an employee may be represented by the representative alone for valid medical reasons.
 3. upon request a copy of the material relating to the proposed action, regardless of whether relied upon in the proposed action;
 4. be represented by an attorney or other representative;
 5. a final written decision, and the specific reasons therefor, by an official other than the official who proposed the action. The deciding official will consider only the reasons specified in the notice and the material in the file, and shall consider any answer of the employee and his or her representative.
- G. The employer shall furnish employees with notices of proposed disciplinary/adverse actions within a reasonable time after the investigation concludes. It is understood criminal investigations outside the control of the employer may be prolonged; in such cases, the employer shall furnish notice at the earliest practicable date after the employer has obtained control over the matter under investigation.
- H. Where investigations have been unduly prolonged because they are not within the administrative control of the employer, a reasonable extension of the response period to the proposed disciplinary or adverse action will be granted by the Employer, upon the request of the employee or his or her representative. In addition, except where time limits are provided by law or applicable government-wide regulation, time limits in this Article will be extended for good cause.

- I. An employee who is dissatisfied with the decision on any disciplinary or adverse action may file a grievance under (1) or (2) below. Removals, suspensions for more than fourteen (14) days, reduction in grade or pay, and furloughs for thirty (30) days or less are also appealable to the Merit Systems Protection Board. An employee cannot file both a grievance and an appeal with the MSPB. Once an employee files a written grievance, or a timely MSPB appeal, he or she may not pursue the other procedure.
 - 1. In the case of an official reprimand, the grievance processing shall begin with Step II in Article 33 (Grievance Procedure) of this Agreement and continue through successive Steps.
 - 2. In the case of a suspension of fourteen (14) days or less, disciplinary transfer, or an adverse action, the employee may request the Local to pursue the grievance without intervening Steps, through arbitration procedures in Article 34 (Arbitration) of this Agreement. The Agency's Notice of Decision shall represent the Agency's final decision referred to in Section A of Article 34 (Arbitration).
- J. Any disciplinary or adverse action which is later found to have been unwarranted shall be removed from the official file of the employee and destroyed and the employee so notified in writing.
- K. No record of a complaint, determined to be unfounded, will be placed in the employee's electronic Official Personnel Folder. Such complaint may, in the interest of the employee and the Agency, be maintained in a subject file but will not under any circumstances be considered as a factor in connection with any disciplinary action, promotion, etc. Such subject file will be maintained in accordance with the Agency records retirement program.
- L. It is recognized that all employees are expected to pay promptly all just financial obligations.
- M. The parties agree that letters of reprimand, suspension of less than fifteen (15) days, and other adverse actions will be taken only for appropriate cause as provided in applicable law. Such cause,

in the case of actions which are not based on unacceptable performance, shall be just and sufficient and only for reasons as will promote the efficiency of the Agency.

- N. Although termination of a probationary or temporary employee is not an appealable adverse action, the Agency agrees that when it deems advance notice of termination to be in the best interests of the operations of the Agency, the affected employee will be given two (2) weeks advance notice prior to the effective date of such action.

Article 33

Grievance Procedure

- A. The purpose of this Article is to provide a fair and simple means for the prompt and equitable processing of grievances. The negotiated grievance procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which fall within its coverage, except as specifically provided herein. However, any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given the opportunity to be present during the processing and at the adjustment and furnished a copy of any written adjustment. The initiation or presentation of a grievance by employees will not cause any reflection on their standing with or their loyalty to the Agency.
- B. Definition — A grievance means a complaint either by a unit employee concerning his or her conditions of employment, or by the Union in its own behalf or concerning conditions of employment of any employee. Unless excluded below, such a complaint may concern the adverse impact of:
1. the effect or interpretation, or a claim of breach of this master Agreement, or other written agreement between the parties; or
 2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Exclusion — This procedure does not cover grievances concerning:

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 Section 7532 of Title 5 U.S.C. for reasons of national security;
4. any examination, certification, or appointment;
5. the reclassification of any position which does not result in a reduction in grade or pay of any employee;
6. a complaint of discrimination which is listed in 5 U.S.C. 2302(b)(1) if the employee has elected to use the statutory appeal procedure;
7. an appeal of an adverse action based on performance under 5 U.S.C. 4302 or efficiency under 5 U.S.C. 7512 if the employee elects the statutory appeals procedure provided under 5 U.S.C. 7701;
8. A Union appeal of an adverse action or an allegation of discrimination against any employee if the Union is not expressly designated by the employee as his or her representative in the matter.

C. Allegations by management as to grievability or arbitrability should be raised at the earliest practical time. However, the parties recognize that questions of arbitrability or grievability may be raised at any appropriate time. Management will attempt to raise such issues at the time that a decision is issued on the grievance at the level of Headquarters, unless the basis of the grievability/arbitrability determination arises after that time.

D. The Agency and the Union agree that every effort will be made by management and the aggrieved party(s) to settle grievances at the lowest possible level. It is agreed that the employee and his or her representative will be given a reasonable amount of time to present the grievance. Upon request, a grievant and his or her Local representative may each be authorized up to a maximum

of 2 hours at Step I and 6 hours at Steps II and III of official time to prepare a grievance for presentation.

E. Step I: Informal grievances must be filed within thirty (30) calendar days after the incident occurs. This time limit will not apply where it is established that the employee had no way of being aware of the incident. The grievance shall first be taken up orally by the concerned employee with the first level of supervision in an attempt to settle the matter. He or she may, if he or she desires, be assisted in the presentation by a Union representative. The Union representative must be present if the employee so desires. If the employee presents a grievance directly to Agency management for adjustment consistent with the terms of this agreement, the Union shall be given the opportunity to have an observer present on official time during the processing and at the time of the adjustment and will be provided with a copy of any written adjustment. The immediate supervisor shall take whatever action he or she deems appropriate to attempt to resolve the problem. If the supervisor is unable to do so, he or she shall so notify the employee as soon as possible, but no later than five workdays after the presentation. At the option of the employee, he or she may pursue his or her informal grievance to the next higher level of supervision if that level is not one of the management officials cited in Step II. All aforementioned procedures for Step I shall apply at this level for informal resolution of the employee's grievance.

Step II: If the employee is dissatisfied with the results of the oral presentation, he or she may file a formal written grievance within 15 calendar days with the Chief Patrol Agent. The employee or the Union shall set forth in precise terms exactly what the grievance is; all the facts relating thereto, including the names of any individuals or entities against whom the grievance is made; the pertinent Article(s) and Section(s) of this Agreement in dispute; the reason for

dissatisfaction; and the corrective action desired. When the Union is designated as the representative of an employee in a grievance, the employee will also furnish the name and address of the representative to the Agency in writing. The employee will also furnish the name and address of any witness(es). The Chief Patrol Agent or his or her designated representative will meet with the employee. The employee's Union representative may be present, in duty status, at the discussion with the employee. The Union will have the opportunity to have an observer present at the discussion, in duty status, when the Union has not been designated by the employee as his or her representative. When Agency employees are called as witnesses, the employees will be considered to be in a duty status. A written decision will be rendered to the employee and his or her representative, if any, within twenty (20) calendar days after receipt of the written grievance. In all cases, a copy of the written decision will be provided to the Union. The written decision shall set forth in precise terms the basis for the decision.

Step III: If the employee is dissatisfied with the decision of the Chief Patrol Agent, he or she may, within fifteen (15) calendar days of receipt of the decision submit his or her grievance in writing to the appropriate Headquarters designated official. The employee will include a copy of the written grievance he or she submitted under Step II and a copy of the written decision he or she received, as well as the reason for his or her dissatisfaction with the initial decision, and the corrective action desired. The employee will also at this time submit a copy to the officer who rendered the decision in Step II. Within thirty (30) calendar days after receipt the appropriate Headquarters official or his or her designee will review the grievance, will obtain or direct to be obtained such necessary additional facts as he or she may deem appropriate including consultation with the employee and his or her representative, and shall give the employee and his or her

representative a written decision which shall include the basis for the decision including a statement of facts to support the decision. If the employee is dissatisfied with the decision, he or she may submit the grievance to the appropriate Local for a decision on whether to process the case through arbitration as provided in Article 34.

F. (1) Union initiated grievances may be submitted in writing (containing the same information required in Step II) within 30 calendar days of the incident by the appropriate Union representative or his or her designee to the appropriate management representative or his or her designee. The Union representative and the management representative shall discuss the matter as soon as possible. The management representative will obtain whatever additional evidence is necessary and will give the Union representative his or her written answer within 30 calendar days of receipt of the written grievance. If the grievance is not settled by this procedure, the Union may, within 15 calendar days, refer the matter to arbitration as described in Article 34 by written notification to the management representative.

(2) In the case of a grievance arising from an action initiated by or within a Sector, the appropriate representatives or their designee(s) are the Council President and the Chief Patrol Agent; by Headquarters, the Council President and the Assistant Commissioner of Human Resources Management

G. In the case of identical grievances, one grievance may be selected by the Union for processing. The decision(s) on the selected grievance shall have binding application to the other grievances.

H. All time limits herein may be extended by mutual agreement of the employee or his or her representative and the Agency. Failure of the Agency to observe the time limits and procedures for any Step in the grievance procedure shall entitle the employee or the Union to advance the grievance to the next step and present the additional violation to the arbitrator for adjustment.

- I. All time limits of this grievance procedure, including arbitration, shall be controlling. Where, under the provisions of this Article, the time limit for taking an action falls on a weekend or a holiday, the action will be considered timely if taken on the next workday. Service will be by electronic mail, personal service, Certified Mail-Return Receipt Requested, Express Mail, Federal Express, or Mailgram.
- J. Grievances will be filed at the level where the action being grieved was initiated. If management raises a valid argument that a grievance was filed at an improper level, the grievance will be considered timely if it was otherwise submitted in a timely manner, and will be forwarded to the level that the Agency designates as being responsible for the action being grieved.

Article 34

Arbitration

- A. If the Agency and Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by the Union, may be submitted to arbitration within fifteen (15) calendar days from the date the Agency's final decision is personally delivered or mailed. If service is by mail, five (5) additional calendar days shall be allowed.

In cases involving suspensions of less than fifteen (15) days, or adverse actions, requests for arbitration must be filed after receipt of the Notice of Decision, but not later than thirty (30) calendar days after the effective date of action.

- B. Recognizing that both parties consider completion of the R-43 to be of concern and that the Federal Mediation and Conciliation Service prefers joint submission of the form, each party will participate in completion of the Form. It is recognized that the parties may differ in their view of the issue, the area from which arbitrators may be drawn, and so forth. Accordingly, either party may provide information on the form that is to be submitted to the FMCS, and will allow adequate space for the other party to provide input on the R-43. The Union may either submit a written request to management for arbitration, or a completed R-43, to fulfill the requirement of Section A.
1. If the Union submits a written request, management will prepare a R-43 and submit it to the Union, which shall provide its input, sign the form, and submit it to the FMCS within seven calendar days.
 2. If the Union submits a completed R-43 to management, management will provide its input, sign the form, and submit it to the FMCS within seven calendar days.

The parties shall telephonically select an arbitrator within seven (7) calendar days after receipt of such a list. If they cannot agree upon one of the listed arbitrators, the Agency and the Union

will each strike one arbitrator's name from the list of five and then repeat this procedure. The remaining person shall be the duly selected arbitrator.

- C. Either party may withdraw its grievance or request for arbitration of a grievance at any time. However, where withdrawal of the grievance or arbitration request results in charges from an arbitrator based on tardy cancellation of a planned hearing, the party withdrawing the grievance or request for arbitration shall pay all such charges.
- D. If for any reason either party refuses to participate in the selection of an arbitrator, the FMCS will be empowered to make a direct designation of an arbitrator to hear the case.
- E. The arbitrator's fees and expenses shall be borne equally by the Agency and the Union. Fees to be paid by the Agency will be governed by existing regulations. The arbitration hearing will be held, if possible, on the Agency's premises during the regular day shift of the basic workweek. In the absence of operational emergency circumstances, the Agency shall, if provided two weeks notice of the arbitration hearing, rearrange schedules so that all participants receive reasonable official time to prepare for, participate in, and travel to and from hearings. Participants appearing for the Union will be entitled to applicable travel and per diem if roundtrip travel of more than 100 miles is required.

If each party elects to receive a transcript, each shall pay half the cost. Either party may elect to receive a transcript initially ordered by the other at any time up to the conclusion of the hearing. If either party does not elect to receive a transcript ordered by the other party, the transcript shall be made available for inspection when post-hearing briefs are exchanged. A request to correct the record may be made up to seven calendar days following the inspection.

- F. The arbitrator will be requested to render his or her decision as quickly as possible but in any event not later than thirty (30) days after the conclusion of the hearing unless the parties mutually agree

to extend the time limit.

If the arbitrator's decision has not been received within sixty (60) days after the closing of the record, the parties will go forward with a joint request to the FMCS calling for prompt issuance of the decision.

G. The arbitrator's award shall be final and binding on the parties. The award may be appealed, pursuant to law.

Article 35

Publicizing the Agreement

- A. The Agency agrees to distribute an electronic link to the Agreement, to all employees currently assigned to the bargaining unit. It is further understood that proof copies of the Agreement will be reviewed and approved by the Agency and Union prior to final electronic publishing.
- B. In addition, the Agency agrees to provide one hundred and fifty (150) copies of the printed (5" x 7") Agreement to the Council President and fifty (50) copies to AFGE.
- C. The Agency agrees that at the time of orientation, all new Unit employees shall be advised that the Union has exclusive recognition and provided a link to an electronic copy of the Union contract together with electronic links to health insurance plans.
- D. The Union will be advised in advance of all new employee orientation sessions and will have the opportunity to make a fifteen (15) minute presentation during regular duty hours to the employees at the orientation. The union representative will be in a non-duty status and the Union's presentation will cover only labor relations law, provisions of the contract and Union-Management agreements.

Article 36

Effective Date and Duration

- A. This agreement shall be considered executed on the date it has been signed by both parties' authorized representatives (or, if the representatives sign on different dates, on the date signed by the last of the two). Following agency head approval pursuant to 5 U.S.C. § 7114(c) (or failure of the agency head to approve or disapprove within 30 days of execution) the agreement shall become effective on the date of the ceremonial signing of the agreement by the Commissioner of the Agency and the President of the Union Council. The parties agree to promptly schedule a signing ceremony.
- B. The agreement shall remain in effect for six (6) years from its effective date. If either party subsequently desires to renegotiate this contract, it will furnish written notice to the other party containing the proposed changes not less than one hundred eighty (180) days but not more than two hundred ten (210) days prior to the termination of this agreement. If neither party desires to renegotiate the agreement, the parties shall execute new signatures and dates, and the agreement shall be renewed for a one (1) year period.
- C. In the event notice is given by either party, renegotiations shall begin within sixty (60) days from the date of receipt of notice of the proposed changes.

Appendix I
Seniority Definition

- A. The total time an employee has served in his or her occupational series (e.g. Border Patrol Agent, Sector Enforcement Specialist, Law Enforcement Communications, Assistant, Mission Support Specialist/ Assistant.)
- B. In the rare event different occupations are competing for the same item in which seniority is considered, seniority will begin with the steps outlined in section D.
- C. In situations where an employee is reclassified in a different occupation within the U.S. Border Patrol due to circumstances beyond their control (e.g. injuries, RIF, audit), the employee's prior occupational time within the previous occupation will count toward their total time in the new occupational series for this purpose. Reclassifications due to disciplinary issues do not constitute circumstances beyond the employee's control.
- D. In the event it is necessary to resolve ties in total time in occupational series (A), these criteria will be applied in the following order:
 - 1. The total time an employee has served in the U.S. Border Patrol, regardless of occupation,
 - 2. the total time served in CBP. Prior time spent in a Legacy agency will be credited to CBP time (e.g. Immigration and Naturalization Service, Customs.)
 - 3. alphabetical order applied in this order: last name, first, and middle, with each letter of the name serving as a tiebreaker when necessary.

Appendix II

Shift Bids

I. General

- A. This shift bid Appendix will be the mechanism used for employees to express an interest in requesting or being assigned to a specific shift.
- B. These procedures are intended to apply to all Sectors and Stations. However, Chief Patrol Agents and the NBPC Local President may mutually agree not to implement this shift bid mechanism at the station or sector level and maintain existing rotational shift procedures. Such an agreement must be documented in writing with a copy submitted to U.S. Border Patrol Headquarters and to the NBPC President.

II. Definitions

- A. Shift – the daily tour of duty (e.g. 0600-1400 hrs.) for a station and/or worksite, hereafter referred to only as location.
- B. Shift rotation – the length of time employees will remain on a shift (e.g. three, four, six, or twelve months).
- C. Bump – when an employee is moved to a different shift, during the bid process, to accommodate another employee under the shift preference plan.
- D. Seniority – refer to the seniority definition in this Agreement.

III. Application

- A. The Agency will determine the numbers, types and grades of employees required for each shift based upon operational requirements.
- B. This Appendix covers the Shift Bid process. It does not address any other aspects of shifts, tours of duty, assignments of work, or any other conditions of employment. It does not modify any other aspects of this Agreement.
- C. This Appendix does not apply to situations where employees are on temporary duty assignments outside of the Border Patrol (DEA task force, HSI task force, etc.).
- D. All bargaining unit employees who are subject to more than one shift will be covered by this shift-bid process.
1. Employees with less than two years of employment within their occupational series will be assigned to a shift based on the needs of the Agency.
 2. Employees will be eligible to bid for the next shift rotation upon completing two years of employment in their occupational series.
 3. The Shift Bid process will utilize the negotiated seniority definition (attached).
- E. The established rotation of all shifts will not be shorter than three (3) months. The Agency will solicit input from the Union before setting the rotation.
- F. The shift bid process will be managed by one or more management officials at the station or work location.
- G. The Union's designated representative at each location will have the opportunity to review the final shift assignments prior to distribution to employees. For this purpose, the Union representative will have access to records related to the shift-bid process (i.e. the bids and shift assignments).

- H. Should any dispute arise over the shift-bid process, the designated supervisor and the Union representative will attempt to settle the dispute informally. Complaints that remain unsettled may use the negotiated grievance procedure.
- I. Management retains the right to place agents with disciplinary, performance, or other employment-related issues on a different shift.
- J. **This shift bid process does not apply to employees temporarily detailed away from their permanent duty location to a different location.** When employees are detailed to a different location and assigned to more than one shift, the Agency will attempt to accommodate the employees' shift preferences using seniority.

IV. Shift Selection

- A. Shift selection will be based on a bid process, with each employee requesting shifts in order of preference or indicating no preference.
 - 1. Employees will receive bid sheets at least four (4) pay periods prior to the scheduled shift change, but will have access to bid sheets at all times.
 - 2. Employees will be given an open period of one (1) pay period to complete, update, and submit bid sheets.
 - 3. The shift assignments will normally be posted two (2) pay periods prior to scheduled shift rotation.
 - 4. In the event an employee fails to submit a bid-sheet or does not have one on file, the employee will be assigned to a shift at the discretion of the Agency.
 - 5. At the end of the open period, the designated management official will sort the employees' shift-bid requests in order of seniority for each requested shift.

- B. Shift bid requests will remain on file and used for future shift-bid assignments until an employee submits a new shift request. New or updated requests may be submitted at any time. Requests submitted outside the open period will not be considered until the next open period.
- C. All employees who are expected to be assigned to a shift at their location for the upcoming shift rotation should complete a bid sheet if they do not have one on file or wish to update their preference.
- D. Except as stated herein, shift assignments will be based on seniority.
- E. Shift swaps may be requested at any time, consistent with the Collective Bargaining Agreement.
- F. Shift requests based on special circumstances will be considered and may be approved by management on a case by case basis after an employee has exhausted attempts to voluntarily swap shifts.

V. Shift Preference Plan

- A. In order to ensure that all employees have an opportunity to work a requested shift, the Shift Preference Plan (SPP) will be followed:
 - 1. An employee cannot be denied their first choice on more than two (2) consecutive bids.
 - 2. When an employee has been denied their first choice on two (2) consecutive bids, he/she shall automatically be granted his/her first choice on the next bid, by way of the SPP.
 - 3. If it becomes necessary to bump an employee from a shift, the junior-most employee on the shift will be replaced and given his/her next available choice based on seniority.
 - a. No employee will be bumped more than once until all other employees assigned to the affected shift have been bumped once.

b. The Agency will be responsible for maintaining a list of employees who have been previously bumped from their requested shift under this provision.

VI. Collateral Duties and Details

- A. Employees who are assigned to collateral duties and/ or details may not be considered in the shift-bid process at the employee's permanent duty location until the employee is expected to return to regular duties, unless the specialty unit is normally a part of the traditional shift at the location.
- B. If the employees assigned to collateral duties and/or details are not normally assigned to a traditional shift at the location, management may assign the individuals based upon operational need.
- C. If a collateral duty and/ or detail is terminated during a shift bid rotation, the returning employee will be placed on a shift at the discretion of management, with due consideration for the employee's request.
- D. Employees on details which are shorter than the current shift rotation will return to the shift to which they were previously assigned.
- E. Notwithstanding the above, Management reserves the right to place agents with specialized training, skills, and certifications where needed, based on the needs of the Agency.

VII. Light Duty/Admin Duty

- A. Employees who are on administrative duty or light duty will not be factored into shift-bids unless they are expected to return during that shift rotation. If an employee returns to full duty after the shift bid process, the employee will be placed on a shift at the discretion of the agency. The agency will seek to accommodate the employee's preference if operationally possible.

Appendix III

Temporary Assignments and Collateral Duties

This Appendix contains the sole procedures for selections of temporary assignments and collateral duties not otherwise addressed in this Agreement. For the purposes of this collective bargaining agreement, temporary assignments are synonymous with details.

A. Selection Procedures

1. Seniority, as defined in Appendix I, will apply to all details and collateral duties that management determines does not require special skills. In such cases, details or collateral duties will be assigned based upon seniority and on a voluntary basis. Once an agent or employee completes a voluntary detail, that agent may not be granted the same detail until all agents or employees have been given the opportunity to complete the same detail or collateral duty. If there are no volunteers, the agency may mandate agents or employees based upon reverse seniority. Once an agent or employee has been mandated, that person may not be mandated again until all eligible agents or employees as identified by the agency have been mandated to fulfill a detail or collateral duty.
2. If the agency determines that a detail or collateral duty requires special skills, the Agency will use the following criteria for selection:
 - a. Any required qualifications, certifications or other training, etc.
 - b. Any preferred prerequisites/qualifications
 - c. Prior temporary assignment of the same type
 - d. Seniority
 - e. Period between temporary assignments

- f. Interview (if applicable)
- g. Supervisory Recommendations
- h. Availability

The weights of the above criteria will be including in the solicitation. In the event the above criteria result in an equal evaluation of two or more candidates, seniority will be the tie breaker.

- B. If an eligible employee declines selection, the Agency will select the next qualified employee using the selection criteria until an employee accepts the selection.
- C. If there are no qualified volunteers for a temporary assignment or collateral duty, the employees currently assigned will be afforded an opportunity to voluntarily extend.
- D. In the event there are no qualified volunteers for a particular temporary assignment, or collateral duty, employees currently assigned do not volunteer to extend, and the position must be filled, the Agency may make selections from employees deemed qualified by the Agency. When making these selections for involuntary temporary assignments or collateral duty, the Agency will consider qualifications/prerequisites and inverse seniority.
- E. Outside of exigent circumstances as determined by the agency, temporary assignments or collateral duties will have a waiting period in which the agent or employee will return to normal duties for a period equal to the length of the completed temporary assignment or collateral duty, not to exceed 1 year. A waiting period will be waived when an agent or employee volunteers for a detail or collateral duty which has no other volunteers.

Appendix IV
Outside Employment Form

See PDF CBP Form 3031

Appendix V

Recovery of Outstanding Travel Advances

- A. This agreement applies solely to travel advances provided to employees by the Agency, and does not include any funds that employees obtain from Automatic Teller Machines.
- B. Any employee who has a travel advance outstanding more than 30 days but less than 60 days after the completion of travel shall receive a letter:
 - 1. advising the employee of the outstanding balance of the travel advance and the date(s) for which such travel was authorized; and
 - 2. advising the employee of his or her right to inspect or obtain a copy of the documentation related to the outstanding travel advance; and providing the employee with an opportunity to:
 - (a) submit evidence that a travel voucher for the travel in question has been filed and/or any excess travel advance over the amount claimed for such travel has been returned; or
 - (b) file a travel voucher for the travel in question and/or return any excess travel advance over the amount claimed for such travel.
- C. Any employee who has a travel advance outstanding more than 60 days after the completion of travel shall receive a letter by certified mail, return receipt requested or by personal delivery, signed for by the employee:
 - 1. advising the employee of the outstanding balance of the travel advance and the date(s) for which such travel was authorized; and
 - 2. advising the employee of his or her right to inspect or obtain a copy of the documentation related to the outstanding travel advance; and
 - 3. providing the employee with an opportunity to:

- (a) submit evidence that a travel voucher for the travel in question has been filed and/or any excess travel advance over the amount claimed for such travel has been returned; or
 - (b) file a travel voucher for the travel in question and/or return any excess travel advance over the amount claimed for such travel; and/or
 - (c) enter into a written agreement with the Agency to repay the outstanding excess travel advance; and/or
 - (d) request a review of the alleged indebtedness by submitting a written request for review to the head of the servicing Finance Office within 30 days of receipt of the letter; and
4. advising the employee that the failure to take one of the actions outlined in subparagraph C.3. above shall result in the initiation of steps to recover the outstanding travel advance balance through salary offset no sooner than 30 days following receipt of the letter.
- D. Salary offset to recover outstanding travel advances shall not exceed 15% of an employee's disposable income in any pay period.
- E. Any amount that is offset from an employee's salary in error (including any amount that is substantiated on a voucher and/or any advance that is returned to the Agency by any other means) shall be promptly refunded to the employee.
- F. Nothing herein waives any employee rights otherwise available under the Debt Collection Improvement Act of 1996.

Appendix VI

Placeholder for G-955 PDF in final version.

Refer to updated G-955 Word doc and comment in email.

Appendix VII

Designation of Representative and Authorization to Release Information

I, _____, hereby designate
_____ as my Union
representative in the disciplinary action proposed against me.

As my representative, (s)he is entitled and authorized to receive copies of all correspondence, documents, and material related to my case, in accordance with my rights in Article 32 and the rest of the labor agreement between the National Border Patrol Council, American Federation of Government Employees, AFL-CIO and Customs and Border Protection.

The address of my Union representative is: _____

Signature of Employee

Date

Appendix VIII

Service of Documents and Notices Between the Parties

- A. Acceptable forms of service of correspondence shall be by one of the following: personal service, through the mails (U.S. Postal Service, United Parcel Service, etc.), email, or facsimile. Upon mutual agreement, other methods of service may be acceptable.
1. Hand delivery date, post mark date, fax transmission date/time or email sending date/time shall be recognized as the date/time of filing for timeliness purposes. An item will be considered timely if time stamped, emailed, or faxed by 11:59 p.m. on the due date of the sending party's time or postmarked on the due date.
 2. Time limits for the next step of any process shall begin to toll on the date after the date of delivery/receipt date. The filing date and receipt date are not necessarily the same.
 3. If a deadline falls on a Saturday, Sunday, or federal holiday, then the deadline and response period will automatically be extended to the next business day.
- B. When delays in mail processing and delivery exist, the Agency will notify the designated Union representative and they will mutually agree upon an extended response period.

